STATE OF MAINE
WORKERS' COMPENSATION BOARD
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JANET T. MILLS
GOVERNOR

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September 4, 2025

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, Final Report

Dear Senator Tipping and Representative Roeder:

As required by Resolves 2023, c. 139 the Workers' Compensation Board ("Board") is submitting this final report to the Labor Committee.

Sincerely,

John C. Rohde, Executive Director, Maine Workers' Compensation Board
Lynne Gaudette, Management Director, Maine Workers' Compensation Board
Glenn Burroughs, Labor Director, Maine Workers' Compensation Board

Cc: Senator Dick Bradstreet
Senator Joseph Rafferty
Representative Marshall Archer
Representative Matthew Beck
Representative Alicia Collins
Representative Gary Drinkwater
Representative Valli Geiger
Representative Laurel Libby
Representative Rafael Macias
Representative Charles Skold
Representative Mike Soboleski
Steven Langlin - OPLA Analyst
Sophia Paddon - OPLA Analyst
Eliana Beca, Committee Clerk

Resolves 2023, c. 139

Final Report

Submitted to the Joint Standing Committee on Labor

September 4, 2025

I. INTRODUCTION

Enactment of Resolves 2023, c. 139 (the "Resolve") presented the Workers' Compensation Board (the "Board") with the specific task of examining the effect of inflation on weekly incapacity benefits as well as the potential cost impact of modifying the existing cost-of-living adjustment ("COLA") in 39-A M.R.S.A. §212. More broadly, the Board was tasked with considering whether the Workers' Compensation Act (the "Act") provides substantial protection to injured workers at an affordable cost to employers.

To accomplish these tasks, the Board developed a framework within which the directors could evaluate the Resolve's questions. Acting within this framework, management and labor directors forged productive working relationships and evaluated (1) whether the Act provides adequate benefits in light of the impact of inflation and (2) the cost impact of expanding the COLA in §212 to cover workers receiving 100% of their benefit pursuant to §213 because they are unable to work due to their work-related injury, and to cover dependents receiving death benefits pursuant to §215.

The Board's work on this Resolve formed the basis for discussions about the impact of inflation and potential changes to address that impact. The Board is currently working with labor and management stakeholders and the National Council of Compensation Insurers ("NCCI") to discuss these potential changes.

Finally, evaluating whether Maine's workers' compensation system provides substantial protection to injured workers at an affordable cost to employers is not a discrete project. It will require ongoing work by the Board. The framework provides a process through which the Board can continue to study and evaluate whether Maine's system meets these twin objectives.

II. L.D. 1896

The Resolve was enacted after a stakeholder group created by the Board was unable to reach consensus with respect to a bill introduced by Senator Tim Nangle in the First Regular Session of the 131st Maine Legislature.

That bill, L.D. 1896, "An Act to Index Workers' Compensation Benefits to the Rate of Inflation"[1] was introduced to address the effects of inflation on workers' compensation benefits.

> Inflation is a natural phenomenon that affects all aspects of our economy, including the cost of living for workers. As the prices of goods and services increase over time, the purchasing power of workers' compensation benefits decreases. This silent shrinkage places an undue burden on injured workers, who are often struggling to cope with everyday expenses as their earning capacity is compromised.
>
> LD 1896 proposes a simple yet powerful solution: index workers compensation benefits to the Consumer Price Index (CPI), a measure compiled by the United

[1] L.D. 1896 is attached as Appendix B.

> States Department of Labor, Bureau of Labor Statistics. This ensures that the real value of these benefits stays constant, providing much-needed stability for our workers when they are most vulnerable.

Testimony of Senator Timothy Nangle introducing L.D. 1896, "An Act to Index Workers' Compensation Benefits to the Rate of Inflation," May 11, 2023. (Available at: https://legislature.maine.gov/billtracker/#Paper/1896?legislature=131.)

As originally drafted, L.D. 1896 required that "[c]ompensation under this Act must be annually increased to account for inflation by the amount of increase in the Consumer Price Index compiled by the United States Department of Labor, Bureau of Labor Statistics for the most recent 12-month period for which data are available."

Testimony and discussions before the Labor Committee raised questions about how the bill would impact costs and be applied to benefits. The Labor Committee voted to carry over L.D. 1896 to the Second Regular Session and the Board agreed to facilitate meetings with stakeholders to see if consensus could be reached on how to proceed with the bill.

During the first stakeholder meeting, Senator Nangle outlined a more specific proposal. The group agreed to meet again after NCCI produced a cost estimate of the modified proposal. Before the first meeting concluded, two participants indicated they would not be able to reach consensus.

A second stakeholder meeting was held after NCCI produced its cost estimate. In an effort to start a conversation that might lead to meaningful discussions, Senator Nangle asked what it would take for insurance companies to agree to change the existing COLA. There was no reply.

Nevertheless, the stakeholder group met one final time to see if it was possible to reach consensus. It was not. The process then concluded, and, on December 11, 2023, the Board submitted a report to this Committee detailing its efforts with respect to LD 1896.[2]

Although the three stakeholder meetings ended without progress, several important issues were raised, including: The impact of inflation on employees who are receiving incapacity benefits due to work related injuries; the scope of the COLA enacted in 2019; the concept of benefit adequacy; how to assess whether costs are affordable to employers; the cost of inflation adjustments to the workers' compensation system; the extent to which workers' compensation costs are being shifted out of the workers' compensation system; and, whether to expand the scope of the 2019 COLA beyond § 212. It was also clear that the directors of the Board would need to develop their own framework to evaluate Maine's workers' compensation system and any proposals for change.

[2] The full report is attached as Appendix C.

III. RESOLVES 2023, c. 139

During the Second Regular Session, the Labor Committee continued its discussion of L.D. 1896. These discussions ultimately led to the enactment of the Resolve.[3] The Resolve instructed the Board to review information from payors of workers' compensation benefits together with any other information that is relevant to benefits paid under 39-A MRSA § 212 (total disability), § 213 (partial disability) and § 215 (death benefits).

The Board was also directed to evaluate the accuracy of claims data that is generated by payors of benefits, study how benefit amounts compare to the current cost of living, and, estimate the cost of expanding the annual COLA in § 212 to benefits paid under §§ 213 and 215.

Finally, the Resolve required

> [t]hat the board, within existing resources, shall provide monthly updates to the joint standing committee of the Legislature having jurisdiction over workers' compensation matters on the identification of data and reports and the analysis conducted under section 1. No later than August 16, 2025, the board shall submit a final report to the committee with its findings, recommendations and suggested legislation. The report must include:
>
> 1. A thorough analysis of the data and reports that were considered, identification of data or other areas that require further study and recommendations on any changes or adjustments to workers' compensation benefits in order to ensure claimants are receiving adequate benefits;
>
> 2. A thorough analysis of whether the Maine Workers' Compensation Act of 1992 provides substantial protection for workers who have suffered work-related injuries and diseases at an affordable cost to employers, including whether the workers' compensation system can provide the income support that injured workers require as a result of their injuries at a cost no greater than the median cost in other states; and
>
> 3. Information regarding the retroactive application of workers' compensation legislation based on the analysis under this resolve and an evaluation of the costs of potential retroactive application.

Resolves 2023, c. 139, Sec. 2.

IV. THE FRAMEWORK

The Resolve's mandate presented the Board with an opportunity to build upon the collaborative approach it has fostered since 2019. To that end, the directors developed a procedural framework to consider issues generated by the Resolve and to evaluate whether Maine's

[3] Resolves 2023, c. 139 is attached as Appendix B.

workers' compensation system meets its basic objectives of providing substantial protection to injured workers at an affordable cost to employers.

A. The Board is meeting its original goal of labor-management cooperation

In 1992, a Blue Ribbon Commission ("BRC") submitted a report to the Legislature detailing suggested changes to Maine's workers' compensation system. One recommendation, later enacted, was the creation of the Workers' Compensation Board. The BRC's recommendation with respect to the Board

> Places control of the system in the hands of a new labor-management board, which will have the ability and the responsibility to see to it that the system operates as intended, and that any problems that arise can be quickly and accurately identified and dealt with.

Report of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System ["BRC Report"], August 31, 1992, p. 2.

The original board of directors was composed of 8 members, 4 representing labor and 4 representing management. During the late 1990s, the board deadlocked on some important issues. As a result, in 2004, the legislature changed the board to its current 7-member configuration. Even after the change in 2004, it is fair to say that conflict was no stranger to the workers' compensation system.

In 2019 Governor Mills set an expectation that stakeholders work in good faith with the goal of reaching consensus on issues in the workers' compensation system. The current board of directors is meeting this expectation and fulfilling the original purpose of the Board. They are dedicated, they work hard, they collaborate and, as envisioned by the Board's mission statement, they are "fostering labor-management cooperation." (39-A M.R.S.A. § 151-A.)

Their collaborative approach to working on the Resolve was fundamental to the success of this project because it is difficult, at best, to engage in meaningful discussion if members are constantly at odds with one another.

B. Basic objectives for Maine's workers' compensation system

The BRC also identified two "equally important" objectives for Maine's workers' compensation system: "substantial protection for workers who have suffered work-related injuries and diseases at an affordable cost to employers . . ." (*BRC Report*, August 31, 1992, p. 3.)

The adequacy of benefits and their cost to employers are equally important elements of Maine's Workers' Compensation Act ("Act"). Therefore, proposals (such as the role of cost-of-living adjustments (COLA's)) must be analyzed in terms of both employer costs and benefit adequacy and not through the lens of only one or the other.

With these objectives in mind, the Board considered: The impact of inflation on the value of incapacity benefits; how to assess affordability, including what role advisory loss cost filings and

interstate comparisons should play in the analysis; how effective the system is with respect to returning injured employees to their jobs; the effectiveness of employment rehabilitation; the extent to which costs are shifted out of the workers' compensation system and onto other payors (e.g. the injured worker, the employer, health insurance companies and other private and public benefit programs); the importance of transmitting timely and accurate claims data to the Board; and, how to measure the impact of proposals that have a retroactive impact.

The framework used by the directors in its work on the Resolve can be used in future years to evaluate issues, understand trends, and monitor whether Maine's workers' compensation system meets its basic objectives. The task of assessing whether Maine's workers' compensation system is operating as intended is not a discrete project -- it will require ongoing work by the directors of the Board. As will be discussed later in this report, the Board must receive timely and accurate claims data to accurately monitor the performance of the system.

V. INCAPACITY BENEFITS AND THE COST-OF-LIVING-ADJUSTMENT IN THE CURRENT WORKERS' COMPENSATION ACT

An injured employee who is unable to return to work because of a work-related injury is entitled to 100% of their incapacity benefit. That benefit can be paid pursuant to either 39-A M.R.S.A. § 212 or § 213. Employees paid total benefits pursuant to § 212 are eligible for a COLA after receiving 260 weeks of benefits pursuant to this section; employees paid partial benefits pursuant to § 213 are not entitled to a COLA. Death benefits are paid to dependents pursuant to § 215. Recipients of death benefits are not entitled to a COLA.

A. Employees paid pursuant to § 212 may be eligible for a COLA.

Employees receiving total incapacity benefits pursuant to § 212 may be eligible for a COLA if they were injured on or after January 1, 2020 and have received 260 weeks of incapacity benefits pursuant to § 212.

There are two ways an injured employee can demonstrate entitlement to benefits pursuant to § 212:

> First, an employee who demonstrates a total physical incapacity, that is, the medically demonstrated lack of the physical ability to earn, can prove entitlement to "total" incapacity benefits pursuant to section 212 without a showing of any work search or other evidence that work is unavailable. *Morse [v. Fleet Fin.]*, 2001 ME 142, P8, 782 A.2d [769] at 772.
>
> Second, in limited situations, an employee suffering only partial incapacity to earn may be entitled to "total" benefits pursuant to section 212 if the employee can establish both (1) the unavailability of work within the employee's local community, and (2) the physical inability to perform full-time work in the statewide labor market, regardless of availability. Id.; *Alexander [v. Portland Natural Gas]*, 2001 ME 129, P19, 778 A.2d [343] at 351.

Monaghan v. Jordan's Meats, 2007 ME 100 ¶¶ 11-12, 928 A.2d 786, 791.

The § 212 benefit payments do not have to occur in consecutive weeks, but they must be made pursuant to § 212. Weeks for which benefits are paid pursuant to § 213, even if they are equal to 100% of the employee's workers' compensation benefit, do not count toward the 260-week threshold, nor do weeks for which no benefit is due. It is, therefore, necessary to track both the number of weeks paid and the section pursuant to which each weekly benefit payment was made.

The date of injury criteria is straightforward: Employees injured on and after January 1, 2020 are eligible for the COLA if the above criteria are satisfied. Employees injured prior to that date are not eligible for a COLA under Title 39-A. [4]

B. Employees paid pursuant to §§ 213 and 215 are not eligible for a COLA.

An employee can receive 100% of their benefit entitlement under the partial incapacity section of the Act.

> [A] partially incapacitated employee may be entitled to "100% partial" incapacity benefits pursuant to section 213 based on the combination of a partially incapacitating work injury and the loss of employment opportunities that are attributable to that injury. *Morse*, 2001 ME 142, ¶ 6, 782 A.2d at 771. In order to obtain the 100% benefit, it must be established, pursuant to the "work search rule" that work is unavailable within the employee's local community as a result of the work injury.

Monaghan v. Jordan's Meats, 2007 ME 100 ¶ 13, 928 A.2d 786, 791.

These employees, even though they are receiving their full benefit amount, are not eligible for a COLA because they are being paid under § 213, the partial incapacity provision. Hence, a partially disabled worker who cannot find a job after a diligent search is entitled to 100% benefits but is not entitled to an inflation adjustment.

Employees with a partial incapacity who are working may be entitled to partial incapacity payments based on the difference between what they earned before the injury and what they are earning after the injury.

Partially incapacitated employees who do not look for work or who do not conduct a good faith work search may receive partial incapacity benefits based on the difference between what they earned before the injury and what they are able to earn after the injury.

In the event a work injury results in the employee's death, benefits are paid to the deceased workers' dependents pursuant to § 215. These payments are not eligible for a COLA.

[4] Employees receiving the maximum weekly benefit, currently 125% of the state average weekly wage, may have their weekly benefit amount adjusted in July based on changes to the state average weekly wage.

C. Summary

The COLA provision in § 212 only applies to benefits paid pursuant to that section. Receipt of benefits pursuant to § 213 (partial incapacity) and § 215 (death benefits) are not subject to adjustments and do not count toward the 260-week COLA threshold. This is true even if the level and amount of the benefit being paid pursuant to § 213 or § 215 is the same as it would be if paid pursuant to § 212.

VI. SUBSTANTIAL PROTECTION FOR INJURED WORKERS

One of the basic objectives of the Act is to provide "substantial protection" for injured workers. With respect to incapacity benefits, the BRC believed the system should ensure that injured workers receive "the income support that they require as a result of their injuries." *BRC Report*, p.3.

In this vein, the Resolve requires an analysis of how workers' compensation benefits compare "to the current cost of living as determined by the United States Department of Labor, Bureau of Labor Statistics CPI-U for the New England Division . . ."

A. Wage replacement benefits pursuant to the Act.

In Maine, employees who suffer work-related injuries are entitled to weekly wage replacement benefits once they meet the waiting period. Employees whose incapacity lasts for seven days or less are not entitled to incapacity benefits. Benefits begin on the eighth day of incapacity. If the incapacity lasts for more than 14 days, the employee is entitled to payment from the date of injury. The waiting period does not apply to firefighters per 39-A M.R.S.A. § 204.

