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**ANNUAL REPORT ON THE
STATUS OF THE MAINE WORKERS' COMPENSATION SYSTEM**

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JULY 14, 1990

MAR 5 1990

Submitted to the 114th Legislature by:

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January 25, 1989

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John R. McKernan, Jr.
Governor



John Fitzsimmons
Commissioner

James H. McGowan
Director

DEPARTMENT OF LABOR
Bureau of Labor Standards

January 25, 1989

John L. Martin
Speaker of the House
State House Station #2
Augusta, ME 04333

Charles P. Pray
President of the Senate
State House Station #3
Augusta, ME 04333

Dear Speaker Martin and President Pray:

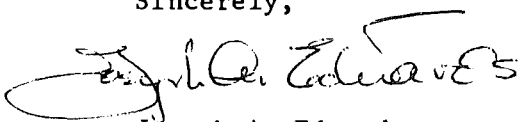
We are pleased to submit to the Legislature the first Annual Report on the Status of the Maine Workers' Compensation system pursuant to Public Law 1987, Chapter 599. This document summarizes the results of data collection by the three agencies involved and is intended to present a profile of the workers' compensation system including costs, administration, adequacy, and an evaluation of the entire system.

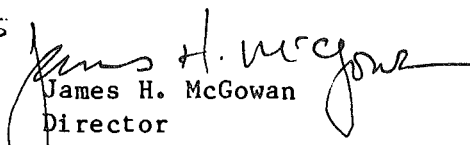
To a large extent, each agency is involved with different operational concerns and views the system from a different perspective. Accordingly, this first report is organized into three sections. On the other hand, the report itself is very much a cooperative effort.

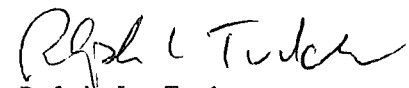
Sincerely,

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Joseph A. Edwards
Superintendent
Bureau of Insurance


James H. McGowan
Director
Bureau of Labor Standards


Ralph L. Tucker
Chairman
Workers' Compensation
Commission

REPORT ON THE 1988 MARKET FOR WORKERS' COMPENSATION INSURANCE

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

BUREAU OF INSURANCE

REPORT ON THE 1988 MARKET FOR WORKERS' COMPENSATION INSURANCE

During the course of 1987 insurance companies filed plans to withdraw from the Maine workers' compensation market. By early November at least 67 insurers representing over 97% of the premium volume in the state had indicated an intention to cease writing the line on December 31.

On November 20, 1987 legislation introduced by Governor John McKernan, Jr. was approved overwhelmingly by the legislature and as a direct result 12 carriers rescinded their terminations and continued to be licensed in the state. Ten of these carriers actively serviced accounts during calendar year 1987.

During 1988, 26 more companies filed to withdraw their authority to write Maine workers' compensation insurance. These companies had written virtually no workers' compensation business in recent years.

Rates in the voluntary market and safety pool increased by an average 25% on April 27, 1988. The increases varied by class and ranged from a low of 8.6% to a high of 42.5%, applicable to new, renewed, and outstanding policies as of that date. The per policy expense constant increased to \$90.

In the one year period ending November 1, 1988 eight companies became self-insured in the state. No companies terminated their right to self-insure.

While these figures are still subject to final audit, the preliminary report on calendar year 1987 shows the market coverage in the following companies by percentage:

AIG	21.5%
Liberty	17.0
Hanover	13.0
CU	8.3
Maine Bonding	6.7
Hartford	5.7
Travelers	4.4
Aetna	4.2
USF&G	3.4
St. Paul	2.1
All Other	13.8

The total premium volume for 1987 was about \$217 million of which over \$160 million was the residual market.

Very preliminary and partial figures for 1988 (only \$80 million reported) show the following percentages:

Hanover	33.5
CU	21.7
AIG	16.6
Travelers	13.9
Maine Bonding	6.5
Hartford	5.6
Aetna	0.3
All Other	1.9

Some of these percentages are likely to change considerably when final figures are available.

