

MAINE STATE LEGISLATURE

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THE MAINE WORKER'S COMPENSATION SYSTEM:
CAN PREMIUMS BE LOWERED
BY IMPROVING SYSTEM EFFICIENCY?

by
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Notwithstanding its no-fault characteristics, the system as presently constituted is an adversary, third party system which expends too much of the premium dollar in friction costs incident to the delivery of benefits and other purposes entirely alien to the reparation of the accident victim.

Workers' Compensation: Is There a Better Way?

Report of the Interdepartmental
Workers' Compensation Task Force.

What Swing's (J. Baxter Swing, Chief of Florida's Bureau of Workmen's Compensation) bureau does instead is, mostly, process paper. It flows in by the ton: copies of injury reports, claims, medical bills and legal orders. Dozens of clerks stuff the paper into files, cram the files onto shelves and then grab more paper. The carpet on which they stand is so littered with staples it glistens with metallic flashes.

"You see what we have to live with?" said Swing while conducting a recent tour of his two-story headquarters. "We just can't keep going with all this paper."

Consequently, Swing says, the bureau lacks the time or the staff to do other work -- like administer the way benefits are handed out. "We're semi-active at best," he acknowledges. "People say we should be like Wisconsin, that contacts every injured employee to make sure he knows his rights. We haven't done that. It takes people to do that."

Swing has asked for help: 27 new positions last year alone. He got none. Says Campora, "You have to remember that, until recently, no one wanted us to do more. The governor, the insurance companies, labor, Jon Shebel ... everyone seemed content. It wasn't until premiums got really outrageous that people started paying attention."

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1. INTRODUCTION

The general purposes of Study Order S.P. 613 (see Appendix A) was to investigate the general possibility that by making the delivery of workers' compensation benefits more efficient, then the premium costs of the system could be reduced or at least held steady.

The Study Order specifically suggests that the "direct pay" approach to workers' compensation be explored. Most simply this approach requires the employer to compensate an injured employee within set amount of days (e.g., 15) or else decide to controvert the case. The employer would always be able to controvert after the initial payments if additional evidence so indicated. The value of this "direct pay" approach is that, compared to the Maine system, it would greatly expedite relief to an injured worker.

While this would certainly appeal to labor, at first glance it might seem only to increase the employer's costs, for surely some early payments would be incorrect and the employer, deprived of the initial benefits, would later have to controvert the case. However, a more careful examination indicates that the "direct pay" approach may very well reduce the number of contested cases and since litigation costs are a significant workers' compensation expense the overall costs of the system might be reduced. J.L. Hill, former chairman of the Michigan Workmen's Compensation Commission states: "I can say without reservation that no

one, labor, employers, insurance carriers, or the Workmen's Compensation Commission, could possibly consider returning to the old ... system."^{1/}

2. RELATIONSHIP OF LITIGATION TO COMPENSATION SYSTEM COSTS

"Too many administrators have little time to do anything but adjudicate claims, producing a system that is avertly adversary."

- Journal of American Insurance (1978)

Recent literature is discovering a direct relationship between premium costs and the the number of workers' compensation cases which are contested. In 1977 Minnesota established an ambitious select Study Commission, made up of representatives from all workers' compensation interest groups - labor, insurance, employers, state agencies - and for over two years, 40 meetings, studied how to reform their workers' compensation system. Probably their most important finding was the importance of litigation to premium costs. Wisconsin and Minnesota are very similar states yet the Commission found that Wisconsin's premium's averaged one-half that of Minnesota's. Why? The Commission finally concluded that Wisconsin's "direct pay" system, its activist approach to rehabilitation and case management, produced a system that was much less litigious. In a June 14, 1979 speech, Minnesota state Senator Steve Keefe, a member of the Commission, explains the economic (and political) importance of this finding:^{2/}