The amount of the weekly benefit is based on the worker's average weekly wage (AWW). Most often, the AWW is the worker's average income for weeks worked in the prior 52-week period. The purpose of the average weekly wage calculation is to arrive at an estimate of the "employee's future earning capacity as fairly as possible." *Fowler v. First Nat'l Stores, Inc*., 416 A.2d 1258, 1260 (Me. 1980) (quoting *Landry v. Bates Fabrics, Inc*., 389 A.2d 311, 313 (Me. 1978)). *Frank v. Manpower Temporary Servs*., 687 A.2d 623, 625 (Me. 1996).

The weekly disability payment (called the compensation rate) is 2/3 of the AWW.[5] (39-A M.R.S.A. § 212(1-A), § 213(1)(C) and §215(1-B).) Weekly compensation is subject to a maximum benefit level. Weekly benefits cannot exceed 125% of the state average weekly wage (SAWW).[6] (39-A M.R.S.A. §211.) As discussed in the previous section, incapacity benefits are paid under the following sections of the Act: §212 - total incapacity, §213 partial incapacity (100% if good faith work search does not yield a job), §215 - death benefits. Injured workers are

[5] For workers injured between January 1, 1993 and December 31, 2012, the compensation rate was equal to 80% of the worker's after-tax average weekly wage.

[6] For workers injured between January 1, 1993, through December 31, 2012, the maximum benefit payable is 90% of the state average weekly wage. The maximum for workers injured between January 1, 2013, through December 31, 2019, is 100% of the state average weekly wage.

entitled to weekly benefits pursuant to § 212 for the duration of the total disability. Benefits paid pursuant to § 213 are capped at 624 weeks, and death benefits (§215) are limited to 500 weeks.

B. Measuring the impact of inflation on the purchasing power of a dollar

The Resolve requires an analysis, using the Consumer Price Index ("CPI"), of how inflation impacts the extent to which incapacity benefits replace lost earnings.

According to the U.S. Bureau of Labor Statistics,

> The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a representative basket of consumer goods and services. The CPI measures inflation as experienced by consumers in their day-to-day living expenses. Indexes are available for the United States and various geographic areas. Average price data for select utility, automotive fuel, and food items are also available. CPI indexes are used to adjust income eligibility levels for government assistance, federal tax brackets, federally mandated cost-of-living increases, private sector wage and salary increases, poverty measures, and consumer and commercial rent escalations. Consequently, the CPI directly affects hundreds of millions of Americans.

http://www.bls.gov/opub/hom/cpi/ (accessed August 26, 2025).

The CPI-U "shows how the purchasing power of a dollar changes over time." *U.S. Bureau of Labor Statistics, Consumer Price Index, Purchasing power and constant dollars*: https://www.bls.gov/cpi/factsheets/purchasing-power-constant-dollars.htm (accessed August 26, 2025).

The following chart uses the CPI-U Index for the New England Division to show how inflation altered the purchasing power of a dollar from December of 2017 to December of 2024.

Year	CPI-U New England Division Index	Ratio of index values to 2020	Ratio multiplied by 100	Percentage loss in purchasing power
2017	100			
2018	102.169	0.98	97.9	2.1
2019	104.273	0.96	95.9	4.1
2020	105.101	0.95	95.1	4.9
2021	111.635	0.90	89.6	10.4
2022	117.821	0.85	84.9	15.1
2023	120.579	0.83	82.9	17.1
2024	124.559	0.80	80.3	19.7

A dollar in 2024 could purchase approximately 80% of what it could in 2017; a decline in purchasing power of 19.7%.

C. Measuring the impact of inflation on Maine workers' compensation benefits

How does this decline in purchasing power impact workers' compensation benefits? As discussed earlier, the compensation rate is designed to replace 2/3 of an employee's pre-injury AWW. It is not designed to replace 100% of an employee's pre-injury after-tax earnings.[7] While each individual employee's experience will vary based on income and filing status, a reasonable estimate is that an injured employee receiving 100% of their compensation rate is likely receiving approximately 80% of their pre-injury after-tax pay.

The following chart illustrates how the value of the compensation rate changes when inflation is taken into account. The chart is based on the CPI-U for the New England Division. The longer an individual receives weekly benefits, the more the value of the benefit erodes due to inflation.

SAWW December, 2017		$804.40			
CR		$536.27			
Year	CPI-U New England Division Index	Ratio of index values to 2020	Equivalent AWW in 2017 dollars	Compensation Rate	Year to Year Value of Benefit
2017	100		$804.40	$536.27	66.7%
2018	102.169	1.022	$821.85	$536.27	65.3%
2019	104.273	1.043	$838.77	$536.27	63.9%
2020	105.101	1.051	$845.43	$536.27	63.4%
2021	111.635	1.116	$897.99	$536.27	59.7%
2022	117.821	1.178	$947.75	$536.27	56.6%
2023	120.579	1.206	$969.94	$536.27	55.3%
2024	124.559	1.246	$1,001.95	$536.27	53.5%

As mentioned above, employees receiving wage replacement benefits are already receiving less than their pre-injury spendable earnings. Inflation further erodes the value of the weekly wage replacement income.

The impact of inflation is likely one reason a COLA was enacted in 2019. The next chart shows how the existing COLA affects the value of benefits over time.[8] In order to have more than five

[7] Workers' compensation benefits are designed to "to provide protection to workers against loss of income from work-related injuries and diseases. To achieve this goal, the program must carefully weigh the worker's interest in substantial income benefits against factors such as the loss of incentive for rehabilitation, which some believe may occur if income benefits are too high." *Report of the National Commission on State Workmen's Compensation Laws*, July 1972, p, 53.

[8] The existing COLA only applies to employees receiving benefits pursuant to § 212. Employees receiving 100% pursuant to § 213 are not eligible for the COLA.

years of information, the chart assumes the current COLA would have applied to an individual injured in 2017. When the COLA starts to apply, the decline in the value of the benefit stops.

SAWW December, 2017		$804.40			
CR		$536.27			
Year	Change in State Average Weekly Wage	Wage Inflation Limited to 5%	Adjusted Average Weekly Wage	Compensation Rate with adjustments	Year to year value of benefit
2017			$804.40	$536.27	66.67%
2018	3.10%	3.10%	$829.34	$536.27	64.66%
2019	3.31%	3.31%	$856.79	$536.27	62.59%
2020	3.80%	3.80%	$889.35	$536.27	60.30%
2021	10.64%	5.00%	$933.81	$536.27	57.43%
2022	5.30%	5.00%	$980.50	$563.08	57.43%
2023	6.52%	5.00%	$1,029.53	$591.24	57.43%
2024	3.71%	5.00%	$1,081.00	$620.80	57.43%

The Resolve requires consideration of CPI-U inflation data for the New England Division. The following chart substitutes the CPI-U for the New England Division for the increases in the SAWW beginning in 2018.

SAWW December, 2018		$829.30			
Compensation Rate		$552.87			
Year	CPI-U NE Div	CPI-U NE Div (limited to 5%)	Adjusted Average Weekly Wage	Compensation Rate With COLA based on CPI-U New Eng Div	Year to year value of benefit
2018			$829.30	$552.87	66.67%
2019	1.90%	1.90%	$845.06	$552.87	65.42%
2020	0.90%	0.90%	$852.66	$552.87	64.84%
2021	3.60%	3.60%	$883.36	$552.87	62.59%
2022	7.10%	5.00%	$927.53	$552.87	59.61%
2023	2.90%	2.90%	$954.42	$568.90	59.61%
2024	3.20%	3.20%	$984.97	$587.11	59.61%

D. Partial incapacity

The discussion above is focused on employees who cannot return to work because of their work-related injury and are, therefore, receiving 100% of their weekly benefit. The Board is still studying how to measure benefit adequacy with respect to partially incapacitated employees.

Studies from other jurisdictions have approached this issue by attempting to measure the earnings replacement rate ("ERR") provided by the relevant workers' compensation system.[9] These studies use data from sources other than workers' compensation (e.g., unemployment data) to estimate comparison earnings against which workers' compensation benefits and post-injury earnings can be measured. This type of study is not one that can be done by the Board within existing resources. It is an area that requires further study and consideration.

E. Summary

Inflation diminishes the value of workers' compensation benefits and erodes the purchasing power of injured workers. One question the Board is continuing to evaluate is when the impact of inflation causes injured workers to no longer receive "the income support that they require as a result of their injuries[,]" *BRC Report*, p.3.

VII. AFFORDABLE COSTS TO EMPLOYERS

Another basic objective of the Act is to provide the "substantial protection" discussed above "at an affordable cost to employers . . ." (*BRC Report*, August 31, 1992, p. 3.)

Costs to employers in the workers' compensation system come in the form of premium payments to insurance companies, contributions to self-insured groups or, for individual self-insured employers, in the cost of proving solvency and financial ability to pay required benefits.

A. Workers' compensation coverage

With limited exceptions, Maine employers are required to "secure the payment of compensation with respect to all employees by purchasing a workers' compensation policy or self-insuring." 39-A M.R.S.A. § 401(1).

i. Self-insured employers

Employers can self-insure individually or as a group. Self-insured employers must obtain authorization from the Bureau of Insurance by proving that they have the ability to pay benefits required by the Workers' Compensation Act (the "Act"). In 2023, self-insured employers[10] accounted for approximately 30.4% of Maine's workers' compensation market as measured by estimated premiums.

> The estimated standard premium for individual self-insured employers is determined by multiplying the advisory loss cost by a factor of 1.2 as specified in

[9] For example, see *Workers' Compensation: Analysis for its Second Century*, H. Allan Hunt and Marcus Dillender, 2017, p. 14; *Using Linked Federal and State Data to Study the Adequacy of Workers' Compensation Benefits*, Seabury, et al., *American Journal of Industrial Medicine*, 57:1165-1173 (2014); and, Adequacy of Workers' Compensation Benefit in Michigan; Savych, Bogdan and Hunt, H. Allan, Workers' Compensation Research Institute, June 2017.

[10] As of October 1, 2024, 18 self-insured groups represented approximately 1,157 employers. Another 49 were individually self-insured.

> statute, multiplying that figure by the payroll amount, dividing the result by 100, and then applying an experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

Annual Report on the Status of the Maine Workers' Compensation System, February 2025, p. B14.

ii. Insured employers

Most employers[11] opt to purchase workers' compensation insurance policies by paying premiums to insurance companies. Insured employers accounted for the remaining 69.6% of the market in 2024.

Insurance premiums are designed to compensate injured workers for lost wages, medical treatment, vocational rehabilitation and, in some cases, settlements; to pay for managing and defending claims; to cover the cost of insurance companies' general overhead; and to pay for profits and other charges. Premiums paid by employers are based on advisory loss cost filing submitted by NCCI. (Loss cost filings are discussed further, below.)

While there are a number of elements that factor into the premium an employer will pay, two essential components are payroll and job classification code(s). [12] Payroll, divided by $100 and multiplied by the insurer's class code loss cost results in the premium paid by an employer. Other adjustments (e.g., merit or experience ratings and expense constants[13]) are also plugged in to the premium equation.

B. Loss cost filings

Premiums paid by employers are based on loss cost filings submitted by NCCI to the Bureau of Insurance. These include annual advisory loss cost filings and, when necessary, law only filings in response to changes in the law. NCCI's loss cost filings apply to insured employers and are based on claims data NCCI gathers from insurance companies. NCCI does not receive claims data from self-insured employers which establish their own rates pursuant to the plans of operation approved by the Bureau of Insurance.

i. Annual advisory loss cost filings

Each year, NCCI, creates updated class code rates for hundreds of occupational classifications across five industry groups and submits them to the Bureau of Insurance in an advisory loss cost filing. These class code rates are subject to review and approval by the Bureau of Insurance. These loss costs pertain to benefits (e.g., lost wages and medical expenses) and expenses insurers incur related to the handling of workers' compensation claims. Annual advisory loss cost filings are usually submitted early in the calendar year and approved effective April 1 of each year.

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[11] According to the Small Business Association Office of Advocacy, in 2022, there were approximately 33,300 businesses with 1-499 employees in Maine.

[12] Class codes are based upon the type of work being done by the employee for whom coverage is being secured. For example, class code 8810 applies to clerical office employees and 8835 applies to home healthcare providers.

[13] The expense constant is the same for all policies and is intended to cover expenses common to all policies.

In its analysis, NCCI uses data, including the number of injuries and the severity of injuries, from three prior policy years to estimate the future cost of benefits and adjustment expenses for the upcoming policy year. If, for example, the expectation is that there will be fewer and/or less severe injuries in the next policy year, NCCI's loss cost recommendation will be to decrease rates. Conversely, if the expectation is that there will be more injuries and/or more expensive injuries in the coming policy year, the loss cost recommendation would be to increase rates. In its most recent filing, effective April 1, 2025, NCCI recommended a -9.6% loss cost decrease.

After NCCI submits its advisory loss cost filing and the Bureau of Insurance approves it, each workers' compensation insurer approved to do business in Maine must submit its own filing. These filings set rates, by class code, and include the insurer's loss cost multiplier.[14] These filings determine the final rates that insurance companies will offer to employers for workers' compensation coverage and must also be approved by the Bureau of Insurance.

ii. Law only loss cost filings

Another role NCCI performs is to determine the cost impact of changes to the law. Depending on the timing of the change, these estimates can be included in the annual advisory loss cost filing or can be recommended in law only filings that adjust rates in between the annual filings. For example, legislative amendments were enacted in 2019 and were effective on January 1, 2020. A law only filing was required because the effective date of the amendments was prior to the date of the next annual loss cost filing, April 1, 2020.

Loss cost filings, in and of themselves, cannot answer the question of whether a workers' compensation system is "affordable" or whether that system's benefits are "adequate." For example, when the Board's LD 1896 stakeholder group met in 2023, it asked NCCI to estimate the cost impact of a proposal to change the existing cost-of-living adjustment. NCCI's preliminary estimate, based on the concept outlined by the stakeholder group, was a prospective[15] impact of +1.7% to +2.4%.

In light of NCCI's estimate, participants opposed to change contended that if the proposal was enacted, the cumulative impact to loss cost filings from the change in 2019 (+3.9%) and the L.D. 1896 proposal (at the high end, +2.4%) would be +6.3%. Others noted that adding +2.4% to the cumulative advisory loss cost changes from April 1, 2019, through April 1, 2023, would still have meant an overall change of -23.1%. Since then, two additional advisory loss cost filings have been approved: -19.0% in 2024 and -9.6% in 2025.

Rate/Loss Cost	Effective Date	Filed % Change	Approved % Change	Filing Type	Applies To	Filing Action

[14] Loss cost multipliers include expenses related to issuing policies, general expenses, licenses, fees, taxes, and, profit.

[15] The concept outlined by the stakeholder group included a retroactive component. NCCI does not provide estimates of the cost of proposals that apply retroactively. For purposes of rate making (and loss cost filings) changes to the Act are considered retroactive if they affect dates of injury prior to the effective date of a change.

