REPORT

TO THE 113TH LEGISLATURE

VOCATIONAL REHABILITATION

UNDER

THE MAINE WORKERS' COMPENSATION ACT

39 M.R.S.A. §§ 81 -90

Maine Workers' Compensation Commission

February 15, 1988

Rehabilitation in Maine Workers' Compensation

Introduction

This report to the Second Regular Session of the 113th Legislature is submitted by the Chairman of the Workers' Compensation Commission as required by 39 M.R.S.A. §90(3).

An extensive subchapter on rehabilitation was added to the Maine Workers' Compensation Act by P.L. 1985, c.372, §A, 29, codified as 39 M.R.S.A. §§81 to 90. An injured employee's right to commission-ordered vocational rehabilitation, under the medical benefits section of the Act at §52, was repealed. The new subchapter replaced this right with a state-monitored system of mandatory evaluations and regulation of voluntary rehabilitation activities by a new Office of Employment Rehabilitation.

A mandatory retraining section was added to the rehabilitation law, effective November 20, 1987, as §86-A. Mandatory retraining may substantially alter the purpose, nature and scope of Maine's program; however, petitions for mandatory retraining may not be filed until one year after maximum medical improvement.

This report will discuss:

A. The Purpose of Rehabilitation

B. Administration of the Rehabilitation Program Under the Workers' Compensation Act

1. Only Injuries After 1/1/86
2. Screening at 120 Days
3. Three Step Regulatory Process
4. Voluntary Rehabilitation
5. Employee Choice of Rehabilitation Provider
6. Regulation of Private Rehabilitation Providers
7. Medical Management
8. Dispute Resolution and Appeals
9. Employment Rehabilitation Fund
10. Employment Rehabilitation Advisory Board

C. Cost and Savings of Rehabilitation

D. Effectiveness of Rehabilitation

E. Legislative Trends of Other States

F. Conclusion

A. The Purpose of Rehabilitation

Although the statute defines the purpose of rehabilitation as return to gainful employment, disagreement exists over the nature of rehabilitation in workers' compensation, and the best way to accomplish this purpose.

Some employees feel rehabilitation should be a way to learn new skills which may help them regain the earning capacity lost by their injury. Hence, they think of vocational rehabilitation in terms of job training and education to which they are entitled as compensation for the injury.

On the other hand, some employers and insurers feel rehabilitation should be a case management technique under the control of the insurer to reduce benefit costs, a method of returning the disabled employee to work as fast as possible. Hence, they think of rehabilitation as job modification or enforced job placement.

These different approaches to rehabilitation, as either an employee benefit or as a cost-cutting tool, underlie many aspects of our rehabilitation program. The workers' compensation rehabilitation program results from a legislative compromise and will not fully satisfy either expectation.

Section 81 of the Workers' Compensation Act states the purpose of rehabilitation:

> The purpose of this subchapter is restoration of the injured employee to gainful employment. To further that purpose, it is the shared responsibility of all parties involved to cooperate in developing a rehabilitation process designed to promote reemployment at a level of earnings commensurate with the employee's ability to perform under present conditions, consistent with the priorities of section 86.

The purpose of rehabilitation under this section is simply "restoration to gainful employment." Under this section the rehabilitation program is not specifically designed to restore former earning capacity; it is designed to promote reemployment at a "level of earnings commensurate with the employee's ability to perform under present conditions."

This focus on rehabilitation as return to any gainful work, rather than restoration of lost earning capacity, is confirmed by the priorities set out in §86. Employees are not eligible for the higher numbered priorities unless all lower numbered priorities are "unlikely to result in a suitable job placement" and are "clearly inappropriate." The priorities are:

1. Former job
2. Modified job
3. New job
4. On-the-job training (with former employer)
5. New employer
6. On-the-job training (with new employer)
7. Retraining

However, the law also requires that job placements be suitable for the employee, and that rehabilitation plans consider the employee's qualifications, including, in §83(3)(B):

> 1. his work history;
> 2. his interests;
> 3. his aptitude;
> 4. his education;
> 5. his skills;
> 6. his work life expectancy;
> 7. the locality of employment; and
> 8. the likelihood of reemployment.

Thus, although the purpose of §81 is placement, rather than restoration of earning ability, some individual considerations of suitability must be made.

The new mandatory retraining section, §86-A, will add a new twist to the statutory purpose of rehabilitation, by requiring that retraining plans aim for restoration of the employee's preinjury earning capacity:

> The commission . . . shall prescribe a plan for retraining which will return, to the maximum extent practicable, the employee to his preinjury earning capacity.