[T]here had been an article in Business Week Magazine just that summer that compared Wisconsin to Illinois. They were pointing to Wisconsin as an example of a model system and Illinois as an example of a system in trouble. They said the big difference was a 30 percent litigation rate in Illinois, while in Wisconsin the litigation rate was only 2 percent. This led us to try to collect data from all 50 states to compare litigation rates. Well, of course, we found we couldn't get comparable data from all 50 states, but we did find 17 states. The data we used was the number of Requests for Hearing compared to the number of First Reports of Injury, that is, how many accident victims wound up at least asking for a hearing in front of a Workers' Compensation judge. We figured once you get to asking for a hearing you have a lawyer and you are fighting it out. Even if the hearing isn't held, chances are it was a case that was settled at least in part by the threat of litigation.

We compared that data and we found that the rate of litigation competes with the benefit level as the most important factor in determining premium levels. In fact, we found states with higher benefit levels than Minnesota's which had lower litigation rates and they had lower average premiums. And we found states with higher litigation rates, but lower benefit levels, and they still had higher premiums.

In Wisconsin the litigation rate was barely 2 percent. In Minnesota it was almost 10 percent. In some states, it went as high as 30 or 40 percent. Now remember, this is supposed to be a "no fault" system adopted to avoid litigation and yet we found in Minnesota litigation in 10 percent of the cases.

Why should that add so much to the cost of workers' compensation? Well, as a matter of fact, there was a study on the subject done by the California Workers' Compensation Institute under Allen Tebb. That's an insurance industry sponsored research institute and they do excellent work. They looked into the problem of litigation in California

and found not only that litigation produces its own direct related costs, court costs, attorneys fees, etc., but also that the average litigated case was much more expensive than the average non-litigated case, at least in part because litigation delays rehabilitation and postpones the return to work. Nobody ever gets well while his case is pending.

No, the question is how do we influence that litigation rate? Obviously, there are socio-economic factors over which we in the Legislature have very little control. You are a lot more likely to get sued for any reason if you live in Los Angeles County than if you live in rural Iowa. But those differences don't apply to the Minnesota-Wisconsin situation. I doubt if there are two states in this Union more alike than Minnesota and Wisconsin.

According to Business Week the way Wisconsin keeps their litigation down is by having an unusual activist state administration of the Workers' Compensation Laws. And they do. They have very tough rules about the first contact from the employer or insurer after the first report of injury. They require insurance companies to deliver the first check within 11 days of the report of injury and when an insurance company has its license renewed one of the things the Insurance Commissioner considers is their record of service to workers' compensation claimants. In addition, the state mandates a vigorous activist rehabilitation system, talking to people, working with them, getting them back to work. They have an excellent brochure which the state sends out to accident victims right after the accident explaining to them their rights and responsibilities under the workers' compensation law, what benefits they are entitled to and how to make sure they get those benefits. They have whole series of schedules of various degrees of disability defining what constitutes such and such a percent of the back or such and such a percent of hearing, which resolves a lot of tough questions before they ever get to court.

That fits with the conclusion of the Tebb Study in California, which recommended to California insurers that they could reduce litigation by getting

into an active, sympathetic, early intervention, rapid rehabilitation program. The Tebb Study concluded that the way to save money in workers' compensation was to get people back to work quickly. They found that litigants were for the most part people who didn't understand the workers' compensation system; if they knew they were covered by workers' compensation when they were hurt, (and many of them didn't) they didn't have any idea what the benefits were, or how to apply for them. Many of them had other alienation problems. They might have an English language difficulty or an education problem. They weren't well equipped to take care of themselves. So what happened? They turned to an attorney. That also fit with the testimony we got from rehabilitation counselors who told us that if you get to an injured worker the first few weeks after the injury, while he is still thinking in terms of work, and not in terms of being a workers' compensation recipient, your chances of being able to rehabilitate that worker and get him back on the job quickly, are substantially improved. If it takes you more than six months to get him back to work, you have almost no chance at all.