Loss Cost	4/1/2019	-7.5	-7.5	Experience	New/Renewal	Approved
Loss Cost	1/1/2020	3.9	3.9	Law Only	New/Renewal	Approved
Loss Cost	4/1/2021	0.3	0.3	Experience	New/Renewal	Approved
Loss Cost	4/1/2022	-10.3	-10.3	Experience	New/Renewal	Approved
Loss Cost	4/1/2023	-11.9	-11.9	Experience	New/Renewal	Approved
Loss Cost	4/1/2024	-19.0	-19.0	Experience	New/Renewal	Approved
Loss Cost	4/1/2025	-9.6	-9.6	Experience	New/Renewal	Approved

Limiting the affordability and adequacy analysis to just the impact of proposed law changes creates an incomplete picture because it fails to take into account the downward trend of rates in recent years.[16] Also, while relevant, the overall loss cost trend, by itself, does not establish whether benefits are adequate. The reason, in part, is because loss cost filings are based on estimates of how many claims will be filed in a coming policy year and how serious those claims are expected to be. Unless those factors remain exactly the same, system costs will change by a smaller or larger amount. For example, if a proposal with a +2.4% impact is adopted, and the overall rate decreases by -7.5%, the net effect will be -5.1%. Conversely, if the frequency and/or severity of injuries is estimated to increase by +7.5%, the overall impact would be +9.9%.

Annual loss cost filings and, when applicable, law only filings, are essential components of the premium setting process. While, when viewed over time, they can indicate whether costs are more or less affordable today than previously, they cannot, either individually or in the aggregate answer the questions of whether a workers' compensation system is affordable or whether that system provides adequate benefits.

C. Interstate comparisons

In 1992, the BRC believed Maine's system could "provide income support that injured workers require as a result of their injuries at a cost no greater than the median cost in other states." *Report of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System ["BRC Report"]*, August 31, 1992, p. 3.

The BRC did not define what it meant by "no greater than the median cost in other states," nor did it discuss how it fits in with respect to the twin objectives of an affordable system that provides adequate benefits. Still, this phrase is invoked, frequently in conjunction with a report produced by Oregon's Department of Consumer and Business Services, to argue that the goals of the BRC have not been met. Essentially, this interpretation defines "median cost" as a moving target. Each year (or, in the case of the Oregon report, every other year) an assessment would need to be made regarding where Maine ranks with respect to other jurisdictions. This would eliminate the balancing of adequacy and affordability and replace it with a determination of

[16] As well as the overall change since 1992. According to the Bureau of Insurance, prior to the -9.6% decrease in 2025, average loss costs have declined more than 75% since 1993. *Annual Report on the Status of the Maine Workers' Compensation System*, February 2024, p. B6.

where Maine stands vis-à-vis other states regardless of whether benefits are adequate or costs affordable.

There are other possible interpretations. One is that the BRC was referring to the "median cost" as it existed when they wrote their report. Viewed in this light, Maine's 2024 index (1.37) is lower than the least expensive state (North Dakota, 1.97) in the 1992 Oregon report. While Maine's system, by this measure, is more affordable than it was in 1992[17], it does not necessarily mean that comparisons between states should no longer play a role in the affordability/adequacy analysis.

Similar to loss cost filings, comparisons between states cannot, by themselves, answer whether a workers' compensation system is affordable or provides adequate benefits. Comparisons may provide useful data for such an analysis, but, if they do, caution is necessary because of differences between states. These include differences in: The benefits available in the event of an injury; the mix of industries; injury rates and severity; wages; employee demographics; the breadth of coverage for injuries; how the system is administered; and, issues related to breadth of coverage of employees.

D. Summary

Whether or not workers' compensation is "affordable" is an important question. It is also one that is not easy to define. There is no single data point that can be used to answer this question. Possible means of assessing affordability include: Comparing Maine to states with similar laws; comparing states within a specific geographic region; comparing states that are similar with respect to population demographics and/or industry mix; and, perhaps a different measure altogether, such as costs per $100.00. The Board will continue to weigh these various options.

VIII. STAY-AT-WORK / RETURN TO WORK

The previous sections separately discuss the basic objectives of substantial protection and affordability. While these are often seen as competing objectives, this is not always the case. For example, both substantial protection and affordability are best served by safely allowing injured employees to stay at work or, if that is not possible, returning injured employees to work as soon as possible after an injury.

A. Benefits of returning to work as soon as possible after an injury

Most injured employees can return to the same job without losing any time or after a short recovery period. Others need temporary accommodations or may require more extensive services including employment rehabilitation. Limiting, or eliminating, time lost from work after an injury directly benefits the employer and the employee.

[17] Maine' s index value decreased by 73% from 1992 to 2024.

i. Employers' perspective

As discussed in section VII, most employers provide workers' compensation coverage for their employees by purchasing a policy from an insurance company. Insurance premiums are primarily based on an employer's payroll and the type of jobs that insured workers perform. The final premium is also subject to merit or experience rating. Merit and experience rating plans are processes that adjust an employer's premium based on their claim experience. To simplify, lower claim costs will result in lower premiums; higher claim costs will result in higher premiums.[18]

An employer can improve its experience rating by reducing lost wage benefits that are paid to injured workers. This can be achieved by limiting the amount of time an employee is absent from work after an injury. The Act has a seven-day waiting period for weekly compensation benefits. 39-A M.R.S.A. § 204. Employees who return to work within the waiting period are not entitled to compensation for their incapacity. Returning an employee to work as soon as possible will lower claim costs and help create a favorable experience rating.

Employers have other reasons for bringing employees back to work as soon as possible. "For example, an employer that takes pride in taking care of its workers might put more effort into keeping workers who experience work disabilities attached to the firm, simply because that is part of the firm's mission." Epstein, et al., *Synthesis of SAW/RTW Programs, Efforts, Models and Definitions,* (Prepared for the US Department of Labor), 2020, p.8. Also, employers that bring employees back to work avoid costs associated with lost productivity as well as recruitment and training to replace the injured employee.

ii. Employees' perspective

The most obvious incentive for an injured employee to return to work is to prevent loss of income. Because of the waiting period, an injured employee will not receive any benefits for the first seven days of incapacity. This means that an employee who does not want, or cannot afford, to lose a week of pay must use sick leave, vacation pay or earned time off, if available, to replace lost wages.

As discussed in section III, some injured workers who do not return to work earning their pre-injury wage may, depending on their level of incapacity, experience a significant loss of income if their workers' compensation benefit does not keep pace with inflation. Returning to work can also mitigate other impacts on an employee's financial well-being. For example, employees may lose access to employer funded (partially or wholly) benefits like health insurance. An employee who is not working or has reduced earnings will either not contribute, or will have reduced contributions, to retirement programs like Social Security.

Also, similar to employers, " . . . workers often take pride in their work and may prefer working to not working even when the financial returns are quite small." Epstein, et al., p. 8.

[18] It is the Board's understanding that employers in self-insured groups pay contributions instead of premiums and that member contributions are based, in part, on claims history.

B. Return to work and accommodations

To promote return to work for the same employer, the Act provides streamlined procedures for an insurer to reduce or discontinue lost wage benefits when an employee returns to work for the same employer following a work-related disabling injury.

i. Return to work for the same employer

Pursuant to §205(9)(A), an employer can automatically reduce or discontinue lost time benefits when an employee returns to work with, or receives an increase in pay from, the employer paying benefits.

ii. Reasons other than return to work for the same employer

If benefits are being paid pursuant to an award, order or compensation scheme, the insurer may only terminate or reduce benefits by filing a petition pursuant to §205(9)(B)(2) and obtaining an order that allows the benefit reduction. Alternatively, if benefits are being paid without an award, order or compensation scheme, benefits may be reduced or discontinued by filing a 21-day certificate and unilaterally reduce or terminate benefits under §205(9)(B)(1).

iii. Employee's petition to return to work

Pursuant to 39-A M.R.S.A. § 218, an employer's obligation to reinstate its injured worker and to make reasonable accommodations for an employee only arises after an employee files a petition with the Board. If an employee cannot return to their pre-injury job, §218 establishes an employer's obligation, under certain circumstances, to reinstate and make reasonable accommodations for the physical condition of an injured employee. Before this responsibility is imposed, the employee must file a petition seeking reinstatement. *See Jandreau v. Shaw's Supermarkets, Inc*., 2003 ME 134, ¶¶ 14-16.

Requiring litigation before the obligation to explore reasonable accommodations arises necessarily slows down the process and may be counterproductive in terms of getting injured employees back to work. It also seems to run counter to the Board's mission statement which is "to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation." 39-A M.R.S.A. § 151-A.

C. Employment rehabilitation

There will, of course, be situations where it is not possible for an injured worker to return to the same employer or, perhaps, the same type of work. In such situations, an employee may need employment rehabilitation. Entitlement to employment rehabilitation is governed by 39-A M.R.S.A. § 217 and Workers' Compensation Board Rule chapter 6.

The process can be cumbersome in part because of the opportunities for litigation – first, on the issue of whether an evaluation for suitability should be completed and, second, on the issue of

whether a recommended plan should be implemented. Perhaps because it is cumbersome, the process outlined in § 217 is rarely utilized.

The Board began publishing the number of employment rehabilitation requests in the 2012 Annual Report on the Status of the Maine Workers' Compensation System. The following chart shows that the number of applications received by the Board has dropped precipitously since applications reached their peak in 2013.

Calendar Year	Applications Received
2011	31
2012	42
2013	66
2014	60
2015	52
2016	47
2017	45
2018	44
2019	32
2020	15
2021	10
2022	7
2023	8

D. Hiring incentives

The Act contains incentives for employers to bring back to work or hire employees who have completed rehabilitation programs pursuant to § 217. These include reimbursement pursuant to 39-A M.R.S.A. §355 in certain situations for weekly wage replacement benefits due to a subsequent work injury if the employee returns to work for the same employer, and a wage credit for subsequent employers (i.e., an employer other than the one for whom the employee was working when injured) that hire employees who have completed rehabilitation programs under §217. Given the scarcity of vocational rehabilitation requests under §217, it is not surprising that the reimbursement provisions are rarely invoked.

E. Summary

Bringing injured workers back to work as soon as possible after a period of incapacity is an important objective of the workers' compensation system. The Board needs more data to understand how well Maine's workers' compensation system is performing in this regard. For example, while very few vocational rehabilitation requests are filed with the Board, it would be helpful to know if injured employees are availing themselves of employment rehabilitation programs outside of the Act.

Injured workers may be taking advantage of the Maine Department of Labor's rehabilitation services. Others may be receiving services directly from workers' compensation insurers. This was the case in 2019 when, pursuant to P.L. 2019, c. 344, § 17 (L.D. 756), the Board convened a group of stakeholders to study whether the employment rehabilitation process should or could be

improved. Ultimately, the stakeholder group did not make a recommendation. [19] Instead, there was general agreement that it was premature because recent rule changes had not been in effect sufficiently long enough to create a track record. There was also agreement that further examination was warranted to find out why the Board's vocational rehabilitation process was not being used more frequently and that further substantive changes should not be considered until after that.

With respect to services provided by insurance companies, the Board does not have any data with respect to the amount or types of services provided and how successful those services are in terms of returning injured workers to employment. The Board will examine its data collection practices to ensure it is receiving the information it needs – how many employees return to work for the same employer, how many return to work for different employers, how long does it take for employees to return to work, how long do they stay in jobs they return to, how often do rehabilitation services cause an injured employee to successfully return to work, and, how do post-injury wages compare to pre-injury earnings. Also, whether the system is best served by requiring the filing of a petition before an employer is required to identify whether reasonable accommodations are possible.

Management and labor members of the Board have extensive knowledge about stay-at-work and early return-to-work programs, and they understand how important they are to both employers and employees. The Board will continue to explore ways to improve the return-to-work provisions of the Act to ensure that employers and employees receive the full benefits of effective return to work/retraining strategies.

IX. THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

The Resolve requires the Board to provide information with respect to reports it considered. One such study is discussed in this section, the 1972 report of the National Commission on State Workmen's Compensation Laws (the "National Commission"). The National Commission's report was written in the 1970s, a time when workers' compensation systems were perceived, by some, as failing to provide substantial protection to injured workers.

A. The National Commission

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

[19] The relevant section of the report filed in 2020 is attached as Appendix D.

> 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 recommendations[20] 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.

[20] The full list of recommendations is included in Appendix E.

- 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.

- 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 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.

- 3.11 (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.

- 3.15 (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.

- 3.17 (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 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 NCCI. 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

B. 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. The report was used by the U.S. Department of Labor until approximately 2004 when the

USDOL stopped monitoring state workers; compensation systems. "The measure of adequacy used by the [National] Commission was later adopted by the National Academy of Social Insurance, and used in sophisticated earnings losses and replacement studies that become possible with the development of new research tools in the 1980s." Speiler, Emily A., *(Re)Assessing the Grand Bargain: Compensation for Work Injuries in the Untied States, 1900-2017*, Rutgers University Law Review [Vol. 69:891, 2017], pp. 932-933 (footnotes omitted).

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 again referenced by the Department of Labor 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	*Cavers v. Houston McLane Co.*, 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	N		

	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[21]			
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
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.

C. Summary

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'

[21] 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.

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 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

X. COST SHIFTING

During L.D. 1896 stakeholder group meetings in 2023, questions were raised regarding whether and, if so, to what extent, the costs of workplace injuries are shifted out of the workers' compensation system and onto other payors.

In the context of workers' compensation benefits, cost shifting occurs when an injured worker receives wage replacement and medical benefits from a payor other than the workers' compensation insurer responsible for paying benefits. It can also happen when employees who should be entitled to workers' compensation do not receive those benefits either because they do not pursue payment or they have been misclassified as an independent contractor instead of an employee. Finally, it can happen by operation of law.

A. How costs can be shifted.

i. Costs can be shifted to other payors.

In a December 14, 2017, article about cost shifting, Barry Lipton and Jim Davis from the NCCI provide an example of cost shifting.

> [C]ost shifting, in and of itself, is not necessarily bad—sometimes it is the result of realigning practices with the original intent of a program. For example, SSDI beneficiaries receive Medicare to cover their medical expenses (after a waiting period). Medicare is not supposed to pay for medical costs due to covered work-related injuries; that is the responsibility of the W[orkers']C[ompensation] insurer or other W[orkers']C[ompensation] payor. This was established by the 1965 Medicare amendment to the Social Security Act.
>
> To help ensure compliance, the Centers for Medicare & Medicaid Services (CMS) has a process for reviewing proposed Medicare Set-Asides (MSAs), which are the parts of W[orkers']C[ompensation] settlements that cover costs that Medicare would otherwise pay.
>
> Strengthening enforcement of Medicare's secondary payer role from 2001 to the present [2017] has had a large cost-shifting impact. Claims subject to MSAs are often quite large. In NCCI's 2014 study on MSAs, we found that insurers had to increase that component of their overall settlement on these claims in 2010 by roughly 60%, which is approximately $40,000 more per claim subject to an MSA. Once this became a more established practice, the average difference between the proposed and approved MSAs was much smaller (16% in 2015).
>
> This was a major cost shift to W[orkers']C[ompensation] from Medicare (which also covers SSDI beneficiaries). However, to the extent that the increases were appropriate to protect Medicare's interests, this cost shifting is appropriate.

Social Security Disability Insurance and Workers' Compensation Cost Shifting, National Council on Compensation Insurance, December 14, 2017 (footnotes omitted).

In the above example, costs were initially shifted from workers' compensation to Medicare. After CMS strengthened its enforcement efforts, the costs were appropriately shifted back to the workers' compensation system.

Costs are sometimes shifted to other payors, like private health and disability insurers, while an employee waits to see if a claim will be deemed compensable. In situations like this, the health or disability insurer is entitled to repayment. If the workers' compensation insurer's repayment is less than the amount paid provisionally, the employee may be responsible under the Act for the difference.

ii. Costs can be shifted when employees do not report injuries to their employers.