In sum, the purpose of rehabilitation is return to gainful employment. In practice, employee advocates argue that the best way to achieve long-term return to gainful employment is to improve the employee's job skills, and that premature job placement or forced work search for low paying jobs may be

counter productive and short-sighted. On the other hand, employer advocates argue that restoration to former earning capacity through retraining or education often tends to be lengthy, costly, and uncertain.

Our statutory priorities try to balance these approaches to rehabilitation by focusing on job placement first, but allowing retraining if necessary.

B. Administration of the Rehabilitation Program Under the Workers' Compensation Act

The following paragraphs discuss the major features of Maine's rehabilitation system.

In developing the statistical information which follows, Office of Employment Rehabilitation data was used to display activity for rehabilitation cases during 1987: the number of initial referrals, evaluations, plans developed, plans implemented, plans closed, and the overall percentage of plans closed with the injured worker returning to employment. A more intensive analysis of closed plans was then conducted. A sample consisting of 478 of the 538 closed plans was selected on the basis of complete information being available on the computer. The return to work rate of the sample and all closed plans was identical.

These closures were analyzed to determine the number of days from the date of injury to the date of the initial referral; the number of days spent in evaluation and plan development, prior to participating in a rehabilitation plan; the length of rehabilitation plans; the costs of plan implementation; the percentage of plans resulting in a return to work; and earnings recovery for injured workers completing plans.

1. Only Injuries After 1/1/86

The new rehabilitation program was effective January 1, 1986, and applies only to injuries occurring on and after that date.

If the new rehabilitation program had applied to all workers' compensation cases, the Commission would have been overwhelmed with evaluations and rehabilitation plans. Serious workers' compensation claims can remain open 6 years or more, and high cost and administrative confusion has been avoided by having the new Rehabilitation Act apply only to new cases as they develop.

This has allowed Maine's rehabilitation program to grow gradually as the newer cases come in. We have avoided the problem experienced by the State of Washington in 1985. Washington State instituted a mandatory rehabilitation program covering all injured employees, past and present. Due to administrative confusion and overuse of rehabilitation, rehabilitation costs got out of control. Washington then repealed its mandatory rehabilitation program.

2. Screening at 120 Days

In order to identify all potential candidates for rehabilitation, the statute requires insurers to report the status of all disability cases which extend beyond 120 days. The purpose of this report, called an R-1, is to identify cases which may need an evaluation by a rehabilitation specialist. The object is to screen out of the rehabilitation system cases where there is obviously no need for rehabilitation.

There is some concern among rehabilitation providers that 120 days is too long and that earlier involvement is necessary for success. On the other hand, employers and insurers appreciate the 120 day grace period before they have to file with the Office of Employment Rehabilitation. If an employer is able to get an employee back to work within 120 days, they can avoid the red tape of the rehabilitation process.

There would be dramatically increased numbers of claims if short term disabilities had to be reported at 30, 60 or 90 days. This could result in much rehabilitation evaluation work on cases which may not have been necessary. The following chart shows how the numbers of claims decrease sharply as mother nature takes care of the short term disabilities.

Chart 1

Cases to be Evaluated at Different Screening Dates
(Estimate Based on 1986 Figures)

All Wage Loss Cases	16,119
30 days	6,984
60 days	4,824
90 days	3,968
120 days	3,502
180 days	3,031
360 days	1,453

Many initial reports are filed late. The following chart indicates the average number of days from injury to filing of the R-1 in the 1987 plan closures.

On many occasions the filing of the R-1 is done prior to 120 days, so we have separated the average for those filings which occur 120 days or more after the date of injury, into the second column.

Chart 2

Average Number of Days Injury to Referral
by Return to Work Status

	All	Greater Than 120
Same Job Same Employer	138	206
Modified Job Same Employer	155	225
Different Job Same Employer	133	178
Similar Job Different Employer	137	170
Different Job Different Employer	195	231
Non Return to Work	154	206

There appear to be a large number of unreported disabilities of over 120 days. In 1986 approximately 3,500 cases occurred where the period of incapacity exceeded 120 days. Nevertheless, in 1987 the Commission received the 120 day rehabilitation status report on only 2,145. Thus, there appear to be a large number of unreported disabilities of over 120 days.

The Workers' Compensation Commission will soon have the data processing capability to match 120 day benefit cases with rehabilitation reports received, and can then assess penalties if there are insurers who are not routinely complying.