Any finally it fit with the testimony of self-insured employers. They said the main reason they were self-insured was because they thought it improved employee relations. By rapid contact with the injured employee they made him know that the company still cared about him, they were able to mesh workers' compensation with other benefit programs, and they were able to get the employee back to work more quickly.

Now this was a marvelous conclusion for us to reach because it is an entirely palatable solution to the workers' compensation problem from a political point of view. It is not only better from the point of view of the employer to get the employee back to work quickly, because it saves him money, it is also better from the point of view from the employee, because no matter how generous the benefit system, is, the employee is always economically better off working than he is on workers' compensation.

So our Study Commission adopted a whole series of recommendations designed to reduce litigation and encourage rehabilitation. We mandated and funded a brochure like Wisconsin's for employees whenever there is a first report on injury. In fact, we

did them one better and funded a brochure for employers as well to explain their rights and responsibilities under workers' compensation. We even require a notice to be posted on bulletin boards in plants explaining rights and responsibilities of employees under workers' compensation. We passed tougher regulations on delivery of first checks, passed strong incentives for employees and employers to get them involved in on-the-job training programs including protection from liability for re-injury of workers' compensation injuries. We mandated a whole series of objective schedules to be promulgated in the regulations to solve litigation problems before they get to court and we passed a very broad rehabilitation statute designed to stress early intervention and rapid return to work.

All those changes were easy to pass through the Minnesota Legislature.

In a bitterly, evenly divided Minnesota Legislature (similar to the current Maine Legislature), the Study Commission managed to get 49 of its 57 recommendations passed. The entire text of Senator Keefe's entertaining and politically astute speech can be found in Appendix B.

3. COST OF REFORM

The above discussion makes clear that a key to reducing the cost of premiums will be a more active - and more expensive - Workers' Compensation Commission. Where will financing for this more active commission come from? Currently, the workers' compensation system produces approximately four times as much General Fund revenues as it spends administratively. Employers must pay

a State tax on workers' compensation insurance premiums and in 1978, for example, the General Fund received \$1,294,550 in revenues, yet the Commission's administrative costs were only \$311,490. And this is the same pattern historically:

	<u>Premium tax paid to the General Fund</u>	<u>Commission's General Fund Appropriation</u>
1974	\$ 597,653	\$ 244,444
1975	796,644	254,580
1976	903,040	253,250
1977	1,024,153	276,124
1978	1,294,550	311,490

A final recommendation of the 1977 Report to the President and Congress of the Interdepartmental Workers' Compensation Task Force was: "To finance this more active role for the State workers' compensation agencies, we recommend that all taxes on workers' compensation premiums and on self-insurers be reserved for financing the administration of the system ..."

4. DESCRIPTION OF MAINE'S WORKERS' COMPENSATION SYSTEM

A. Typical employee injury. The Maine Workers' Compensation is overwhelmed by an ever-increasing flood of injuries. It can just manage to process the injury reports it receives; it cannot actively monitor the plight of each injured worker. The following describes a typical injury and the typical Commission response:

(1) Employee injures his hand and misses at least 3 days work. He is eligible for compensation for "incapacity" (39 MRSA §53). For any injury needing medical care he receives compensation for doctor bills, whether or not he receives §53 incapacity benefits (§52).

(2) Employee sees a posted sign: tell your employer immediately. If you wait longer than 30 days you may lose right to compensation (§63). Petitions must be filed within 2 years (§95). Basically, the workers' compensation system relies on the employer to "administer" the law. A change in the law this year will result in the posted sign also informing the worker of his right to free legal assistance.

(3) Within 7 days of notification the employer fills out a "first report of injury," sends a copy to the State, to the insurance carrier and keeps a copy for himself.

(4) Commission checks report only to see if there has been a 3-day loss of time. If not, stamps report "inactive." If blank, it assumes 3 days have been lost. It does not contact the employee or inform him in any way of his rights.