Costs are also shifted away from workers' compensation insurers when employees fail to report injuries as work-related. Failure to report may result from an employee being

> . . . unaware of their eligibility, be unwilling to spend the time and resources associated with claim filing, be aware of the potential for a disagreeable experience, be concerned about retaliation, pressured by their managers, or may not see the benefits of the filing process. For these workers, the costs of lost income and medical care fall outside the workers' compensation system.

Williams, Jessica A.R., Sorensen, Gloria, et al., *Impact of Occupations Injuries on Nonworkers' Compensation Medical Costs of Patient-Care Workers*, American College of Occupational and Environmental Medicine, Vol. 59, Number 6, June 2017, p. e119.

Whatever the reason, if an injury is not reported, insurers, governmental entities and others who are not responsible will shoulder the burden for the workers' compensation insurer. In short, there is no opportunity for that claim to be paid through the workers' compensation system.

iii. Costs can be shifted when employees are misclassified.

The misclassification of employees as independent contractors also shifts costs out of the workers' compensation system.

> Misclassifying workers increases the likelihood of work injuries through two mechanisms. First, by misclassifying wage employees as independent contractors, employers do not have to worry about the OSHA requirement to provide a safe workplace since OSHA law does not cover the self-employed. Second, these employers avoid paying workers' compensation premiums (as well as unemployment and other benefits and taxes). The misclassifying employer is no longer concerned about workers' compensation premiums rising following a work injury, so is less likely to invest in safety. The result is increased risk of work injuries at workplaces where employees have been misclassified, and, when those injuries do occur, the injured workers, their families and the taxpayer bear the costs, subsidizing the employer's hazardous operations.

Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job, p. 8.

iv. Costs can be shifted by operation of law

Costs can also be shifted by operation of law. For example, in Maine (and most, if not all, other jurisdictions), wage replacement benefits are not designed to replace all of an injured worker's lost wages. Weekly compensation benefits in Maine are equal to 2/3 of the employee's gross weekly wages. The basis for replacing 2/3 of an employee's wages is

> to provide protection to workers against loss of income from work-related injuries and diseases. To achieve this goal, the program must carefully weigh the worker's interest in substantial income benefits against factors such as the loss of incentive for rehabilitation, which some believe may occur if income benefits are too high.

Report of the National Commission on State Workmen's Compensation Laws, July 1972, p, 53.

However, as discussed in section IV, above, the replacement rate for weekly compensation, over time, is impacted by inflation.

> For temporary and permanent total disability workers' compensation cases, there has long been agreement that the adequacy benchmark is two-thirds of pretax earnings (National Commission on State Workmen's Compensation Laws 1972). . . .
> Recent studies estimating the proportion of lost earnings replaced by workers' compensation for long-term temporary disability and PPD cases consistently show workers' compensation replacing well under half of long-term losses.

O'Leary, Paul, Leslie I. Boden, Seth A. Seabury, Al Ozonoff, and Ethan Scherer, *Workplace Injuries and the Take-Up of Social Security Disability Benefits*, Social Security Bulletin, Vol. 72, No. 3, 2012, p.13.

Also, an injured employee's fringe benefits are sometimes lost or compromised. Although the value fringe benefits can be included in an employee's average weekly wage[22], the amount that is added may not be sufficient to replace the benefits. Additionally, an employee's contributions to a retirement plan, such as Social Security, is interrupted entirely, or partially, while an employee is receiving workers' compensation benefits.

Cost shifting can also be caused by legislative decisions.

> For an example, according to the Southern Poverty Law Center, the Alabama Legislature amended that state's Worker Compensation Act in 1992 to enact a more difficult standard for workers reporting "injuries which have resulted from gradual deterioration or cumulative physical stress disorders" because such claims were "one of the contributing causes of the current workers' compensation crisis facing [the] state."

Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job, David Michaels, PhD, MPH, Occupational Safety & Health Administration, United States Department of Labor, June 2015, p. 14, fn. 13.

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[22] "'Average weekly wages, earnings or salary' does not include any fringe or other benefits paid by the employer that continue during the disability. Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death. For injuries occurring on or after January 1, 2020, any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of 125% of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of 125% of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death. 39-A M.R.S.A. § 102(4)(H).

B. Summary

Costs can be shifted out of the workers' compensation system and onto other payors. Whether, and if so, how much and what can or should be done, is an area of further inquiry for the Board.

XI. TIMELY TRANSMISSION OF ACCURATE CLAIMS DATA IS ESSENTIAL FOR THE BOARD TO SUCCESSFULLY PERFORM ITS OVERSIGHT ROLE

The Resolve directs the Board to analyze lost wage benefits paid for total disability (§ 212), partial disability (§ 213) and for death (§ 215).[23] When conducting this evaluation, the Board must use "data supplied by insurers, 3rd-party administrators, group self-insurers and individual self-insured employers [together with] other relevant data and available reports." At a minimum, the Board must consider the following claim information:

1. The claim identification number assigned by the board;
2. The claim identification number assigned by the insurer, 3rd-party administrator, group self-insurer or individual self-insured employer;
3. The date of injury;
4. The average weekly wage;
5. The compensation rate;
6. For a claimant pursuant to Title 39-A, section 212, the number of weeks of compensation and benefits paid;
7. For a claimant pursuant to Title 39-A, section 213, the number of weeks of compensation and benefits paid and the number of weeks for which the benefit was 100% partial;
8. For a claimant pursuant to Title 39-A, section 215, the number of weeks of compensation and benefits paid;
9. The date the last payment was made and whether payments are continuing;
10. The total amount of indemnity benefits paid; and
11. Any other information the board determines necessary to complete the analysis.

The Board receives data from insurers, 3rd-party administrators, group self-insurers and individual self-insured employers in a couple of different ways. The majority of information is, or should be, received on an ongoing basis pursuant to filing requirements in the Act and accompanying rules. Additional information is received in response to specific requests made by the Board.[24]

A. Filing Requirements

[23] More information about who qualifies for benefits pursuant to 39-A MRSA § 212 and § 213 can be found in Section II of this report.

[24] Pursuant to 39-A M.R.S.A. § 153(4), "The board shall require the employee, employer or insurer to provide it with any information it reasonably determines necessary to monitor cases, including, but not limited to, preinjury and postinjury wage statements."

39-A MRSA § 205(2) requires insurers, self-insured employers and group self-insurers (collectively "insurers") to maintain records "of all payments made under this Act and of the time and manner of making the payments" and to "furnish reports, based upon these records, to the board as it may reasonably require." Section § 152(2) authorizes the Board to "define terms [and] prescribe forms." Section 357 mandates that insurers "shall fill out any blanks and answer all questions submitted that may relate to . . . compensation paid." Section 152(10) requires the Board to "assume an active and forceful role in the administration of this Act" and to "continually monitor individual cases to ensure that benefits are provided in accordance with this Act."

As envisioned by the Act, the board has promulgated forms that insurers must fill out and file with the Board so that it can monitor the nature and extent of work related injuries, the benefits that are due, the amounts are paid, the dates of modifications, reductions, and discontinuances, the reasons for those changes, and other pertinent information that becomes relevant during the life of a claim. What follows are examples of events that trigger an insurer's duty to submit information on claim forms:

- If an employee misses a day of work because of an injury, a First Report of Injury ("FROI") must be filed within 7 days.
- If the employee returns to work within the 7-day waiting period,[25] the insurer must report the date the employee returned to work.
- If the incapacity extends beyond the waiting period, the insurer must file a Wage Statement and either:
    - Commence paying the claim and file a Memorandum of Payment ("MOP"); or,
    - Decline to pay and file a Notice of Controversy ("NOC").
- If payments for lost time change, the insurer must notify the Board by filing either a Modification Form ("MOD") or Discontinuance Form ("DISC").
- Insurers must periodically send the Board Statements of Compensation forms that summarize lost time payments.

Insurers submit forms through either a modern computer-to-computer transmission system or, alternatively, by e-mailing, faxing or mailing them which requires Board staff to manually enter information into the Board's database. Currently, only FROIs and NOCs are transmitted by way of the computer-to-computer system. This is preferable because errors are quickly identified, insurers are immediately notified, and the forms are corrected. Not surprisingly, the modern fast-track approach afforded by electronic transmission is more efficient than the hard copy/fax method.

With respect to the eleven data points that the Resolve requires the Board to consider in its benefit analysis, only the first three – jurisdiction claim number (assigned by the Board upon receipt of a FROI), the insurer's file number and the date of injury – are received via computer-

[25] Employees whose incapacity lasts for seven days or less are not entitled to incapacity benefits. Benefits begin on the eighth day of incapacity. If the incapacity lasts for more than 14 days the employee is entitled to payment from the date of injury. The waiting period does not apply to firefighters 39-A M.R.S.A. § 204. (See section IV for more information.)

to-computer communication. Insurers transmit the remaining data on forms. Board employees manually extract the data and enter it into the Board's database. The following chart shows the number of forms received and entered in calendar year 2024.

CALENDAR YEAR 2024			
FORM	Computer-to-computer	Staff	Total
FROI	27,379	59	27,438
NOCs	8,665	16	8,681
Petitions		1,343	1,343
Answers to Petitions		395	395
Wage Statements		9,824	9,824
Fringe Benefits Worksheet		4,660	4,660
MOPs (including revisions)		6,400	6,400
All other including DISCs		15,604	15,604
Statement of Compensation		12,008	12,008
	36,044	50,309	86,353

B. Data Collection For This Study

In 2023, the Board asked insurers for information about the number of workers injured in 2020 who were receiving 100% of their benefit pursuant to § 212 along with how many workers injured in 2020 were receiving 100% partial benefits pursuant to § 213.[26] While some information was provided, it was not enough to conduct a meaningful analysis.

In seeking information for this Resolve in April of 2024, the Board streamlined the process based on lessons learned from its previous attempt. The Board asked insurers to submit forms that appeared to be missing for injuries that occurred between 2018 and 2023. Specifically, the Board identified cases where it appeared that indemnity payments were ongoing but where Statements of Compensation Paid, Discontinuance forms, and/or Modification forms had not been entered into the Board's database.

The Board worked with insurers, 3rd-party administrators, group self-insurers and individual self-insured employers (collectively "claims administrators") to ensure the information being analyzed was as complete as possible.

To ensure that the amount of data would be manageable, the Board focused on two injury years, 2018 ("IY 2018") and 2020 ("IY 2020"). For these years, the Board looked at the length of time benefits were paid and at the benefit amount, meaning, whether the benefit amount was compensation for 100% incapacity or less than 100% incapacity.

The benefit amount was used (except where specified) in lieu of the statutory section (§ 212 or § 213) because, as discussed in paragraph C of this section, below, while claims administrators use

[26] See, Appendix A, Report to the Labor and Housing Committee Regarding the L.D. 1896 Stakeholder Group, December 11, 2023, pp. 3-4.

designations such as Temporary Total Disability ("TTD") and Temporary Partial Disability ("TPD"), they cannot be relied upon to identify whether a payment is made pursuant to § 212 or § 213. Claims were therefore separated into two categories based on whether the injured worker received (is receiving) 100% of their benefit amount or less than 100% or their benefit amount.[27]

i. Injury Year 2018

The chart below contains information about IY 2018 claims. With respect to claims where it appeared that more than 260 weeks of benefits were paid, the Board worked with claims administrators to try and ensure the Board's information was as complete as possible. Based on the information available to the Board for IY 2018: The Board received 14,452 lost time First Reports of Injury ("LT FROIs");[28] and, injured workers received at least one day of compensation for lost wages in 4,663 of these claims. (The compensation paid could have been pursuant to § 212, § 213 or a combination of both.)

As the following chart shows, the vast majority of claimants received less than 52 weeks of lost wage benefits. Approximately 97 (2.1%) of injured workers received benefits for more than 260 weeks, and of those, approximately 51 (1.09%) received 100% of their benefit entitlement for greater than 260 weeks. With respect to the 51 claims that received 100% of their benefit entitlement, it is not known how many received benefits pursuant to § 212 and, if they did, how many weeks of benefits were paid pursuant to § 212 as opposed to § 213.

Injury Year 2018			
Weeks Paid	Claims	Claims with a payment	Total LT FROIs
0-52	4,006	85.91%	27.72%
53-103	303	6.50%	2.10%
104-155	126	2.70%	0.87%
156-207	79	1.69%	0.55%
208-259	52	1.12%	0.36%
260+ (All)	97	2.08%	0.67%
260+ (@ 100%)	51	1.09%	0.35%
Claims with a payment	4,663		32.27%
Total LT FROIs	14,452		

ii. Injury Year 2020

For IY 2020, the Board identified cases where a COLA might be due in calendar year 2025. The Board sent this information to claims administrators both to help ensure completeness of information and because, pursuant to 39-A M.R.S.A. § 153(1)(B), the Board "shall monitor cases to ensure that . . . [p]ayments to the employee provide the full amount of compensation to which the employee is entitled and are properly indicated on the memorandum of payment."

[27] More information about who qualifies for benefits pursuant to 39-A MRSA § 212 and § 213 is in section III of this report.

[28] A lost time FROI must be filed with the Board any time an injury causes an employee to lose a day or more of work. 39-A M.R.S.A. § 303.

Based on the information available to the Board, for IY 2020: The Board received 15,029 LT FROIs; injured workers received at least one day of compensation for lost wages in 5,820 cases; and, in 5,628 of these cases, the Board's data shows that payments have ended.[29] The end of a payment period is determined by the information filed by claims administrators. If that information is incomplete or inaccurate some claims will appear to have ongoing payments when they actually do not. Further review is likely needed to ensure the payment status is accurate. As mentioned above, because a COLA may be due to some injured workers in 2025, the Board undertook an additional review, in conjunction with claims administrators, in these cases.

This chart summarizes the totals described above.

IY 2020		
All LT FROIs	15,029	
Claims with a payment	5,820	38.73%
Claims without ongoing payments	5,628	37.45%

The next chart shows a breakdown, by the number of weeks paid, of claims without ongoing payments.

IY 2020			
	Claims	Claims without ongoing payments	All LT FROIs (without ongoing)
0-52	5005	88.93%	33.73%
53-103	351	6.24%	2.37%
104-155	170	3.02%	1.15%
156-207	72	1.28%	0.49%
208-259	29	0.52%	0.20%
260+	1	0.02%	0.01%
Claims without ongoing payments	5,628		37.93%
All LT FROIs (without ongoing)	14,837		

Finally, the following chart shows the results of the Board's review of cases that might be due a COLA in 2025.

IY 2020 Claims that may be due a COLA in 2025	
COLA applied	5

[29] Unless a claim is settled pursuant to 39-A M.R.S.A. § 352 or a determination is made that the effects of an injury have ended, a claim for further lost wage compensation can be made.

Claims Administrator indicates COLA may be due in 2025	2
Paying per sec. 213 - no COLA	27
Response unclear	22
No response	35
Total	91

C. Categorization of benefit type

Indemnity benefit payments compensate injured employees for wage loss resulting from work-related injuries. Indemnity benefits are payable under Maine's Workers' Compensation Act for total incapacity (§212), partial incapacity (§213), and death benefits (§215). Indemnity payments are categorized by insurers and self-insurers when they are made. As mentioned above, §205(2) requires insurers to maintain records of benefit payments.

Categorization is required pursuant to § 212(4) because only weeks of benefits paid pursuant to § 212 count toward the 260-week period before a COLA may be required. Categorization is also necessary because insurers in Maine, along with insurers in 35 other states, report benefit payments to NCCI which collects workers' compensation claims data and provides services that relate to workers' compensation insurance premiums charged to employers. Benefit payments are reported to NCCI in the following categories:

- Death Benefits;
- Permanent Total Disability (PTD) Benefits;
- Permanent Partial Disability (PPD) Benefits broken down further into:
    - Scheduled PPD (list of scheduled injuries with specific benefits for each body part listed) and
    - Non-Scheduled PPD (typically a function of whole body impairment));
- Temporary Total Disability (TTD) Benefits; and,
- Temporary Partial Disability (TPD) Benefits.