3. Three Step Regulatory Process

After the insurer submits a 120 day report, a three step process is required under the statute.

Based on the 120 day status report the Commission may order an evaluation of suitability. After the evaluation of suitability has taken place, the Commission may order plan development. These two steps of evaluation and plan development are mandatory if ordered.

The third step is actual implementation of the rehabilitation plan. This step is voluntary and must be agreed by both the employee and insurer. This means that either the injured worker or insurer can veto the plan after it has been developed.

The following chart illustrates the 1987 rehabilitation summary for each stage of the rehabilitation process.

Chart 3

1987 REHABILITATION SUMMARY

Initial Referrals	2,145
Referred for at least Evaluation	1,233
Plans Developed	820
Estimated Plans Implemented	656
Plans Closed	538
Percent Closed with a Return to Work	54%

The chart supports the estimate by rehabilitation providers and Commission staff that about 80% of plans developed are actually implemented. This suggests that despite the voluntary nature of the rehabilitation plans, most parties agree to the plan once it has been developed.

The chart also reflects the estimate that about 66% of evaluations result in a recommendation that rehabilitation is in order. In the earlier stages of the program, almost every evaluation resulted in a recommendation for rehabilitation. This

pattern was startling; however, if rehabilitation is broadly defined as job placement, and the purpose of rehabilitation is to return injured workers to gainful employment, than it could be argued that the mere fact of unemployment defined eligibility for rehabilitation.

The next chart shows the time from referral to receipt of a plan by the Office of Employment Rehabilitation, listed by return to work status. This chart displays the amount of time spent in evaluation or plan development prior to the beginning of the rehabilitation services themselves. As may be seen, this process takes an average two to three months following an initial referral.

Chart 4

Time from Referral to Plan Development
by Return to Work Status

	Average Number of Days
Same Job Same Employer	59
Modified Job Same Employer	69
Different Job Same Employer	81
Similar Job Different Employer	110
Different Job Different Employer	86
Non Return to Work	92

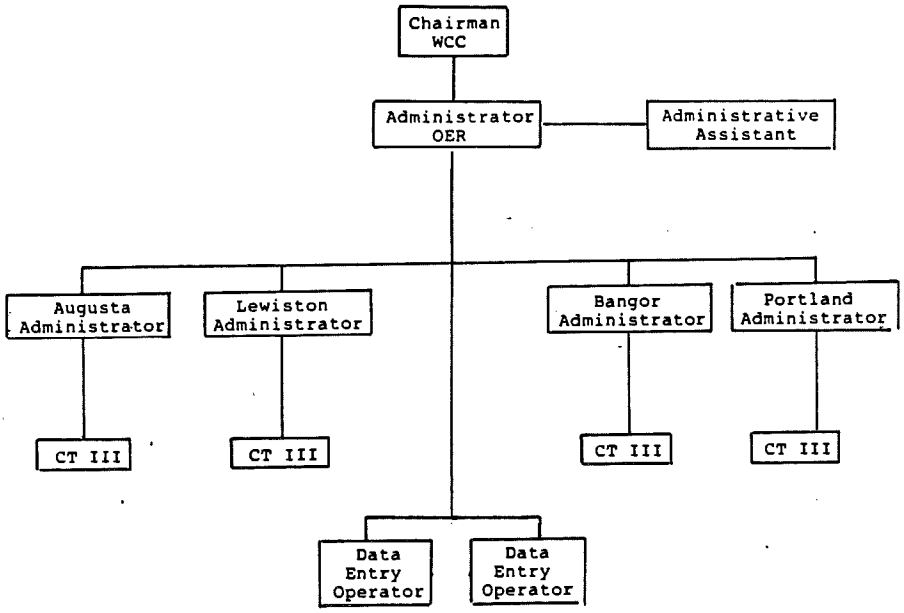
The next chart displays the length of plans. Once the rehabilitation plan is implemented the average plan length varies between 3 and 5 months. Longer plans tend to occur when return to the preinjury job and preinjury employer are not possible.

Chart 5

Length of Plans

	Average Number of Days
Same Job Same Employer	108
Modified Job Same Employer	129
Different Job Same Employer	147
Similar Job Different Employer	136
Different Job Different Employer	154
Non Return to Work	150

In administering this three step process, rehabilitation administrators from the Workers' Compensation Commission approve monitor and regulate rehabilitation plans. Rehabilitation administrators are stationed in Portland, Lewiston, Augusta and Bangor. This allows proximity to injured workers, knowledge of local labor markets, and familiarity with regional service providers. The chart below indicates the personnel structure of the Office of Rehabilitation, and its budget.