(5) The insurance carrier receives its copy of the report and assigns an adjuster or claim's representative to see if it is "compensable."

(6) Within 60 days after notice, employer must file with the commission either an Agreement for Payment of Compensation or the carrier must file a denial, giving valid reasons, making a copy of the denial available to the employee and advising the claimant of his right to petition the commission for a hearing. (Rule 2K)

(7) If after 60 days the commission hear nothing, it sends out a letter advising the injured employee of his rights (including free legal fees). This is the commission's first contact with an employee. If the employer files a denial the commission relies on the employer to tell the employee of his right to petition. The employer need not remind him of his right to a free attorney.

(8) If employer's denial does not enclose a copy of a letter advising employee of right to petition, the commission sends out a letter to employee advising him of his right to petition. Its closing: "We will take no further action in the matter unless we hear from you."

(9) If carrier indicates employee received notice of the denial and right to petition, the commission stamps the file inactive and pursues it no longer.

(10) If an employee petitions for a hearing, it is possible he will wait 8 months or a year. During that time, no compensation is received.

(11) If the employer and the employee reach an agreement, the commission must approve it. This "approval"

is mainly limited to certifying the compensation rate, the period of incapacity and the employee's wage level.

(12) If the case is not complex and agreement quickly reached, an employee might begin to receive compensation in approximately 7 weeks.

(13) If a petition is filed a decision might not be reached for 8 months to a year.

(14) It does not seem unreasonable to suggest that the great majority of Maine employees and employers do not know their rights and duties under the workers' compensation system. Unions, which do keep their members informed of their workers' compensation rights, represent only 15% to 20% of the State's workers.

As is evident, not only must employees wait an inordinarily long time for compensation, there is also little opportunity for the commission to take an active role in assisting the employee's rehabilitation and return to work. And, of course, as Minnesota Senator Keefe's remarks made clear (see above Section 2) there is a direct relation between premium costs and delay, rehabilitation and return to work: "Nobody ever gets better while his case is pending."

B. Comparison of Maine's "agreement" system with a "direct pay" state.

Wisconsin's "direct pay"
system

(1) Employer, unless it contests the case, is required to proceed immediately with payments without waiting for approval of the State Workers' Compensation Division or the employee's agreement. However, payment of compensation does not preclude the employer or insurance carrier from suspending or terminating payments and denying further liability upon the basis of additional information.

(2) Upon receipt of the report of injury from the employer, the Workers' Compensation Division sends to the employee a pamphlet of facts, with a form letter giving additional information and suggesting that he write to the division if he has any question or does not receive compensation within 15 days after his disability commenced. These reports are audited by the division to assure that the proper payment have been made for the disability indicated.

(3) Compensation is usually received within 15 days of injury (85% of the cases). In 1977 only 2% of the reported cases became disputed. Many questions are resolved through correspondence or through informal conferences between parties and the Division. There is speculation that a "direct payment" state has fewer contested cases because the prompt payments show employees that they can receive benefits without legal assistance.

Maine's "agreement"
system

(1) Employer notifies Commission of any injury which causes a loss of a day's work or assistance of a physician. If injury caused a loss of work the employer's report is placed in a pending file by the Commission and after 60 days of inaction the employee is sent a letter informing him of his rights.

(2) If employer and employee can agree on the amount of compensation, they file an agreement with the Commission and, after its approval, the insurance company pays the employee. There is no time limit for insurance company payments until after the Commission accepts the approval. This could take 60 days or longer.

(3) If the case is not complicated and an agreement is quickly reached, compensation might be paid in 7 weeks. In 1978, 8% of the reported cases became disputed.

C. Maine workers' compensation statistics

<u>Commission's work</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>% of first reports (1978)</u>
(1) First reports of injury	38,553	42,800	43,989	N/A
(2) Agreements	9,764	11,395	12,357	28%
(3) Petitions for hearings (contested cases)	2,112	2,802	3,556	8%

From the above statistics, it is clear that a quite high percentage of Maine cases are contested (8% as opposed to 2% in Wisconsin).