As of November 1, 1988, all 12 carriers will remain in the market in 1989.

OCCUPATIONAL INJURIES AND ILLNESSES DATA SYSTEM

MAINE DEPARTMENT OF LABOR

BUREAU OF LABOR STANDARDS

OCCUPATIONAL INJURIES AND ILLNESSES DATA SYSTEM

The Maine Department of Labor, Bureau of Labor Standards, through its Research and Statistics Division, conducts two statistical programs collecting data in the area of occupational safety and health. Both of these programs are funded through cooperative grant agreements with the U.S. Department of Labor, Bureau of Labor Statistics. Although one of these programs collects the information directly from Workers' Compensation reports, the primary purpose of both programs is to provide data and analysis focusing on the understanding and prevention of occupational injury and illness rather than on the administration of the Workers' Compensation system. Although the Bureau looks first to the needs of its own safety consultation and enforcement activities and towards those of other state and federal agencies involved in safety and health enforcement, it is also well aware of the requirements safety and health professionals outside of government. The Bureau also considers the Workers' Compensation Commission a primary user whose needs must be met.

The older of the two programs is the Annual Survey of Injuries and Illnesses (OSHA 200S). This program collects data from a sample of employers based on Occupational Safety and Health Administration (OSHA) required records. This information is used to produce estimates of incidence by industry suitable for comparison with other states or with the nation as a whole. The resulting publication is entitled Occupational Injuries and Illnesses in Maine.

The second project is more directly related to Workers' Compensation. It too is funded by OSHA money channeled through the U.S. Bureau of Labor Statistics. This program is called the Supplementary Data System (SDS). It

is based on a cause and type analysis of each First Report of Occupational Injury or Disease and ancillary documents provided by employers to the Maine Workers' Compensation Commission. This program has been in operation as a full-time, ongoing system since calendar 1977. In 1984, with the creation of the Workers' Compensation Management Information System, the Bureau's collection of data was integrated with the resulting Workers' Compensation Commission data base. This allows the Commission full access to any information developed by the Bureau of Labor Standards and, in return, allows the Bureau full access to Workers' Compensation Commission generated data. The results of this program are released annually in the publication, Characteristics of Work-Related Injuries and Illnesses in Maine. This publication is issued in December of the year following the calendar year to which it refers.

Since this information is stored on a case-by-case basis, it provides a great deal of flexibility in its use as a research tool. In the past year using this data base, the Bureau has completed 35 special studies for a variety of different requestors. In addition, there are seven special studies in progress. It may be helpful to provide some examples. One recent study involved back injuries in health care settings comparing hospitals with nursing homes. This was done for a hospital with a nursing care facility attached. This study involved developing a rate of injury based on the number of beds in a facility. As a example of work done for another state agency, the Bureau, earlier this year, provided several detailed cross-tabulations of injuries in the paper industry for the Department of Human Services. The Bureau also works with industry associations as shown by a study of payments on self-insured cases made for the Maine Self-Insureds Association. The average time for completing such a special study is just under two weeks. In

addition to the major special studies (i.e. those requiring special programming and analysis), the Research and Statistics Division estimates that they performed 55 "mini" studies which required only the retabulation and analysis of previously unpublished information.

The Commission on Safety and Health in the Maine Workplace, during its two plus years' existence, has made data collection a major focus. The Commission concluded that the Workers' Compensation data base was the single data source most likely to provide the breadth and depth of detail necessary for use in targeting its efforts.

There are some problems associated with this program. Chief among them is the maintenance of an acceptable degree of accuracy and completeness of the information. To this end, the Bureau enlisted the services of the U.S. Bureau of Labor Statistics national office in sponsoring a regional seminar on the coding and use of the First Report of Occupational Injury and Disease. In the short term, this conference has yielded significant benefits in the understanding of the coding staff in relationship to the use of this type of record. Given the relatively large number of people who input information into this system, maintaining accuracy will be a continuing problem.

