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JANET T. MILLS
GOVERNOR

STATE OF MAINE
WORKERS' COMPENSATION BOARD
OFFICE OF THE EXECUTIVE DIRECTOR
27 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0027

JOHN C. ROHDE
ACTING EXECUTIVE DIRECTOR

January 31, 2019

Senator Shenna Bellows, Chair
Representative Michael Sylvester, Chair
Joint Standing Committee on Labor and Housing
100 State House Station
Augusta, ME 04333-0100

Re: Annual Report to the Labor and Housing Committee on Permanent Impairment Ratings Pursuant to 39-A M.R.S.A. § 153(10).

Dear Senator Bellows and Representative Sylvester:

I. STATUTORY REQUIREMENT

Pursuant to 39-A M.R.S.A. § 153(10), the Workers' Compensation Board ("Board") must collect and analyze permanent impairment ratings and costs to employers pursuant to 39-A M.R.S.A. § 213.

II. BACKGROUND

Permanent impairment "means any anatomic or functional abnormality or loss existing after the date of maximum medical improvement that results from [a work-related] injury." 39-A M.R.S.A. § 102(16). Maximum medical improvement "means the date after which further recovery and further restoration of function can no longer be reasonably anticipated, based upon reasonable medical probability." 39-A M.R.S.A. § 102(15).

Permanent impairment is an important concept because an injured worker's entitlement to partial incapacity benefits is capped at 520 weeks unless her/his permanent impairment exceeds the applicable permanent impairment threshold. The applicable permanent impairment threshold depends on the injured worker's date of injury.

In 1993, the current Workers' Compensation Act (the "Act") became law. Initially, the permanent impairment threshold was "in excess of 15% to the body." The purpose of the threshold was to cap partial incapacity benefits for 75% of injured workers while allowing 25% of partially incapacitated injured workers to receive benefits for the duration of their disability.

In order to maintain this split, the Board was required to adjust the permanent impairment threshold every other year beginning in 1998. The adjustments had to be “based on actuarially sound data and methodology.” 39-A M.R.S.A. § 213.

The Board adjusted the permanent impairment threshold three times between 1998 and 2012. The adjustments can be found in the Board’s rules and are as follows:

- For cases with dates of injury on or after January 1, 1993 and before January 1, 2002, [the permanent impairment threshold] is in excess of 11.8%.
- For cases with dates of injury on or after January 1, 2002 and before January 1, 2004, [the permanent impairment threshold] is in excess of 13.2%.
- For cases with dates of injury on or after January 1, 2004 and before January 1, 2006, [the permanent impairment threshold] is in excess of 13.4%.

90 MAR 351 Ch. 2 § 1.

Pursuant to P.L. 2011, c. 647, the permanent impairment threshold for dates of injury on or after January 1, 2006 and before January 1, 2013 was changed to “a whole person impairment in excess of 12%.” 39-A M.R.S.A. § 213(3-A).

That same law changed the permanent impairment threshold for injuries on and after January 1, 2013 to in excess of 18%. This law also added additional requirements that must be met in order to receive benefits beyond the 520-week cap. 39-A M.R.S.A. § 213 (1-B).

III. DATA & ANALYSIS

A. Collection.

In 2008, in order to gather more data regarding permanent impairment, the Board adopted a rule requiring parties to present a permanent impairment rating at the time a case lump sum settled. Effective September 1, 2018, the Board repealed this rule. The Board’s decision was based on comments from employee and employer/insurer representatives that the rule was adding unnecessary cost and delay to the system.

From 2008 through 2018, virtually all permanent impairment ratings collected by the Board came from lump sum settlements. Because of the rule change, it is almost certain that the number of ratings collected by the Board in coming years will be drastically reduced. The Board is currently assessing how it can best obtain this data going forward.

B. Data from 2008 through 2018.

The following chart shows how the Board’s data was collected:

Source of Data	No. of Ratings	% of Total	Range of Ratings
Agreement Between Parties	3	0%	10% to 13%
Consent Decree	2	0%	14% to 28%
Decree	2	0%	21% to 24%
Lump Sum Settlement	5433	99%	0% to 72%
Modification Form	28	1%	0% to 52%
Payment Form	7	0%	0% to 10%
Total	5475	100.00%	

The next chart shows the number and percentage of ratings within five ranges. The left three columns include ratings of 0%. Some of these 0% ratings likely are from cases where there is a permanent injury and, therefore, are eligible for a rating. Others, likely are from cases where there is no permanent injury and, therefore, would not be eligible for a rating. The three columns on the right are limited to cases with permanent impairment ratings equal to or above 1%.

PI Range	No. of Claims	% of Total		PI Range	No. of Claims	% of Total
0% - 10%	3950	72.15%		1% - 10%	2783	64.60%
10% - 12%	783	14.30%		10% - 12%	783	18.18%
13% - 18%	385	7.03%		13% - 18%	385	8.94%
19% - 25%	238	4.35%		19% - 25%	238	5.52%
> 25%	119	2.17%		> 25%	119	2.76%
Total	5475	100.00%		Total	5475	100.00%

C. Analysis.

The Board's data is limited, essentially, to cases that ultimately settle. It is not clear these cases are a representative sample of all cases. In other words, the distribution of permanent impairment ratings in cases that do not settle could be different, perhaps very different. That said, the data presented above shows, for cases that settle, 92% - 93% fall below the current permanent impairment threshold (which is in excess of 18%).

As for costs, employers/insurers were (until September 1, 2018) required to pay for permanent impairment ratings, if one had not already been done, prior to a settlement hearing. The cost of obtaining a permanent impairment rating is \$450.00. 90 MAR 351 Ch. 5 § 1.11(2). Assuming the employer paid this fee in each case that settled from 2008 through 2018, the total cost to obtain permanent impairment ratings was \$2,444,850, or, \$222,259 per year.

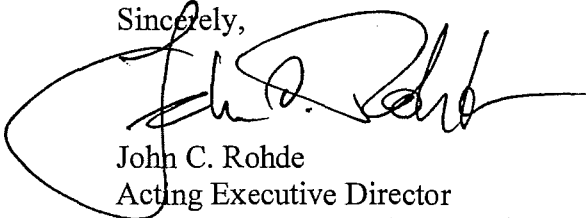
IV. CONCLUSION

The data used in this report derives almost entirely from cases that lump sum settled. It is not clear that this data is representative of the distribution of permanent impairment ratings in all cases involving permanent injury. However, based on the available data, it appears the original goal of § 213, capping partial incapacity benefits for 75% of injured workers while allowing 25% of partially incapacitated injured workers to receive benefits for the duration of their disability, is no longer being met.

By repealing the rule that required permanent impairment rating at a lump sum settlement proceeding, the Board may have lowered employer costs by approximately \$222,259 per year. The Board likely can devise a method of gathering permanent impairment data for future reports without this rule. Thus, it seems as though the savings outweigh the potential impact of repealing the rule.

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

Sincerely,



John C. Rohde
Acting Executive Director
Workers' Compensation Board

Cc: Senator Stacey Guerin
Senator Mark Lawrence
Representative Susan Austin
Representative Dick Bradstreet
Representative Anne Carney
Representative Scott Cuddy
Representative Donna Doore
Representative Lawrence Lockman
Representative Joshua Morris
Representative Ann Peoples
Representative Deane Rykerson
Henry Fouts, Legislative Analyst
Rachel Tremblay, OFPR Analyst
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