D. Comparison of Maine workers' compensation rates with other states. The Maine State Planning Office recently studied the Maine economy^{3/} and concluded the following as the Maine Workers' Compensation system:

In addition to the wage and salary costs of labor, there are other supplementary costs. Those over which the State has some control are premiums for workers' compensation insurance and unemployment insurance. In 1972, a National Commission on State Workmen's Compensation Laws recommended to Congress that a number of changes be made in these laws. As state legislatures have made these changes, generally increasing the number of workers covered and the benefits provided and indexing benefits to changes in state average gross weekly wages, premium costs have risen. Rising medical costs have also contributed to rising premiums. The effects of these changes are reflected in the following table.

Changes in Maine Workers' Compensation Insurance Premiums

Year	% Increase in Rate Due to Increased Benefits	Total Premiums Paid (million \$)	Total Premiums Paid as a % of Total Payroll	
			Maine	U.S.
1972	23.5%	\$ 18m	1.3	0.8
1973	1.3%	23	1.2	0.9
1974	23.6%	28	1.3	0.9
1975	10.0%	39	1.8	1.0
1976	1.2%	45	1.7	n.a.
1977	7.1%	51	1.7	n.a.

Sources: Maine Department of Business Regulation, unpublished data; U.S. Bureau of the Census Statistical Abstract of the U.S., 1977.

Clearly Maine businesses have seen their rates increase substantially over the past few years. In addition, their premiums constitute a substantially higher portion of their total payroll costs than is true for the nation as a whole. However, a number of points should be kept in mind in examining these figures.

(1) Maine's workers' compensation laws are not substantially different from those of most other states. U.S. Chamber of Commerce data show that in terms of workers covered and benefits provided, Maine's law is similar to that of most other states.

(2) The reason for Maine's higher premiums are the result primarily of Maine's dependence upon higher risk industries.

Relative Incidence of Occupational Injury
and Illness by Industry, U.S. and Maine, 1973-76 Average

Industry Rate as a % of National Manufacturing Rate

<u>Industry</u>	<u>U.S.</u>	<u>Maine</u>
Leather	0.81	0.95
Textiles	0.76	1.04
Paper	1.03	0.65
Lumber & Wood	1.55	1.85
Food	1.33	1.54
Transport. Equip.	1.05	1.70

Source: U.S. Bureau of the Census Statistical Abstract of the U.S. 1977; and Maine Department of Manpower Affairs Occupational Injuries and Illnesses in Maine, 1976.

The above figures show that four of Maine's Big 6 industries have above average rates of injury and illness on a national basis and that five of the six have higher rates in Maine than their national average.

(3) Maine's higher premium costs constitute only a minute portion of total compensation: Adding 1.7% to Maine's average hourly wage in manufacturing amounts to only \$0.08 per hour, still leaving Maine's average labor costs well below the national average.

In sum, while these costs clearly do represent an absolute increase to the employer and thus a disincentive to further investment, they are not sufficient to offset Maine's relatively lower labor costs.

The other "supplemental" labor cost considered here is unemployment insurance. Data for the 1970 to 1976 period show that unemployment benefits as a percent of total wages averaged 1.49% in Maine compared to 1.21% for the U.S. as a whole. As a result of this differential, Maine's tax rate over this period averaged 1.32% of total wages compared to a national average of 0.88%.

As with workers' compensation insurance, unemployment insurance benefits, and thus ultimately premiums, depend on the provisions in the state law and the state's unemployment experience. While there is little that a state can do to affect its overall unemployment rate, it could presumably change its statutory provisions to lower premiums, by increasing eligibility requirements for instance. However, a major study of interstate differences in unemployment insurance costs concluded:

That interstate differences in insured unemployment rates are so dominant a factor in explaining benefit cost rate variation among states that there is comparatively little potential for controlling aggregate cost rates by adjusting statutory provisions when unemployment is high.