A not unrelated problem is that of staffing. When the staff for this program was originally set, the Workers' Compensation Commission was receiving fewer than 40,000 First Reports a year. Now, this figure is in excess of 70,000 and growing. The Workers' Compensation Reform Act of 1987 did provide additional positions for this program funded through the Safety Education and Training Fund. This has alleviated most of the coding production problems. Whereas previously, the Bureau had been running as much as a two-week backlog, this now rarely exceeds two days.

On the other hand, the additional funding and personnel have not solved the problem of providing data analysis and computer support for the users of this information. The Bureau's policy calls for the completion of a special study within two weeks of the official request. As noted above, the Bureau is meeting this obligation "on the average". But a study-by-study analysis shows this is not necessarily true. Of the 11 studies completed in the last quarter, seven failed to meet this standard. In addition, of the seven studies currently in progress, four have already exceeded the time limit. There is a very real question whether the Bureau will be able to meet its obligations in the future.

CURRENT STATUS OF THE MAINE WORKERS' COMPENSATION SYSTEM

MAINE WORKERS' COMPENSATION COMMISSION

CURRENT STATUS OF THE MAINE WORKERS' COMPENSATION SYSTEM

Historical Overview

The Workers' Compensation Commission is one of the oldest state agencies. Established in 1916, it is an independent state agency. Its sole mission until 1980 was adjudicating disputed workers' compensation claims.

There have been 3 major legislative reforms since the early 1980's. These have added administrative and regulatory functions. Today, the Commission also administers the informal conference system, oversees rehabilitation activities, investigates abuse, and monitors individual cases.

Adjudicating disputed claims remains its most important mission in terms of the agency's effect on injured workers, carriers, and employers alike.

The Commission began to computerize in 1985. Hardware problems and inadequate staffing for the start up phase have made this process slow and difficult. In March - April 1988, a new larger computer was installed. In October 1988 an additional system analyst/programmer was hired. The Commission is making better progress at extending computerization into support of vocational rehabilitation, the litigation process, and more active monitoring of payment information.

Statutory Mandate

Section 92 details many of the responsibilities of the Commission, including adjudication and the management of the Office of Employee Assistants, Office of Employment Rehabilitation, and the Abuse Investigation Unit.

Section 93, Part 6 mandates that the Commission take an active role in the administration of the act and that the Commission monitor individual cases

to ensure that injured workers receive the full amount of compensation which they are entitled.

Section 94-A and 106-A mandate that the Commission provide an explanation of the compensation system to the injured worker after a First Report is filed.

Section 94-B mandates that the Commission assist injured workers in preparing for informal conferences.

Sections 96-105 define many aspects of the formal litigation define procedure.

Sections 81-90 define many aspects of the rehabilitation oversight process.

Data Collection Activities

Data is gathered to support agency operations. A summary of operations and related data gathering follows.

A First Report of Injury form is filed with the Commission if an accident requires medical treatment by a physician or one or more days of work is missed. This is an important form. It contains the name and addresses of the injured worker, employer, insurance carrier, body part, date of incapacity, and similar information necessary for further processing of a claim.

Most First Reports are for medical only injuries. As may be seen in the following table, the total number of First Reports has skyrocketed during the last few years. We believe this is attributable to medical only First Reports being reported more consistently now than in the past.

The number of lost time cases has grown more slowly and is related to employment levels. One would expect that the relationship is more employment, more lost time injuries, and that is correct. However, the relationship is

complex. Lost time cases seem to increase faster than employment during periods of economic growth and decrease more rapidly during economic contractions.

<u>Year</u>	<u>Total First Reports</u>	<u>Lost Time Cases</u>
1978	47,518	17,396
1979	50,537	19,363
1980	51,531	19,846
1981	50,712	19,810
1982	47,188	18,212
1983	49,214	19,140
1984	63,838	23,620
1985	64,033	23,296
1986	67,872	24,336
1987	75,326	27,008*

*Estimate

Information from the First Report is electronically stored and shared by the Workers' Compensation Commission and the Bureau of Labor Standards, Research and Statistics Division.