Self-insured employers also categorize payments by benefit type using the same or similar categories.

Categorization of death benefits is straightforward. The same is not true with respect to categorization of total and partial incapacity benefits in Maine. This is a function of how these terms are defined in Maine.

i. Total and partial incapacity

As discussed earlier in this report, section 212 offers injured workers two avenues of recovery for total disability.

> First, an employee who demonstrates a total physical incapacity, that is, the medically demonstrated lack of the physical ability to earn, can prove entitlement to "total" incapacity benefits pursuant to section 212 without a showing of any work search or other evidence that work is unavailable. *Morse [v. Fleet Fin.]*, 2001 ME 142, P8, 782 A.2d [769] at 772.
>
> Second, in limited situations, an employee suffering only partial incapacity to earn may be entitled to "total" benefits pursuant to section 212 if the employee can establish both (1) the unavailability of work within the employee's local community, and (2) the physical inability to perform full-time work in the statewide labor market, regardless of availability. Id.; *Alexander [v. Portland Natural Gas]*, 2001 ME 129, P19, 778 A.2d [343] at 351.

Monaghan v. Jordan's Meats, 2007 ME 100 ¶¶ 11-12, 928 A.2d 786, 791.

Section 213 governs entitlement to partial incapacity benefits. Partial incapacity benefits are based on the difference "between the employee's average . . . weekly wages . . . before the injury and the average . . . weekly wages . . . that the employee is able to earn after the injury . . ." 39-A M.R.S.A. § 213(1)(C). In a nutshell, partially disabled claimants are awarded reduced (from 100%) partial benefits if they do not perform a convincing work search.

An employee who demonstrates work is unavailable because of their injury can receive 100% of their benefit entitlement under the partial incapacity section.

> [A] partially incapacitated employee may be entitled to "100% partial" incapacity benefits pursuant to section 213 based on the combination of a partially incapacitating work injury and the loss of employment opportunities that are attributable to that injury. *Morse*, 2001 ME 142, ¶ 6, 782 A.2d at 771. In order to obtain the 100% benefit, it must be established, pursuant to the "work search rule" that work is unavailable within the employee's local community as a result of the work injury.

Monaghan v. Jordan's Meats, 2007 ME 100 ¶ 13, 928 A.2d 786, 791.

As will be discussed below, because an employee can receive 100% of their benefit under § 212 or § 213, benefit payments may be miscategorized if the category is chosen based upon the amount of the payment instead of the section pursuant to which the benefit is being paid.

ii. Need for clarification

The potential for mischaracterization means further clarity is needed. This need has become pronounced since the enactment of § 212(4) which requires a COLA after an employee has received 260 weeks of benefits pursuant to § 212. The COLA provision applies to injuries sustained on and after January 1, 2020.

For employees injured prior to January 1, 2020, it was not necessary to categorize each weekly payment. Whether payments were being made pursuant to § 212 or § 213 was not relevant until the benefit limitation in § 213 approached.[30] Benefits paid pursuant to § 213 could be terminated upon the occurrence of the benefit limitation. Benefits paid pursuant to § 212 could not because they must be paid for the duration of the employee's disability.

The COLA provision only applies after the employee has received 260 weeks of benefits pursuant to § 212. Since weekly payments made pursuant to § 213 do not count toward the 260-week threshold, it is necessary to separately categorize each weekly payment in order to determine if the threshold has been met.

The Board previously requested payment information broken down by statutory section (i.e., § 212 or § 213) as it considered the potential impact/application of the COLA. When it did, the Board assumed benefit payments were being tracked using categories the same as, or similar to, those used by NCCI. It was also assumed that these categories would correspond to the relevant sections of Maine's Workers' Compensation Act. In other words, payments made pursuant to § 212 would be categorized as either TTD or PTD and payments made pursuant to § 213 would be characterized as either TPD or PPD.

The Board learned that while these (or similar) categories are being used, they cannot be relied upon to identify whether a payment is made pursuant to § 212 or § 213. As an example, payment for 100% partial might be categorized as TTD based on the amount of the payment (100%) instead of the underlying section of the Act (§ 213). Accordingly, trying to identify weeks of total incapacity (§ 212) benefits based on how many were categorized as TTD will lead to inaccurate results because benefits being paid for 100% partial incapacity (pursuant to § 213) will be included.

D. Summary

The information reviewed by the Board and presented here begins to give a picture of the number of employees who may be eligible for a COLA and how long injured employees typically receive wage replacement benefits.

The same information emphasizes the need to ensure that benefits are accurately categorized and timely reported to the Board. Weekly categorization of benefits is not happening now, presumably because doing so would be a significant, and potentially costly, change from prior practice for the likely small number of claims where a COLA might be due.

[30] The benefit limitation for employees injured on or after January 1, 2013 but before January 1, 2020 is 520 weeks. 39-A M.R.S.A. § 213(1)(B). The benefit limitation for employees injured on or after January 1, 2020 is 624 weeks. 39-A M.R.S.A. § 213(1)(C).

For its part, the Board has identified and is working to eliminate issues with respect to information filed on forms. Specifically, data was missing from some of the 2018 injury claims. In some cases, this makes it appear that a payment obligation may be ongoing, when in fact it has ended. There are a few reasons this can happen. It is possible the form was never filed. It is possible the form was filed but the information did not get entered. It is possible that the form was received but, because there were errors or inconsistencies, the form could not be entered into the Board's database. In those situations, a request for clarification was sent. If no response was received, information on the form could not be entered by Board staff database.

There are far fewer opportunities for error if information is submitted in a computer-to-computer manner. Accordingly, the Board is working to develop ways to enhance a modern automated filing system. At the same time, the Board is undertaking a review, with stakeholders, of its forms in an effort to make sure the Board gets the information it needs in a manner that is as efficient as possible for all involved. The Board will also consider whether to define payment types under the Act (i.e., §212 and §213) in terms used by NCCI and other jurisdictions.

XII. RETROACTIVITY

The concept of retroactivity with respect to changes in the Act is one that has sometimes caused confusion. First, legislation can apply retroactively. In *Grubb v. S.D. Warren Co.*, 2003 ME 139, a case involving a retroactive change in how partial incapacity benefits were determined, the Law Court held that

> . . . statutory amendments may be applied retroactively to alter an employee's level of benefits for injuries predating those amendments, *see Tompkins v. Wade & Searway Constr. Corp.*, 612 A.2d 874, 877-78 (Me. 1992) (relying, in part, on *General Motors Corp. v. Romein*, 503 U.S. 181, 190-91, 117 L. Ed. 2d 328, 112 S. Ct. 1105 (1992)) . . .

Grubb, 2003 ME 139, ¶10.[31]

A. Examples of retroactive provisions

L.D. 756 (P.L. 2019, c. 344) included a retroactive provision. Specifically,

> **Sec. 9. 39-A MRSA §215, sub-§1-B** is enacted to read:
>
> **1-B. Death of employee; date of injury on or after January 1, 2020.** If an injured employee's date of injury is on or after January 1, 2020, if death results from the injury of the employee and if the employee has no dependents, the employer shall pay or cause to be paid to the parents of the employee during the parents' lifetime a weekly payment equal to 2/3 of the employee's gross average weekly wages, earnings or salary, but not more than the maximum benefit under section 211, for a period of 500 weeks from the date of death. This subsection does

[31] Ultimately, the new method was not applied to the employee because the Court held that a legislative change did not obviate the need to show a change in circumstances since a prior decree.

> not apply to an injury or death of an employee occurring before January 1, 2020, except that for a death of an employee resulting from an injury the date of which is on or after January 1, 2019 but before January 1, 2020, payment made to the Treasurer of State under section 355, subsection 14, paragraph F must be transferred to the parents of the deceased employee. For the purposes of this subsection, "parent" means a natural or adoptive parent, unless that parent's parental rights have been terminated.

The retroactive component of L.D. 756 was not seen as problematic because it was likely to only affect a single case and the cost of the retroactive enactment was borne by the State.

Another example is P.L. 2002, c. 390 which retroactively changed the Act in response to a Law Court decision regarding how annual adjustments for injuries prior to November 20, 1987 were calculated.

A final example is P.L. 2002, c. 712 which retroactively changed the Act in response to a Law Court holding regarding the calculation of permanent impairment.

B. Changes are retroactive if they apply to dates of injury prior to the effective date of legislation

Since it is well settled that legislative changes can be retroactive, the next question is what does it mean for a change to be retroactive? For purposes of rate making (and loss cost filings) changes to the Act are considered retroactive if they affect dates of injury prior to the effective date of a change, even if the change only applies to benefit payments made after the effective date of the amendment.

The definition of retroactivity matters with respect to the cost impact of law changes. Insurers and self-insurers cannot charge additional premiums for a prior policy year to account for costs related to subsequent amendments. Additional costs for subsequent amendments after a policy year ends must be absorbed by the insurer or, in the case of a self-insured employer, the employer.

C. How to evaluate the cost impact of retroactive legislation

As previously discussed in this report, when a prospective change to the Act is proposed, or enacted, NCCI will conduct an analysis of the impact on workers' compensation rates. If premium rates will change because of a law, those changes will be built into rates going forward.

NCCI does not provide information for the potential costs of retroactive application of legislation. Since legislation can apply retroactively, a process should be developed to gauge the potential impact of any suggested retroactive amendments. This is another reason why it is essential for the Board to have timely and accurate claims data since that data can be used to provide an estimate of the impact of a retroactive proposal.

D. Summary

While retroactive legislation can be enacted, that does not mean that it should be enacted. As with prospective legislation, it is important to understand the cost implications of retroactive legislation. To the extent retroactive proposals are made, the Board will work with stakeholders to try to determine what the cost impact would be.

XIII. ANALYSIS OF POTENTIAL CHANGES TO ADDRESS THE IMPACT OF INFLATION

Pursuant to Resolves 2023, c. 139 (the "Resolve"), the Board is required to collect and analyze data and, in doing so, consider "how [lost wage benefits compare] to the current cost of living as determined by the United States Department of Labor, Bureau of Labor Statistics CPI-U for the New England Division; the cost of updating the annual adjustment provision in Title 39-A, section 212; and the cost of implementing a cost-of-living adjustment provision in sections 213 and 215."

A. Introduction

As detailed in this report, the Board used the basic objectives of substantial protection for injured workers and affordability for employers to frame its consideration of the impact of inflation on workers' compensation benefits. The Board worked with NCCI to come up with a cost estimate for four scenarios. Having received NCCI's report, the Board is now working with stakeholders to discuss potential recommendations.[32]

B. Eligible for a cost-of-living-adjustment

Pursuant to the enactment of LD 756 in 2019, employees receiving total incapacity benefits pursuant to § 212 are eligible for a COLA if they were injured on or after January 1, 2020 and have received 260 weeks of incapacity benefits pursuant to § 212.[33] (39-A M.R.S.A. § 212(4).)

L.D. 1896 (An Act to Index Workers' Compensation Benefits to the Rate of Inflation) was introduced during the First Regular Session of the 131st Maine Legislature. This proposal would have required an annual adjustment to all lost time benefits based on the increase in the Consumer Price Index compiled by the United States Department of Labor, Bureau of Labor Statistics. In 2023, the Board facilitated a stakeholder group to identify, discuss and try to reach consensus on issue(s) raised by L.D. 1896. Ultimately, consensus could not be reached.

During the group's meetings, participants discussed the fact that the current COLA provision provides some protection against inflation for injured workers who are receiving total incapacity benefits (pursuant to § 212) and who, based on the length of time they have been receiving lost time benefits, are unlikely to return to the workforce.

To evaluate whether the COLA should cover additional injured workers, it will be necessary to consider: Whether the current COLA is meeting its objective (i.e., is there a meaningful

[32] NCCI's preliminary cost impact analysis is attached as Appendix F.
[33] A discussion of who is and is not eligible for a COLA can be found in section III of this report.

distinction between § 212 and § 213 (100% partial) and § 215 (death benefits)); and, whether injured workers who are receiving partial incapacity benefits (less than 100%) pursuant to § 213 should be eligible for a COLA? The Board, with input from stakeholders, will consider whether a meaningful distinction exists.

C. Which inflation factor should be used?

The current COLA is tied to changes in the state average weekly wage (SAWW). The COLA proposal discussed relative to LD 1896 was tied to the CPI-U for New England. The following charts show the differences between changes in Maine's SAWW, the U.S. DOL's CPI-U for New England and the U.S. DOL's CPI-U for the Northeast.
The first chart shows the changes from 2000:

	Annual % Change		
Year	CPI-U Northeast	CPI-U New England	Maine State Average Weekly Wage
2000	3.4%		4.02%
2001	2.8%		2.82%
2002	2.1%		4.15%
2003	2.8%		3.07%
2004	3.5%		3.31%
2005	3.6%		3.67%
2006	3.6%		2.39%
2007	2.6%		3.37%
2008	4.0%		3.89%
2009	0.0%		3.41%
2010	2.0%		0.88%
2011	3.0%		1.92%
2012	2.0%		1.77%
2013	1.4%		1.61%
2014	1.4%		1.88%
2015	-0.1%		2.90%
2016	1.1%		3.34%
2017	1.8%		1.91%
2018	2.2%		3.10%
2019	1.6%	1.9%	3.31%
2020	1.3%	0.9%	3.80%
2021	3.9%	3.6%	10.64%
2022	7.0%	7.1%	5.30%
2023	3.5%	2.9%	6.52%
2024	3.4%	3.2%	3.71%

Avg All Years	2.5%		3.5%
Avg 2019 - 2024	3.4%	3.3%	5.5%

The next chart shows the same information except years where the annual change exceeded 5% have been reduced to 5%. Years where that change was made are highlighted.

	Annual % Change (Limit of 5%)		
Year	CPI-U Northeast	CPI-U New England	Maine State Average Weekly Wage
2000	3.4%		4.02%
2001	2.8%		2.82%
2002	2.1%		4.15%
2003	2.8%		3.07%
2004	3.5%		3.31%
2005	3.6%		3.67%
2006	3.6%		2.39%
2007	2.6%		3.37%
2008	4.0%		3.89%
2009	0.0%		3.41%
2010	2.0%		0.88%
2011	3.0%		1.92%
2012	2.0%		1.77%
2013	1.4%		1.61%
2014	1.4%		1.88%
2015	-0.1%		2.90%
2016	1.1%		3.34%
2017	1.8%		1.91%
2018	2.2%		3.10%
2019	1.6%	1.9%	3.31%
2020	1.3%	0.9%	3.80%
2021	3.9%	3.6%	5.00%
2022	5.0%	5.0%	5.00%
2023	3.5%	2.9%	5.00%
2024	3.4%	3.2%	3.71%
Avg All Years	2.5%		3.2%
Avg 2019 - 2024	3.1%	2.9%	4.3%

As these charts show, annual changes for the Northeast and New England are similar and both differ from the average change in the SAWW.

D. How long before the COLA applies?

The COLA provision in § 212(4) applies after an injured worker has received 5 years of benefits pursuant to § 212. During the L.D. 1896 meetings, one rationale presented for the waiting period was related to the likelihood that an injured worker would return to the workforce. The Board and the stakeholder group will consider whether 5 years is the appropriate amount of time to estimate when an injured worker is unlikely to return to work.[34] Another consideration is the impact of inflation over time.