To conclude, while supplemental wage costs are undoubtedly rising, they are largely dependent on factors beyond state government control and amount to relatively small percentages of basic wages. Furthermore, they are not sufficiently large to offset Maine's relatively lower labor costs compared to the national average.

5. REFORM OPTIONS: DESCRIPTIONS, EXPLANATIONS AND QUESTIONS

The extent of actual controversy is difficult to measure. In some states a formal hearing is required by law, and cases so resolved may be counted as "contested." Sometimes, lawyers file notice of intent to controvert in order to establish a time for a hearing in case they are unable to reach agreement with the carrier, or perhaps to justify their fee. The fact that about two-thirds of the permanent disability cases were settled by agreement outside the courtroom, rather than by formal court decisions, raises questions about the extent of actual controversy in these cases. However, over half of the cases of permanent disability had formal representation, and over half were settled by a formal compromise settlement. Again, however, the statistics may overstate the actual amount of controversy. If persons with permanent disability tend to overstate their claims to begin with, a compromise agreement is to be expected. And representation may

not signify contention in cases where it is perfunctory, as when a union is routinely provides a lawyer.

Nevertheless, the data as a whole indicate a significant level of legal involvement. Such legal involvement may, in part, reflect the difficulties encountered by claimants as they attempt to press claims in a system too complicated for most of them to understand. And, in part, it may reflect actual disagreement between the claimant and the employer or the insurance carrier. In either case, it is expensive, and excessive a system that is supposed to process claims quickly and without the burden of determining fault or negligence.

Ronald Conley and John H. Noble, Jr.

A. Introduction. The underlying theme of this report is that if the system can be made less litigious and more efficient, then workers might receive their statutory benefits faster and the ever increasing premium costs of the system might be checked or even reduced. The following options are general designed to increase the efficiency of the workers' compensation system. In general, they call for a more active commission.

B. Option: Maine could change from an "agreement" system to a "direct pay" system. Clearly, a standard is needed prescribing minimally acceptable delays in paying benefits. In 1974 the Council of State Governments drew up a model Act which required benefits to begin within 15 days after the employer had knowledge of the injury. If such a standard is adopted, it must be enforced, with penalties levied when necessary. The New Hampshire law (see Appendix C) or

the Wisconsin system could be used as a model. Setting standards for benefit promptness would place great pressure on the system to reform itself. Carriers would pressure employers to report accidents immediately and they would act quickly to dispose of cases. Currently, if a case is delayed a claimant might be forced to settle for a lesser benefit. See section 4(B) of this report for a comparative view of Maine's "agreement" system and Wisconsin's "direct pay" system.

Again, it should be emphasized: switching to a "direct pay" approach yet failing to provide funds to allow the Commission to actively audit what happens after the initial payment would be counter-productive. If it adopts "direct pay," Maine should also become an "active" instead of "passive" agency.

C. Option: The Commission could aggressively encourage rehabilitation, job training and placement assistance. Currently, Maine's Commission has only 1 rehabilitation counselor.

In their January 19, 1977 report to the President and Congress, the Interdepartmental Workers' Compensation Task Force made clear the relationship to the efficiency of the workers' compensation system:

In practice, the workers' compensation system creates a conflict for the worker. In order to receive benefits, he must show that he has suffered impairment and disability. Since 39 percent of the permanent partial and 52 percent of the permanent total cases are litigated, and since average delay between start of lost time and start of payment appears to be 134 days in contested cases and over a year in the worst State, the worker's mind is on proving his case for some time. Since these are averages, nearly half of the cases must take longer -- perhaps much longer. On the other hand, rehabilitation is known to be more effective when started immediately after injury, and the mental state of the patient is very important to its success. The patient is required to focus on what he can do, and strengthen his determination to expand those capacities.