Initial payment information is reported to the Commission on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another form which establishes the workers' average weekly wage. This information is electronically recorded.

For cases where there is a payment for lost wages, a discontinuance is filed when the injured employee returns to work. This reports total payment made on a case and the date the period of incapacity ended. This data is also electronically stored.

If the carrier/employer does not believe the injury is work-related or that they are not liable for some other reason, the first step in a disputed claim is to file a Notice of Controversy. This form lists the reason for the dispute and triggers an informal conference. The "NOC", as it is called, is electronically stored. Commission staff use the computer to schedule informal

conferences. Informal conferences are heard in 10 different locations, involving 11 employee assistants and 12 commissioners.

Failure to file a Notice of Controversy (NOC) within 44 days of a claim may lead to a default. Consequently, many protective NOC's are filed. Also, it frequently happens that a simple dispute is worked out without a conference. This means that often NOC's are filed but no conference is held. For example, in 1987, total filings for informal conferences were a little over 14,000. The Commission held a little over 7,000 informal conferences. 6,000 informal cases did not require a conference. 1,000 informal cases were still outstanding on January 1, 1988.

The outcome of each NOC including the date of informal conference, if any, is electronically stored. Computer programs use this data to generate administrative reports. These prevent informal cases from becoming lost in the process.

If the problem is not worked out at the informal conference then the parties may file a petition to be formally litigated. When a petition is filed, then the case is tried in front of a Commissioner, who is essentially a judge for Workers' Compensation cases.

The Commission maintains a primitive data base on a personal computer to track the number of open petitions per Commissioner. This is used internally by legal secretaries to track formal cases which need to be scheduled. This data is also used to generate a report of the docket size and dispositions for each month. These are compiled every three months for our quarterly report to the Governor, Speaker of the House, and President of the Senate. This report is statutorily mandated and summarizes Commissioner caseload and progress.

The Commission maintains another data base on a personal computer to record rehabilitation monitoring activities. This is used for legislative reporting on the costs and effects of the new rehabilitation statute.

Both data bases on the small personal computers are stop gap measures. They were set up so that the Commission would have at least minimal statistical information on these important areas while more sophisticated data bases were being established on a larger computer.

Profile of the System

Costs

In theory, the payment documents submitted to the Commission provide a data base to analyze claim costs and length of disability. In practice, we have serious reservations about using this data for that purpose.

A preliminary study conducted by the Commission in 1987 revealed a large number of open periods of incapacity with no payment information recorded. This suggests that, in many instances, an injured worker has actually been paid, recovered, and returned to work while the Commission's records show an open period of incapacity and no payment information. One reason is that carriers often close cases without making proper filings with the Commission. The Commission will soon be running another listing of open files to see if reporting has improved.

During the 1987 emergency session, the benefit structure for partial disability was reduced. It was argued that a significant percentage of system costs under the old benefit structure was related to permanent partial cases, where the injured worker has lost some but not all of their earning capacity as a result of work-related injury.

The example, originally presented to the Second Special Session of 1987, estimated the potential benefits to an injured worker making state average weekly wage (\$310.87) with a 50% loss of earnings capacity. Taking the then existing inflation adjustment and lack of a durational limit, the cost of such a case was projected to be \$912,000. The reduction placed a 400 week durational limit and eliminated the inflation adjustment. Under the new structure, the cost would be $\$310.87 \times \frac{2}{3} \times 50\% \times 400$ or \$41,500. Adding an additional year of total disability as the hearing period will give a reasonable estimate of the total cost of such a case. The total disability benefit would be $\$310.87 \times \frac{2}{3}$ or \$10,777. So, the estimated total cost of such a case would be \$41,500 + \$10,777 or \$52,277.