E. NCCI Report

The Resolve tasked the Board with presenting its findings and recommendations to this committee. As it is clear that inflation impacts employees who are unable to return to work because of their work-related injuries, the Board asked NCCI to provide cost estimates for four different scenarios.

1) Extend current [cost of living adjustment] COLA statutes to include claims receiving 100% benefits under § 213 at 5 years;
2) Add COLA to fatal claims after 5 years;
3) Change the basis for the magnitude of the COLA from the State Average Weekly Wage (SAWW) to the Consumer Price Index for All Urban Consumers (CPI-U); and,
4) Reduce the COLA eligibility from 5 years to 3 years.

As requested, NCCI provided a preliminary cost impact analysis.[35] The estimated overall cost impact for each scenario is:

Scenario	Description	NCCI's Estimated Indemnity Cost Impact	NCCI's Estimated Overall Cost Impact
1	Extend current COLA statutes to include claims receiving 100% benefits under §213 at 5 years	+0.1%	Negligible Increase*
2	Add COLA to fatal claims after 5 years	+0.1%	Negligible Increase*
3	Change the basis for the magnitude of the COLA from the State Average Weekly Wage	-0.6%	-0.3%

[34] A related issue the Board will also examine is whether changes can or should be made to encourage stay-at-work and early return-to-work programs.

[35] NCCI notes that its "analysis is based on an informal proposal, not on formal statutory language. Hence this analysis is considered preliminary. If legislation were introduced, NCCI would perform an analysis based on the actual bill language and the impacts stated in this analysis may change accordingly.

	(SAWW) to the Consumer Price Index for All Urban Consumers (CPI-U)		
4	Reduce the COLA eligibility from 5 years to 3 years	+1.2%	+0.5%

* NCCI defines negligible "to be an impact on overall system costs of less than +0.1%."

F. Stakeholder meetings

As it worked on the Resolve, the Board invited stakeholders to meetings to provide input and discuss topics of interest. After the Board received NCCI's preliminary analysis it convened a stakeholder group to discuss its work on this Resolve and NCCI's analysis. The first meeting was held on August 20, 2025. Draft language incorporating some of the scenarios presented to NCCI is being drafted to facilitate future discussions. It is anticipated that meetings will continue through the fall.

XIV. CONCLUSION

Through its work on this Resolve, the Board created a framework to analyze COLAs and other issues presented by the Resolve. In addition to the framework it created and the COLA discussions it has initiated, the Board identified other areas that require further study. These include: The importance of filing timely and accurate claims data; encouraging stay-at-work and return-to-work efforts; analyzing the impact of cost shifting; and, developing a means of assessing the potential impact of retroactive legislation. This work will continue after work on this Resolve has ended.

Finally, this framework will provide the directors, current and future, with a way to purposefully communicate about topics that face the Workers' Compensation Board and to explore proposals that will make our workers' compensation system operate as efficiently and fairly as possible.

APPENDIX A

Resolves 2023, c. 139 (L.D. 1896)

Resolve, Directing the Workers' Compensation Board to Analyze Data on the Adequacy of Certain Maine Workers' Compensation Benefits

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

S.P. 767 - L.D. 1896

Resolve, Directing the Workers' Compensation Board to Analyze Data on the Adequacy of Certain Maine Workers' Compensation Benefits

Sec. 1. Workers' Compensation Board to identify and conduct an analysis of claims and payments. Resolved: That the Workers' Compensation Board, referred to in this resolve as "the board," using data supplied by insurers, 3rd-party administrators, group self-insurers and individual self-insured employers, shall identify and analyze the compensation and benefits provided to an individual claimant pursuant to the Maine Revised Statutes, Title 39-A, section 212 for total incapacity, section 213 for partial incapacity and section 215 for death and any other relevant data and available reports. For each claimant, the analysis must include, but is not limited to, data and reports relating to the following components:

1. The claim identification number assigned by the board;
2. The claim identification number assigned by the insurer, 3rd-party administrator, group self-insurer or individual self-insured employer;
3. The date of injury;
4. The average weekly wage;
5. The compensation rate;
6. For a claimant pursuant to Title 39-A, section 212, the number of weeks of compensation and benefits paid;
7. For a claimant pursuant to Title 39-A, section 213, the number of weeks of compensation and benefits paid and the number of weeks for which the benefit was 100% partial;
8. For a claimant pursuant to Title 39-A, section 215, the number of weeks of compensation and benefits paid;
9. The date the last payment was made and whether payments are continuing;
10. The total amount of indemnity benefits paid; and
11. Any other information the board determines necessary to complete the analysis.

In analyzing each data component, the board shall consider the accuracy of the data available; how the benefit amount compares to the current cost of living as determined by the United States Department of Labor, Bureau of Labor Statistics CPI-U for the New England Division; the cost of updating the annual adjustment provision in Title 39-A, section 212; and the cost of implementing a cost-of-living adjustment provision in sections 213 and 215.

Sec. 2. Updates; report; legislation. Resolved: That the board, within existing resources, shall provide monthly updates to the joint standing committee of the Legislature having jurisdiction over workers' compensation matters on the identification of data and reports and the analysis conducted under section 1. No later than August 16, 2025, the board shall submit a final report to the committee with its findings, recommendations and suggested legislation. The report must include:

1. A thorough analysis of the data and reports that were considered, identification of data or other areas that require further study and recommendations on any changes or adjustments to workers' compensation benefits in order to ensure claimants are receiving adequate benefits;

2. A thorough analysis of whether the Maine Workers' Compensation Act of 1992 provides substantial protection for workers who have suffered work-related injuries and diseases at an affordable cost to employers, including whether the workers' compensation system can provide the income support that injured workers require as a result of their injuries at a cost no greater than the median cost in other states; and

3. Information regarding the retroactive application of workers' compensation legislation based on the analysis under this resolve and an evaluation of the costs of potential retroactive application.

The committee may report out legislation to the 132nd Legislature in 2026 related to the subject matter of the report.

APPENDIX B

L.D. 1896

An Act to Index Workers' Compensation Benefits to the Rate of Inflation

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 39-A MRSA §205, sub-§10 is enacted to read:

10. Inflation adjustment. Compensation under this Act must be annually increased to account for inflation by the amount of increase in the Consumer Price Index compiled by the United States Department of Labor, Bureau of Labor Statistics for the most recent 12-month period for which data are available.

SUMMARY

This bill requires benefits awarded under the Maine Workers' Compensation Act of 1992 to be annually increased to account for inflation by the amount of increase in the Consumer Price Index compiled by the United States Department of Labor, Bureau of Labor Statistics.

APPENDIX C

Report to the Labor and Housing Committee Regarding the L.D. 1896 Stakeholder Group

STATE OF MAINE
WORKERS' COMPENSATION BOARD
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JANET T. MILLS
GOVERNOR

JOHN C. ROHDE
EXECUTIVE DIRECTOR

December 11, 2023

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

Re: Report to The Labor and Housing Committee Regarding the L.D. 1896 Stakeholder Group

The Workers' Compensation Board (the "Board") convened a stakeholder group[36] to identify, discuss and try to reach consensus on issue(s) raised by L.D. 1896 (An Act to Index Workers' Compensation Benefits to the Rate of Inflation).[37] Stakeholders met three times and discussed the impact of inflation on workers' compensation recipients, the scope of the cost-of-living ("COLA") adjustment enacted in 2019,[38] the concept of benefit adequacy, the cost of inflation adjustments to the workers' compensation system, the extent to which workers' compensation costs are being shifted out of the workers' compensation system, and whether to expand the scope of the 2019 COLA.

Ultimately, consensus was unobtainable. Notwithstanding the lack of consensus, the questions posed and ideas raised during the meetings provide a framework for consideration of workers' compensation issues and proposals.

I. The existing COLA

Understanding who is and who is not eligible for COLAs under existing law was a necessary first step for the group. Confusion can arise because employees can receive the full amount of their workers' compensation benefit under either the total incapacity section (39-A M.R.S.A. § 212) or the partial incapacity section (39-A M.R.S.A. § 213).

A. Who is eligible for the current COLA?

To be eligible for a COLA, three criteria must be satisfied: The employee's date of injury must be on or after January 1, 2020; the employee must have received 260 weeks of

[36] A list of attendees for each meeting is included as Attachment A.
[37] The full text of L.D. 1896 is included as Attachment B.
[38] The COLA was enacted as part of L.D. 756 (P.L. 2019, c 344). The full text is included as Attachment C.

incapacity benefit payments; and, the 260 weeks of benefits must have been paid pursuant to § 212.

1. Total incapacity pursuant to 39-A M.R.S.A. § 212.

There are two ways an injured employee can demonstrate entitlement to benefits pursuant to § 212:

> First, an employee who demonstrates a total physical incapacity, that is, the medically demonstrated lack of the physical ability to earn, can prove entitlement to "total" incapacity benefits pursuant to section 212 without a showing of any work search or other evidence that work is unavailable. *Morse [v. Fleet Fin.]*, 2001 ME 142, P8, 782 A.2d [769] at 772.
>
> Second, in limited situations, an employee suffering only partial incapacity to earn may be entitled to "total" benefits pursuant to section 212 if the employee can establish both (1) the unavailability of work within the employee's local community, and (2) the physical inability to perform full-time work in the statewide labor market, regardless of availability. Id.; *Alexander [v. Portland Natural Gas]*, 2001 ME 129, P19, 778 A.2d [343] at 351.

Monaghan v. Jordan's Meats, 2007 ME 100 ¶¶ 11-12, 928 A.2d 786, 791.

2. 260 weeks of benefits.

The § 212 benefit payments do not have to occur in consecutive weeks, but they must be made pursuant to § 212. Weeks for which benefit payments are made pursuant to § 213, even if they are for 100% of the employee's workers' compensation benefit, do not count, nor do weeks for which no benefit is due. It is, therefore, necessary to track both the number of weeks paid and the section pursuant to which each weekly benefit payment was made.

3. Date of injury

The date of injury criteria is straightforward: Employees injured on and after January 1, 2020 are eligible for the COLA if the above criteria are satisfied. Employees injured prior to that date are not eligible for a COLA under Title 39-A. [39]

B. Who is not eligible for the current COLA?

1. Employees receiving 100% partial incapacity pursuant to § 213.

An employee can receive 100% of their benefit entitlement under the partial incapacity section of the Act.

[39] Employees receiving the maximum weekly benefit, currently 125% of the state average weekly wage, may have their weekly benefit amount adjusted in July based on changes to the state average weekly wage.

> [A] partially incapacitated employee may be entitled to "100% partial" incapacity benefits pursuant to section 213 based on the combination of a partially incapacitating work injury and the loss of employment opportunities that are attributable to that injury. *Morse*, 2001 ME 142, ¶ 6, 782 A.2d at 771. In order to obtain the 100% benefit, it must be established, pursuant to the "work search rule" that work is unavailable within the employee's local community as a result of the work injury.

Monaghan v. Jordan's Meats, 2007 ME 100 ¶ 13, 928 A.2d 786, 791.

These employees, even though they are receiving their full benefit amount, are not eligible for a COLA. Hence, a partially disabled worker who cannot find a job after a diligent search is entitled to 100% benefits but is not entitled to an inflation adjustment.

2. Employees receiving less than 100% partial incapacity pursuant to § 213.

Employees with a partial incapacity who are working may be entitled to partial incapacity payments based on the difference between what they earned before the injury and what they are earning after the injury.

Partially incapacitated employees who do not look for work or who do not conduct a good faith work search may receive partial incapacity benefits based on the difference between what they earned before the injury and what they are able to earn after the injury.

3. Death benefits pursuant to § 215.

In the event a work injury results in the employee's death, benefits are paid to the deceased workers' dependents pursuant to § 215. These payments are not eligible for a COLA.

C. Who might be impacted in 2025, the first year a COLA is due under the current law?

Because the COLA applies to dates of injury on and after January 1, 2020, and the injured employee must receive 260 weeks of benefits pursuant to § 212, the first year in which adjustments may be required will be 2025.

To better understand how many claimants may benefit from the COLA, the stakeholder group asked for information about the number of workers injured in 2020 are receiving 100% of their benefit pursuant to § 212 in 2020. Further, some in the group wondered how many workers injured in 2020 are receiving 100% partial benefits pursuant to § 213. A suggestion was also made to include additional years be included to see if there are any trends.

1. Data request to claims administrators.

The Board requested data from insurers, self-insured groups, individual self-insured employers and third-party administrators. The data was requested for injury years 2019, 2020,

2021 and 2022. Some entities provided data in response to this request. Others asked the Board to reconsider the scope of its request, which it did. In an effort to facilitate responses, the data request was limited to just injury year 2020. Several more entities complied with this amended request.

Others, entities that account for the majority of claims data, did not provide any data to the Board. The Board was informed that the data was not available and they would be unable to create it in time for the stakeholder group's consideration.

2. Workers' Compensation Board data.

The Board receives payment information regarding work-related injuries. The Board used this to identify the number of claimants receiving 100% of their benefit entitlement. While the Board can identify the statutory section (i. e. §212, §213, §215) under which payments are being made, the Board does not always receive a form when total benefit payments change from §212 to §213 or vice versa. As a result, while the Board can determine the number of claimants receiving 100% of their benefit entitlement, it cannot be certain how many weeks of benefits are being paid pursuant to § 212 or § 213.

The Board examined data for injury years 2018 and 2020. For injury year 2018, the Board's data indicates that less than 1% of workers (approximately 50 individuals) received 100% of their benefit entitlement for five consecutive years. For injury year 2020, the Board's data indicates that approximately 1.3% of workers (approximately 70 individuals) received 100% of their benefit entitlement for three consecutive years.

For both injury years, only a subset of those workers would have received benefits pursuant to § 212 for some or all of those weeks.

3. Is consideration of a COLA bill premature?

Some members expressed concern that discussion of a COLA is premature because we have not yet seen the impact of the 2019 COLA.[40] Others noted the impact is being felt already because inflation is affecting injured workers today and their benefits have not been, and may not ever be, adjusted for inflation. Concerns were also raised that stakeholders were being asked to reconsider an issue that was negotiated in 2019. It was unclear what the scope of that discussion was. For example, whether consideration was given to extending the COLA provision to injured workers receiving 100% partial or to dependents who are receiving death benefits and, if it was, what the rationale was for distinguishing between the different categories of benefits.

III. Framework for considering changes

In 1992, a Blue Ribbon Commission was created to examine Maine's workers' compensation system and recommend changes to the existing Act. In its report,[41] the Blue

[40] As discussed below, the loss cost impact for L.D. 1896 was +3.9%. Of this figure, 1.1% was attributed to the COLA in § 212(4).
[41] The full text of the Blue Ribbon Commission Report is included as Attachment D.

Ribbon Commission stated that its goal was to create a system "that will provide substantial protection for workers . . . at an affordable cost to employers."[42]

During the stakeholder meetings, participants raised issues and posed questions pertinent to these goals. These issues and questions are outlined below.

A. Are there studies that examine the adequacy of workers' compensation benefits?

No Maine-specific studies were identified, but, studies have been conducted to answer questions about benefit adequacy. Some studies have compared benefits to the poverty line, others have compared benefits to a Model Act drafted in the 1970s, and still other studies have examined loss replacement rates and or earnings replacement rates in various state systems.

B. Are there studies that examine whether workers' compensation costs are shifted to other payors?

Although no Maine-specific studies were identified some studies have addressed the question of whether workers' compensation costs are shifted to other payors. An example is a 2017 report issued by the U.S. Occupational Safety and Health Administration which concluded that costs of work-related injuries are being shifted out workers' compensation systems.