It is also clear that the workers' compensation system is not very effective at screening cases to assess the potential need for rehabilitation services -- either physical or vocational. There are some differences among States in their efforts to do this, and States with some screening have higher levels of referral to rehabilitation services. Even such referrals are insufficient to assure that claimants get the necessary services, however. In the interview survey conducted by Cooper and Company, of 251 persons with permanent disabilities who were advised that they needed rehabilitation, only 101 persons got such help, and only 81 were assisted by the State vocational rehabilitation agency, the carrier or the employer. Further, only 17 received any job training, and only 9 received placement assistance.

It is impossible to say how many more persons should receive job training or placement assistance. In the Cooper interview survey, roughly 25 percent of the persons with minor permanent partial cases (paying benefits of less than \$2,500) and about 40 percent of the major permanent partial cases were not employed at the time of the survey. In the follow-up survey conducted by Syracuse University, four years after their cases had been opened, 25 percent of the interviewees of working age were not working, and one-third of these had never worked since their injury. Of those interviewed, 85 percent were men and they had an average impairment rating of 13 percent. If these data are confirmed through additional scrutiny and analysis, they are very relevant to the issue of proper rehabilitation and re-employment.

D. Option: There is significant precedent in other types of insurance for sharing of risks with the insured through specification of a deductible. Such risk-sharing reduces the high paperwork problem and exchange of dollars involved in minor claims. The institution of procedures which would make employers responsible for the first month of payments for temporary lost time rather than carriers could result in substantial savings of time and money, as well as increased promptness of first payment.

This idea comes from a recommendation of the Inter-departmental Workers' Compensation Task Force. The Task Force staff's comments were as follows:

All cases would have to be reported to the carrier promptly, whether the claim appeared likely to exceed a month or not. If notice to the carrier were to occur at the end of the month, all the usual delays in getting out the first check would be experienced at this point. Obviously, this is undesirable and the interruption of benefits could cause severe hardship for the claimant. Responsibility for enforcement of prompt notice would rest with the state agencies and with the carriers, and penalties should be assessed for late notice.

It would also be necessary at the end of the first month to effect a smooth transferral of responsibility for benefit checks. It might be possible to require the employer to notify the carrier around the end of the third week as to the status of the case.

Due to the high dollar value of medical benefits and the lack of need for immediacy in payment of them, these should be handled by the carrier. In this way the carrier is in a very real sense involved in the claim right from the beginning, but is not required to determine benefit levels or make payment until a month has passed.

The most obvious advantage of such a policy would be the reduction of administrative backlogs and, hence, the time lag generated by involvement of a third party.

Self-insurers, which in effect all employers would become for the first month, seem to do much better at paying uncontested claims rapidly. The average time from start of lost time to first check for self-insurers was 26 days, compared to 33 days for other types of insurers. At the end of the first month, 82% of all uncontested claims have been paid, compared to 71% for stock companies and 77% for non-stock companies.

On analysis, the institution of a one-month deductible for all employers could be expected to substantially increase promptness of payment performance with relatively few negative effects. Additional benefits, in the form of employer savings, reduced accident rates and simplicity of the claims procedure might also accrue, making the proposal even more appealing.

E. Option: The workers' compensation statute could be scoured to remove "grey areas" from its definitions of compensable injuries. While the workers' compensation system is designed to be a non-fault system, with remedies specified by statute, not by courts or administrative hearings, still many cases end up in litigation. The statutes could be narrowed so judicial or administrative interpretation would not be necessary. Maine's confusing workers' compensation statute could certainly profit from a revision.