It will take a few years for this change to be fully reflected in statewide costs. The benefit cut from \$192,000 to \$52,277 is significant. If the argument that these partial cases are a large percent of total system cost is correct, then Maine should experience a clear reduction in its projected costs of partial weekly benefits.

By way of interstate comparison, the Commission receives an annual publication from the National Foundation for Unemployment and Workers' Compensation Insurance summarizing fiscal data for state workers' compensation systems. This data shows that rural states with agricultural economies tend to be the least expensive. States with resource extraction industries tend to be most expensive. These states also tend to rank high using OSHA incidence rates of occupational injuries and illnesses and so, a complex relationship exists between industrial mix, workplace safety, and the cost of workers' compensation. Maine's costs are more similar to Washington and Oregon than to other New England states.

The issue of financing the benefit structure is difficult in all of the high accident states. Each has experienced controversy and major legislative activity in the past few years.

Administration

Data Processing

The Commission was one of the last state agencies to computerize. It began this process slowly in 1985. In early 1988 a small computer system was replaced by a mid-sized Honeywell system. Data processing staff was increased from two to four. Since July 1988, computer system development has been more rapid, however, much remains to be accomplished. Currently accident data, insurance coverage information, and informal conference information and payment information is electronically stored. At present, data processing staff is developing computer support for the rehabilitation program. Future projects include computer support for litigation activities, enhanced ad hoc reporting capabilities, and enhanced payments monitoring.

Informal Conferences - Formal Litigation

Timeliness of dispute resolution at the informal and formal levels is the critical measure of Commission administration.

Informal Conferences

The statutory requirement for scheduling an informal conference is 21 days from the date the Notice of Controversy is filed. The Commission has never been able to meet this deadline.

During 1986 an average of 45 days elapsed between the filing of a Notice of Controversy and the date of the informal conference.

This calculation has not been made for 1987 or 1988 cases due to computer system conversion. However, it takes even longer today. In the future, the calculation program will be converted and exact figures will be available.

The addition of three Commissioners during late 1987 and 1988 to the Commission's staff will be of great benefit. We anticipate 1989 will show a significant improvement in timeliness of scheduling informal conferences.

Little data exists to evaluate effectiveness of informal conferences. Based on discussion, they seem to be more effective in simple cases where the dispute centers around missing information or misunderstanding of well accepted points of law.

There is a historical relationship between lost time cases and petitions filed two years later. This has not changed since the early pay system was inaugurated, however it is difficult to determine the exact effect of informal conferences on the likelihood of future litigation.

The informal conferences have been effective in reducing attorney involvement in the early stages of a claim where some type of snag has occurred in the adjustment process. This conforms with the legislative intent to reduce the need for attorneys at the early stages of adjustment and dispute resolution.

Utilization of the informal conference system has been heavy and continues to grow.

<u>Year</u>	<u>Number of Informal Conferences</u>
1984	2,500
1985	3,100
1986	5,842
1987	7,079

Litigation

Litigation, as measured by the number of petitions filed, bears a strong statistical relationship to the number of lost time injuries in the injury year two years' previous. For example, to a significant extent, the number of lost time cases in 1985 can be used to project the number of petitions filed in 1987. This relationship has been consistent for the past decade.

Delay in adjudicating formal petitions has been an area of concern for many years. In early 1987, the Commission released a study on delay and inaugurated a small, computerized tracking system.

At that time, we discovered that the total number of pending petitions was about 7,500 statewide. This represents approximately 5,400 disputed claims. Cases often involve more than one petition.

Despite an increase in filings of petitions, the Commission has held the backlog to this level. It has reduced the number of old cases undecided more than three years from 187 to 80. It has reduced petitions undecided more than two years from 515 to 425.

During 1986, we calculated the average petition for award was decided in 406 days, the average petition for review in 367 days.

During September 1988, the average petition for award was decided in 348 days the average petition for review in 365 days.