C. Affordable cost to employers

1. Loss cost filings

Loss cost filings by the National Council of Compensation Insurers ("NCCI") are one measure used to gauge the cost to employers of changes to the Act. In addition to NCCI's annual filings,[43] NCCI will make "law only" filings that account for changes between the annual filings.

As will be touched on below, NCCI provided a cost estimate for a proposal discussed during the first stakeholder meeting. The estimated impact of the proposal was between +1.7% and +2.4%. The loss cost filing associated with L.D. 756 was +3.9%. It was pointed out that if the proposal was enacted and the high estimate (+2.4%) was included in an NCCI filing, the cumulative impact to loss cost filings from these law changes would be +6.3%. It was also noted that annual loss cost filings also factor into the overall loss costs trend since 2019. The following chart shows the approved loss cost filings in Maine since 2019:

[42] The full quote can be found in the first full paragraph on page 3 of the BRC Report. There was discussion during a stakeholder meeting as to whether the phrase "at a cost no greater than the median cost among states" was included within reasonable costs to employers or had independent relevance.

[43] "NCCI files advisory loss costs on behalf of workers' compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for commissions, general expenses, taxes, and contingencies, nor do they account for profit and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items." *Annual Report on the Status of the Maine Workers' Compensation System,* February, 2023, p. B6 (available at: https://www.maine.gov/wcb/Departments/administration/index.html).

Rate/Loss Cost	Effective Date	Filed % Change	Approved % Change	Filing Type	Applies To	Filing Action
Loss Cost	4/1/2023	-11.9	-11.9	Experience	New/Renewal	Approved
Loss Cost	4/1/2022	-10.3	-10.3	Experience	New/Renewal	Approved
Loss Cost	4/1/2021	0.3	0.3	Experience	New/Renewal	Approved
Loss Cost	1/1/2020	3.9	3.9	Law Only	New/Renewal	Approved
Loss Cost	4/1/2019	-7.5	-7.5	Experience	New/Renewal	Approved

2. Insured employers versus self-insured employers.

Stakeholders discussed the fact that NCCI's loss cost filings only apply to the insured market. Self-insured employers and self-insured groups are not required to use NCCI's loss cost filings in determining cost impacts. Members were invited to address whether there is a material difference in how self-insured employers and self-insured groups determine cost impacts; further discussion on this issue did not occur.

3. Retroactivity

For purposes of rate making (and loss cost filings) changes to the Act are considered retroactive if they affect dates of injury prior to the effective date of a change. This is an area where there may be differences between insured and self-insured employers. If a law change applies retroactively, insurance companies cannot change their rates retroactively to account any differences. Insurance companies must absorb the impact of the retroactive change. In contrast, self-insured employers absorb costs directly.

IV. L.D. 1896

A. Need for clarity

NCCI indicated it could not provide a cost estimate for L.D. 1896 as originally drafted due to uncertainty regarding how it would be implemented. (For example, which inflation factor would apply when adjusting benefits.)

Senator Nangle, the lead sponsor of L.D. 1896, set forth a proposal that NCCI could use to formulate a cost estimate that could from the basis for further conversations. The proposal:

- Applies to benefits paid pursuant to § 212 (total incapacity), § 213 (partial incapacity), and § 215 (death benefits);
- Applies on the first day of the calendar year two years after the date of injury;

- Is based on the U.S. BLS CPI-U for the New England division;
- Replaces the existing COLA in § 212(4);
- Applies prospectively to dates of injury on and after July 1, 2024; and,
- Applies retroactively (i.e., to dates of injury prior to the effective date of the law change).

B. NCCI Cost Impact Estimates

NCCI provided a cost estimate on November 14, 2023, and an updated estimate on November 20, 2023.[44] The impact of the proposal was estimated to be between +1.7% and +2.4%. NCCI included its estimate of the impact on each benefit section, § 212, § 213 and § 215.

C. Senator Nangle's question for the stakeholder group

During the second stakeholder meeting, Senator Nangle asked what it would take for insurance companies to agree to change the existing COLA provision. There was no reply. Nevertheless, the stakeholder group agreed to meet one final time to see if consensus was possible. The answer, as noted in the summary, above, was that it was not.

I am available to answer any questions you may have regarding this report.
Sincerely,

John C. Rohde
Executive Director
Workers' Compensation Board

Cc: Senator Matthea Daughtry
Senator Matthew Pouliot
Representative Dick Bradstreet
Representative Gary Drinkwater
Representative Joe Galletta
Representative Valli Geiger
Representative Traci Gere
Representative Marc Malon
Representative Ronald Russell
Representative Charles Skold
Representative Mike Soboleski
Steven Langlin - OPLA Analyst
Rachel Tremblay - OFPR Analyst
Maria Rodriguez - Committee Clerk

[44] The November 14th and November 20th estimates are included as Attachments E and F respectively.

APPENDIX D

Excerpt from January 29, 2020 Report of the Working Group Established by the Board Pursuant to LD 756, § 17

III. VOCATIONAL REHABILITATION

A. Purpose

The value of vocational rehabilitation in workers' compensation is widely recognized, as explained in the following excerpt from the leading workers' compensation treatise:

> Until comparatively recently, the industrial accident problem had two major phases: prevention and cure. The spotlight is now on a third: rehabilitation. The conviction is gradually gaining ground that the compensation job is not done when the immediate wound has been dressed and healed. There remains the task of restoring the person to the maximum usefulness that he or she can attain given the physical impairment.
>
> As a matter of underlying philosophy, it is not difficult to demonstrate that rehabilitation is properly an inherent part of the workers' compensation system's function, and this is now universally accepted in principle by all interested groups. Even as a purely legal concept, one could put the matter this way: Restitution is the proper remedy when money damages will not restore something that is unique. How much clearer is it that, when the loss is the loss of use of a limb rather than of mere chattels, restitution is the most appropriate remedy.

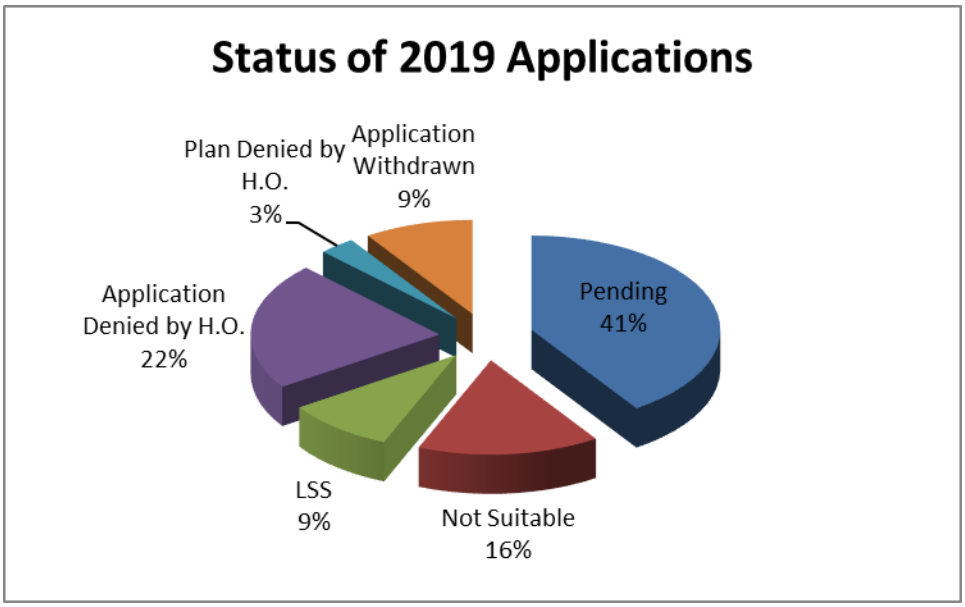
8 Larson's Workers' Compensation Law § 95.01.

B. Data

To provide context for the vocational rehabilitation discussion, the working group examined the number of vocational rehabilitation requests received by the Board and the number of lost time claims received each year.

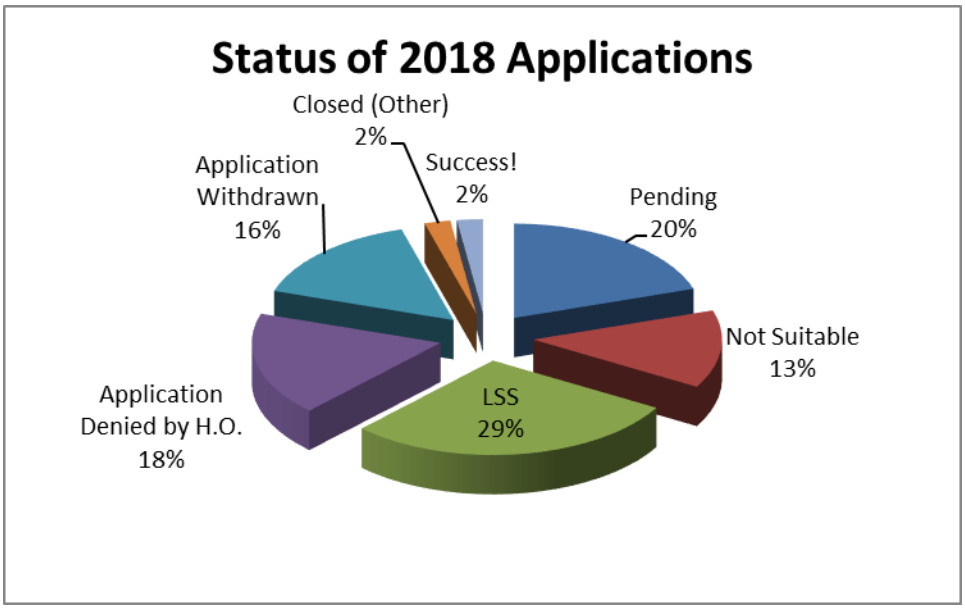
1. Number of vocational rehabilitation requests from 2015 to 2019.

The following charts show the status of vocational rehabilitation requests from 2015 to 2019.



2019:

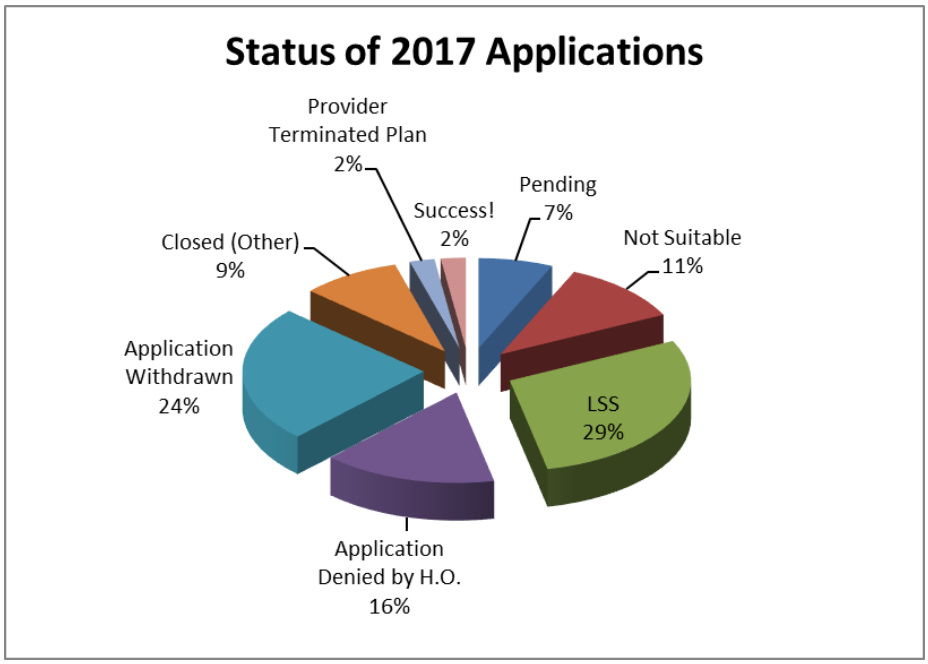
32 Applications Total
26 by EE
3 by ER/IR
3 by ALJ



2018:

45 Applications Total

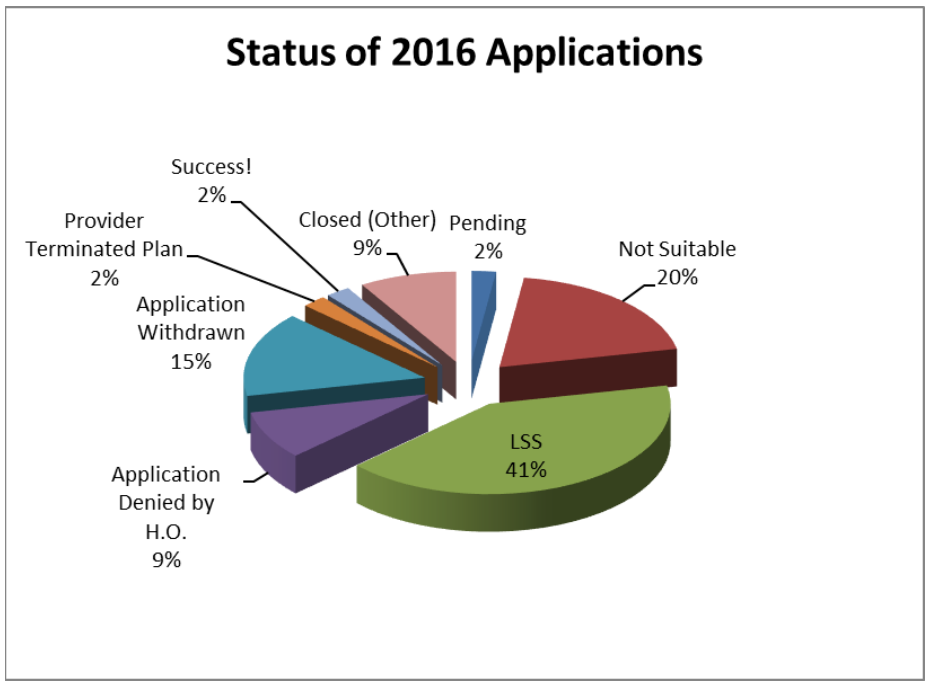
36 by EE
8 by ER/IR
1 by ALJ



2017:

45 Applications Total

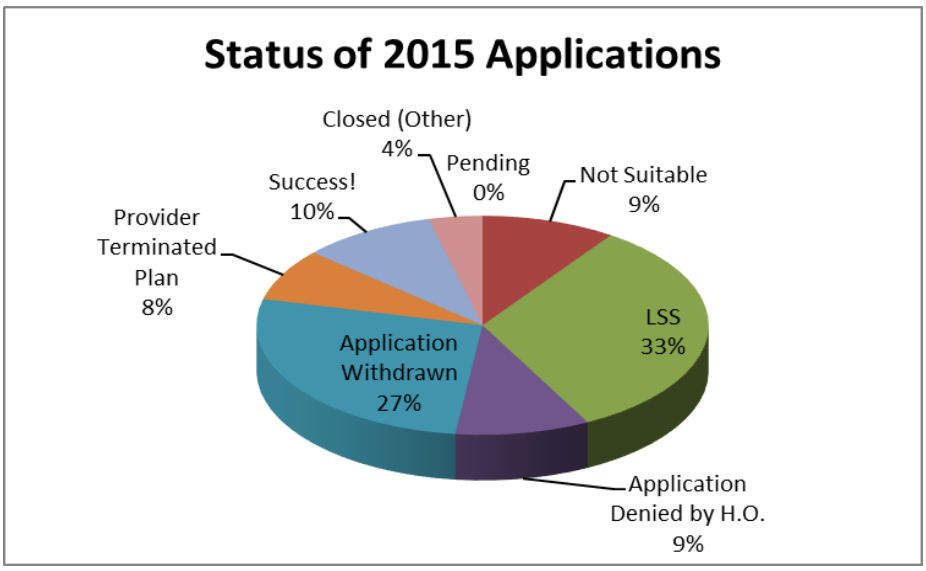
41	by EE
0	by ER/IR
4	by ALJ



2016:

47 Applications Total

39	by EE
6	by ER/IR
2	by ALJ



2015:

53 Applications Total

53 by EE
0 by ER/IR
0 by ALJ

2. Number of lost time claims per year

The following chart - produced by the Department of Labor Bureau of Labor Standards – for the Board's 2019 Annual Compliance Report, shows the number of lost time claims reported from 2013 to 2017.