F. Option: The State could adopt the numerous recommendations of the Interdepartmental Workers' Compensation Task Force specifically designed to improve the delivery of benefits. These recommendations, as listed in the

Task Force's January 19, 1977 report are:

We believe that it is vitally important for State agencies to take a much more active role and to considerably strengthen their administration of workers' compensation. Included in this recommendation are the following:

- State agencies should mount a vigorous program to inform workers, employers, insurers, physicians, and other about the workers' compensation system, including their rights and responsibilities.
- State agencies should identify firms that do not have satisfactory workers' compensation coverage and bring them into compliance.
- A State fund should be available to provide hard-to-get coverage and guarantee benefits against lack of security or bankruptcy.
- A State panel of experts would determine the compensability of work-related disease.
- A unit should be established within the State agency which would initiate contact with the worker on the first report of injury or illness, provide him with information on the system, help him to file his claim, and repeat contact to see whether he needed further help.
- The above unit should be available by telephone to answer any queries about the system, and should have ready access to information about specific cases in order to provide prompt specific answers.
- Carriers/employers should be required to begin payment within 15 days or to send the State agency an explanation for the delay.
- If a hearing is requested or necessary, it should be held within 45 days from the time of the accident, unless the State agency grants an extension.
- Carriers/employers should be able to begin payment of workers' compensation claims immediately, subject to agency review.
- Changes in status should also be on a notice-and-review basis unless the claimant wishes pre-review or the status change is a case closing.
- Legal fees should be regulated, and generally should be based on work done, agencies should review the appropriateness of contingency fees to a system replacing wages as wage-loss accrues.

- In cases of frivolous defense, legal fees and/or penalties should be assessed against the carrier/employer, which should not be included in the experience base for rate-making.
- The State agency should also review medical care, physical and vocational rehabilitation, and re-employment plans and issues, and help the worker to make informed choices among services.
- State agencies should cooperate with State and Federal safety and health agencies in identifying hazards and improving prevention.

To finance this more active role for the State workers' compensation agencies, we recommend that all taxes on workers' compensation premiums and on self-insurers be reserved for financing the administration of the system, and not be returned to general revenues.

We recommend that State workers' compensation agencies take strong steps to develop information systems that will provide the information necessary for good management. We also recommend that the long-run goal be to develop a single information system that will meet the needs of both workers' compensation and the Occupational Safety and Health Act.

As intermediate steps, we recommend that the Basic Administrative Information System developed by the International Association of Industrial Accident Boards and Commissions and the Model Data System developed for the Task Force be reviewed to reach a consensus on common definitions and uniform basic tabulations. We also recommend that the Federal Government fund pilot projects in three States to establish an MDS system. All States should be encouraged to initiate an MDS system combining workers' compensation and OSHA data after the pilot projects have refined the system.

6. THE NEED FOR INTENSIVE STUDY

Three general conclusions might be drawn from this study:

- A. That there is some merit to the idea that simply enacting a "direct pay" provision similar to Wisconsin's or

New Hampshire's (see Appendix C), would somewhat improve the performance of the employers and carriers;

B. That a "direct pay" statute absent financing for an "active" commission which could conduct post-payment audits might produce only illusory reform; and

C. That, as the myriad options discussed in section 5 dramatically indicates, workers' compensation reform is a complex and difficult problem. But that the degree of difficulty is matched equally by the degree of promise that benefits can be delivered faster, more equitably with reduced premium costs.

In view of these findings it is the conclusion of this study that a joint select committee should be formed to study in depth the administrative reform of the Maine workers' compensation system. Sen. Keene's speech revealed that Minnesota, by statute, established a 16-person Study Commission with members from the Legislature, state agencies, employer groups and insurance companies. The Study Commission held 40 meetings over two years, with 49 of their 57 recommendations enacted into law. Further, as these 49 recommendations were being enacted into law a Floor Amendment was passed which established a new study commission with 2 1/2 times the budget of the first Commission! Clearly, workers' compensation is not only an area in which reform is politically possible. A rare combination.

Appendix D of this study is proposed legislation establishing a Maine study of our workers' compensation system.

7. CONCLUSIONS

Perhaps it is best to end this study with a brief quote from the Report of the National Commission on State Workmen's Compensations Laws (1972):

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

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