These figures are in line with other states and are much faster than courts in cases of comparable value and complexity. States with fast hearing timelines often involve situations where the agency's administrative ruling may be followed by a full trial in district court and it is in court, not the state workers' compensation agency, where litigation occurs.

As with the informal conferences, we anticipate the addition of three Commissioners during late 1987 and 1988 will result in a major improvement in the speed in adjudicating formal petitions in 1989.

<u>Year</u>	<u>Number of Petitions Filed</u>
1978	3,556
1979	3,756
1980	5,308
1981	5,796
1982	5,940
1983	7,360
1984	5,968
1985	5,919
1986	7,471
1987	8,140

Adequacy of Benefits

An influential study entitled The Report of the National Commission on State Workers' Compensation Laws issued in 1972 contains certain recommendations which have become commonly accepted benchmarks. Adequacy of benefits is ultimately a political determination, and these recommendations were expressed as a minimum standard, rather than as an ideal benefit structure.

Benefits for total disability were recommended to be at least 2/3 of the injured workers' average weekly wage. Total disability benefits were recommended to be paid for the duration of the disability or life. The waiting period recommended was no more than three days. The maximum weekly benefit to be at least 200% of average weekly wage. An additional suggestion was that compensation for partial disability be a combination of separate benefits for impairment and disability.

Maine's statute on total incapacity follows these recommendations except in the area of the maximum weekly benefit. The current maximum weekly benefit is 144% of state average weekly wage. Maine's statute on partial benefits follows the suggestion of the National Commission.

Timeliness of Benefits

In 1987, 41% of applicable claims were made within 14 days, 61% within 21 days, and 73% within 28 days. In 51-B, section 3 the statute mandates that payment for wage loss be made or the case controverted within 14 days.

If the insurance market becomes less chaotic, industry is likely to do better in terms of complying with the statutory timelines. In an uncertain economic environment, investment decisions as to additional staff and offices tend to be negative.

The Commission is in the early stages of setting up a computer supported process for monitoring payment timeliness on individual cases and working with insurers and adjustment companies to improve timeliness. This system will include sanctions, if necessary.

Additionally, complaints have been raised regarding delay in making payments following a Commission decision. In the past, this issue has been anecdotal and no statistical data as to the nature and extent of the problem existed. During the 1987 emergency session, the penalties provision of the statute was strengthened. As of late September, the Commission had received 101 complaints and had collected \$45,280 in fines. At this juncture, we are waiting to see if the current penalties section will correct this problem and complaints in this area diminish.

Evaluation

Perspective of Workers' Compensation Commission

The nature of Maine's economy and the fact that the rate of injury and illness as measured by the U.S. Bureau of Labor Statistics annual survey of Occupational Injury and Illness is among the highest in the nation creates a difficult environment for workers' compensation.

Litigation, as measured by petitions filed, appears to be in line with its historical relationship to lost time injuries. Additional Commissioners are finally giving the Commission adequate resources to adjudicate disputes more quickly than in the past.

Public concern as to the process exists on both sides. Injured workers often feel they are unprotected from abuse by carriers and employers. Carriers and employers feel they are unable to have people removed from compensation benefits fast enough. Both parties feel the system is difficult to understand.

The performance of carriers and adjusting companies is a source of concern. Prompt payment has not been made on a significant number routine indemnity cases. The informal conference process is too often used to gather initial information rather than resolve actual disputes. Our data indicates that in 27% of routine claims, payment has not been made within 28 days of the date of incapacity. Although there will always be situations where problems develop, the current level of late payment and delayed adjustment reflects a statewide difficulty in claims processing. To a significant degree, the Commission believes these problems reflect an underlying instability in the benefit financing mechanism. Until this is corrected, the Commission sees little opportunity to address system problems through administrative action.

The Commission sees opportunity to improve the speed of the dispute resolution process at both the formal and informal level. We anticipate showing continued improvement in this area during 1989.