			Year of First Report			
Claim Status	2013	2014	2015	2016	2017	Total
Lost Time (LT) Claims	5,152	5,134	4,940	4,561	4,779	24,566
Open LT Claims	241	295	416	512	663	2,127
% Open	4.7%	5.7%	8.4%	11.2%	13.9%	8.8%
Closed LT Claims	4,911	4,839	4,524	4,049	4,116	22,439
Resumed Work	3,120	3,200	3,093	3,205	3,096	15,714
% Resumed Work	60.6%	62.3%	62.6%	70.3%	64.8%	64.1%

2019 Annual Report on the Status of the Maine Workers' Compensation System, p. C-28.

3. Comparison

A comparison of the number of lost time claims to the number of vocational rehabilitation applications shows the Act's vocational rehabilitation process is infrequently used. In contrast, the Department of Labor's Division of Vocational Rehabilitation reported that it received 107 applications in fiscal year 2018-2019 from individuals who were receiving workers' compensation benefits.

C. Streamline process

Over the years, the Board has received feedback that the procedures associated with requesting vocational rehabilitation services is cumbersome and unclear. In 2018, the Board adopted a rule designed to ameliorate some of these concerns. The working group discussed whether or not it would be worthwhile to incorporate the rule changes into the Workers' Compensation Act (the "Act"). The following draft language, which merges 39-A M.R.S.A. §217 with the changes adopted by the Board in 2018, was presented to the working group.

§217. EMPLOYMENT REHABILITATION

When as a result of injury the employee is unable to perform work for which the employee has previous training or experience, the employee is entitled to such employment rehabilitation services, including retraining and job placement, as reasonably necessary to restore the employee to suitable employment.

1. Services. If employment rehabilitation services are not voluntarily offered and accepted, the board on its own motion or upon application of the employee, carrier or employer, after affording the parties an opportunity to be heard, may refer the employee to a board-approved facility for evaluation of the need for and kind of service, treatment or training necessary and appropriate to return the employee to suitable employment. The board's determination under this subsection is final. Neither party may appeal the determination of the board under this subsection.

2. Plan ordered. Upon receipt of an evaluation report pursuant to subsection 1, if the board finds that the proposed plan complies with this Act and that the implementation of the proposed plan is likely to return the injured employee to suitable employment at a reasonable cost, it may order the implementation of the plan. Implementation costs of a plan ordered under this subsection must be paid from the Employment Rehabilitation Fund as provided in section 355, subsection 7. The board's determination under this subsection is final. Neither party may appeal the determination of the board under this subsection.

3. Order of implementation costs recovery. If an injured employee returns to suitable employment after completing a rehabilitation plan ordered under subsection 2, the board shall order the employer who refused to agree to implement the plan to pay reimbursement to the Employment Rehabilitation Fund as provided in section 355, subsection 7.

The employer/insurer shall, no later than 30 days after the Board issues an order pursuant to section 355, subsection 7, either pay the amount ordered by the Board or file a petition objecting to the order.
If a timely petition is received, the matter shall be referred to mediation.
If the matter is not resolved during mediation, the matter will be referred for hearing.

The employer/insurer may raise all issues and defenses that were, or could have been raised, in any prior proceeding conducted under this section.

The board's decision under this subsection is subject to appeal as set forth in section 321-B.

4. Additional payments. The board may order that any employee participating in employment rehabilitation receive additional payments for transportation or any extra and necessary expenses during the period and arising out of the employee's program of employment rehabilitation.

5. Limitation. Employment rehabilitation training, treatment or service may not extend for a period of more than 52 weeks except in cases when, by special order, the board extends the period up to an additional 52 weeks.

6. Loss of or reduction in benefits. If an employee unjustifiably refuses to accept rehabilitation pursuant to an order of the board, the board shall order a loss or reduction of compensation in an amount determined by the board for each week of the period of refusal, except for specific compensation payable under section 212, subsection 3.

7. Hearing. ~~If a dispute arises between the parties concerning application of any of the provisions of subsections 1 to 6, any of the parties may apply for a hearing before the board.~~ The board shall adopt rules establishing procedures to resolve disputes between parties concerning the application of any of the provisions of subsections 1, 2, 4, 5 and 6.

8. Presumption.

9. Reduction of benefits. If an employee is actively participating in a rehabilitation plan ordered pursuant to subsection 2, benefits may not be reduced except:

A. Under section 205, subsection 9, paragraph A, upon the employee's return to work with or an increase in pay from an employer who is paying the employee compensation under this Act;

B. Under section 205, subsection 9, paragraph B, based on the amount of actual documented earnings paid to the employee; or

C. When the employee reaches the durational limit of benefits paid under section 213.

D. Summary of working group activity

In calendar year 2019, the Board received 32 applications for employment rehabilitation – down from approximately 45 in prior years. In Fiscal Year 2018-19 the Department of Labor's Division of Vocational Rehabilitation received 107 applications from employees who were receiving workers compensation benefits and had not been referred by the Board. The group discussed whether it is appropriate/desirable for these costs to be shifted to DOL instead of being absorbed by the workers' compensation system.

It is not clear why fewer applications were received this year, nor is it entirely clear why employees go directly to DOL as opposed to exercising their rights under the Act. With respect to the latter point, it is possible the procedures in place at the Board encourage litigation. Additional litigation slows down the vocational rehabilitation process and may make the Board's process less attractive to injured workers.

That said, there was general agreement that it is premature to decide that the recently adopted rule changes will not alleviate the concerns related to vocational rehabilitation procedures. Also, given the small number of applications in 2019, there is agreement that further study is warranted as to why the Board's vocational rehabilitation process is not used more frequently before considering any substantive changes.

APPENDIX E

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 causeof 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 OSH Act 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 impainnent 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.*

APPENDIX F

NCCI

Preliminary Cost Impact Analysis of Maine Workers' Compensation Board Framework Subcommittee Cost of Living Adjustment Scenarios

PRELIMINARY COST IMPACT ANALYSIS OF MAINE WORKERS' COMPENSATION BOARD FRAMEWORK SUBCOMMITTEE COST OF LIVING ADJUSTMENT SCENARIOS

As Requested on June 16, 2025

NCCI has performed a preliminary cost impact of the Maine Workers' Compensation Board (WCB) Framework Subcommittee Cost of Living Adjustment (COLA) Scenarios, which proposes four different scenarios regarding the application of a COLA on aspects of the Maine workers compensation (WC) system. Scenarios were evaluated in isolation and their impacts are noted in the table below. The assumed effective date for this change is July 1, 2026.

This analysis is based on an informal proposal, not on formal statutory bill language. Hence, this analysis is considered preliminary. If legislation were introduced, NCCI would perform an analysis based on the actual bill language and the impacts stated in this analysis may change accordingly. Note that the absence of an update to the preliminary analysis does not signify that this is NCCI's final assessment of the cost impact of the proposal.

NCCI's analysis is prospective only (i.e., for accidents occurring on or after July 1, 2026). If the proposed changes extend to accidents occurring prior to the assumed effective date, there may be retroactive cost impacts arising from some of these scenarios. Such a retroactive application could result in an unfunded liability to the extent that these additional costs were not contemplated in the premiums charged for policies written prior to the enactment of any of these scenarios.

A summary of the COLA descriptions and estimated cost impacts of each provided scenario is displayed below. Each scenario was evaluated in isolation and did not consider any interaction between the scenarios.

Scenario	Description	Estimated Indemnity Cost Impact	Estimated Overall Cost Impact
1	Extend current COLA statutes to include claims receiving 100% benefits under §213 at 5 years	+0.1%	Negligible Increase[1]
2	Add COLA to fatal claims after 5 years	+0.1%	Negligible Increase[1]
3	Change the basis for the magnitude of the COLA from the State Average Weekly Wage (SAWW) to the Consumer Price Index for All Urban Consumers (CPI-U)	-0.6%	-0.3%
4	Reduce the COLA eligibility from 5 years to 3 years	+1.2%	+0.5%

[1] Negligible is defined in this context to be an impact on overall system costs of less than +0.1%.

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Background

LD 756, which was enacted in the 2019 Maine legislative session, established a COLA for 39-A MRSA §212 benefits (total incapacity) for injuries occurring on or after January 1, 2020. The COLA that was enacted equals the annual change in the state average weekly wage (SAWW) or +5%, whichever is less. In addition, the COLA does not begin until 260 weeks of indemnity benefits have been received, except when the maximum benefits under §211 (maximum benefit levels) limit the compensation to which the claimant would otherwise be entitled.

WC benefits in Maine fall under §212 (total incapacity), §213 (partial incapacity), and §215 (death benefits). They are reported under the NCCI Statistical Plan as permanent total disability (PTD), temporary total disability (TTD), permanent partial disability (PPD), or Fatal.

The following four scenarios have been proposed by the WCB Framework Subcommittee:

- Scenario 1 – Extend current COLA statutes to include those claims receiving 100% benefits under §213 at 5 years
- Scenario 2 – Add COLA to fatal claims after 5 years
- Scenario 3 – Change the basis for the magnitude of the COLA from the State Average Weekly Wage (SAWW) to the Consumer Price Index for All Urban Consumers (CPI-U)
- Scenario 4 – Reduce the COLA eligibility from 5 years to 3 years

Actuarial Analysis

In estimating the potential prospective cost impact of these concepts, NCCI used annuity calculations incorporating assumptions on the average amount of the COLA, average age at injury, deferral period, and impact of Social Security old-age insurance benefit payments and pension offsets.[2] For Scenarios 1, 2, and 4 the COLA based on the SAWW was assumed to be 5% using a 5 year average excluding the highest and lowest values over the past five years.[3] For COLA scenarios involving §212 and §213, the calculations assume the average age of the injured worker is 47 and the Social Security retirement age is 67. For §213 calculations, initial wage-loss benefits and their gradual decline over time are considered. For §215 calculations, benefits are limited to 500 weeks.

[2] In addition, NCCI accounted for those workers already subject to the maximum weekly benefit who currently receive an annual increase in benefits when the SAWW changes, and thus their maximum weekly benefits increase.

[3] Note that 5% is the maximum value for the COLA, thus an upper bound for this analysis.

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Scenario 1 – Extend current COLA statutes to include those claims receiving 100% benefits under §213 at 5 years

This scenario would add a COLA for the claims receiving 100% benefits under §213 to the current statutes. The number of claims receiving 100% benefits under §213 after 5 years is a small portion of §213 so the addition of these claims would have an impact of approximately +0.5% on indemnity benefits for such claims. Since indemnity benefits for §213 claims account for approximately 27.8%[4] of indemnity benefits in Maine and indemnity benefits are projected to represent 45%[5] of total WC benefit costs in Maine, NCCI estimates that this scenario would result in an impact of +0.1% (=+0.5% x 27.8%) on indemnity benefits and a negligible increase on overall system costs (0.0%=+0.1% x 45%).

Scenario 2 – Add COLA to fatal claims after 5 years

This scenario would add a COLA for claims under §215 to the current statutes. For purposes of this scenario analysis, a range of 2% to 5% was used for the COLA. Extending the statute to include a COLA for fatal claims could result in a +2.1% to +5.6%[6] impact on death benefits. Since death benefits make up 1.1%[3] of indemnity benefits and indemnity benefits are projected to represent 45% of total WC benefit costs in Maine, NCCI estimates that this scenario would result in an impact of less than +0.1% (=+5.6% x 1.1%) on indemnity benefits and a negligible increase on overall system costs (0.0%=+0.1% x 45%).

Scenario 3 – Change the basis for the magnitude of the COLA from the State Average Weekly Wage (SAWW) to the Consumer Price Index for All Urban Consumers (CPI-U)

This scenario would change the basis for the COLA calculation from the SAWW to the CPI-U[7]. The CPI-U for the Northeast was used as the basis for the calculation. Recent changes in the average values for the SAWW and CPI-U were calculated using the latest five years of data excluding the highest and lowest values resulting in an average annual change of 5% for the SAWW and 4% for the CPI-U. Switching from the SAWW to the CPI-U as the basis for the annual COLA would have an impact of –0.8% on indemnity benefits for §212 claims. Since indemnity benefits for §212 claims account for approximately 69.8%[3] of indemnity benefits and indemnity benefits are projected to represent 45% of total WC benefit costs in Maine, NCCI estimates that

[4] Based on NCCI Indemnity Data Call data for Accident Years 2017-2024.
[5] Based on unlimited developed, on-leveled, and trended Financial Call data underlying the NCCI experience filing for Maine effective April 1, 2025.
[6] The impact on fatal benefits would depend on the annual COLA adjustment.
[7] From the US Bureau of Labor Statistics using annual values 2019 through 2024.

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this scenario would result in an impact of –0.6% (=–0.8% x 69.8%) on indemnity benefits and a –0.3% (=–0.6% x 45%) impact on overall system costs.

Scenario 4 – Reduce the COLA eligibility from 5 years to 3 years

This scenario would change the eligibility threshold from five years to three years for which claimants would have to wait for the COLA to begin taking effect. The switch from five years to three years would result in a +1.6% impact on indemnity benefits for §212 claims (i.e., those claims for which the existing COLA is applicable). Since indemnity benefits for §212 claims account for approximately 69.8% of indemnity benefits and indemnity benefits are projected to represent 45% of total WC benefit costs in Maine, NCCI estimates that this scenario would result in an impact of +1.1% (=+1.6% x 69.8%) on indemnity benefits and a +0.5% (=+1.1% x 45%) impact on overall system costs.

Other Considerations

NCCI was also asked to evaluate the possible additive or multiplicative impacts associated with the potential combination of the scenarios. The combination of Scenarios 1 and 2 (i.e., addition of 100% §213 and §215) could have a negligible overall impact on WC costs due to their low percentage of overall indemnity losses.

If Scenarios 3 and 4 were combined (changing the basis of the COLA to the CPI-U and reducing COLA eligibility to 3 years), the overall impact would result in a +0.5% impact on indemnity benefits for §212 claims as the two scenarios have offsetting impacts. Since indemnity benefits for §212 claims account for approximately 69.8% of indemnity benefits and indemnity benefits are projected to represent 45% of total WC benefit costs in Maine, NCCI estimates that this would result in an impact of +0.3% (=+0.5% x 69.8%) on indemnity benefits and a +0.1% (=+0.3% x 45%) impact on overall system costs in Maine.

If all scenarios were combined using the CPI-U as the basis, reducing eligibility to 3 years, and adding 100% §213 and §215, NCCI estimates that this would result in an impact of +0.6% (=+0.5% x 69.8% + 0.8% x 27.8% + 6.9% x 1.1%) on indemnity benefits and a +0.3% (=+0.6% x 45%) impact on overall system costs in Maine.

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