F/Y 1988 General Fund allotments for Rehabilitation

1.	Personal Services	$368,080
2.	All Other	$ 91,700
3.	Capital	$ 1,700
	Total	$461,480

4. Voluntary Rehabilitation

Although the evaluation of suitability and the development of the proposed plan are mandatory, actual participation in a rehabilitation plan is voluntary.

By making the program voluntary, the program focuses on employees and insurers who are motivated to make the plan work, encouraging cooperation and good faith.

As stated above, agreement has been obtained in approximately 80% of proposed plans.

Mandatory rehabilitation means that the state becomes involved for the purpose of either ordering the insurer to pay for a rehabilitation plan, or, in the alternative, ordering suspension of the employee's benefits for refusing to participate, or both.

As might be expected, mandatory systems tend to encourage litigation, and result in the rehabilitation process becoming integrated with the claims and benefit process. Rehabilitation can become a tactical consideration, a threat by the employee to increase the value of the case for purposes of settlement, or a method to force employees back to work before they feel they are ready.

Except for §86-A, which provides for mandatory retraining under certain conditions, the Maine program is basically voluntary.

Other states such as Washington, Oregon and Colorado have retreated from mandatory rehabilitation, while Minnesota is studying the issue. Colorado has repealed rehabilitation from its workers' compensation statute entirely.

5. Employee Choice of Rehabilitation Provider

The statute states at §83(2)(C) that:

> The employee shall have the final decision on which approved provider shall be utilized.

This law determines that the employee will control who does their evaluation and rehabilitation. The reason for this law is probably to encourage employee motivation and commitment to the rehabilitation process.

The issue of employee choice of provider is not a serious source of litigation because our rehabilitation program is not mandatory. In a mandatory system, disputes over choice of provider, or change of provider, become very intense, and are a source of controversy and litigation.

6. Regulation of Private Rehabilitation Providers

The Commission is required to regulate the qualifications of rehabilitation providers and costs of rehabilitation.

Maine has chosen to have rehabilitation evaluations and plans performed by private rehabilitation providers rather than by State agencies. Historically, government rehabilitation services, outside the realm of workers' compensation, have focused on severely impaired individuals, as required by federal government guidelines. The focus of public rehabilitation has been on the more difficult cases, and the goal has been self improvement for the individual client, often to assist the client to become employable at all. Therefore, the process is time-consuming and slow.

On the other hand, private rehabilitation agencies have recently sprung up to service the needs of the insurance industry. Private rehabilitation agencies, in contrast to public providers, are able to be more flexible in their activities, and tend to be competitive and aggressive in marketing their services on a profit basis.

Relying on national certification criteria, the Commission has approved the applications of 125 approved rehabilitation providers (ARP's).

At the present time, the same ARP may do the initial evaluation of suitability and, if suitable, plan implementation. Most of their business is by direct referral from insurers to employees who may be eligible for rehabilitation.

Rehabilitation costs are tightly controlled by a $550 ceiling for evaluation of suitability and plan development. An hourly rate, and a recommended time per service, set the guidelines for fees incurred during the implementation of a plan.

7. Medical Management

There is a lack of clarity about the types of traditional rehabilitation activities which may be regulated under Maine's workers' compensation statute. Under our workers' compensation law, the emphasis is on vocational rehabilitation, which focuses on job placement, the job market and training for employment.

On the other hand, private rehabilitation agencies have developed a substantial business working for the insurers performing medical management, labor market surveys for testimony, and other consulting work.

There must be a clearer definition between the work which rehabilitation providers perform directly for the insurers, ancillary to claims adjustment activity, and vocational rehabilitation services performed under the supervision of the Commission.

For the first year of the rehabilitation program, private rehabilitation providers found nearly every employee to be suitable for rehabilitation. The resulting plans often included a primary focus on medical management without any clear vocational focus. After the Commission took the position that medical management activities would be permitted outside the scope of our vocational rehabilitation program, the suitability rate dropped sharply for a number of private agencies who prefer working directly for the insurer on medical management.

The solution to this potential conflict of interest to date has been the designation of two categories of rehabilitation providers: "associated" providers who perform both insurance work and workers' compensation rehabilitation; and "independent" providers who work solely under the workers' compensation program.

8. Dispute Resolution and Appeals

During 1987 there were 281 administrative conferences to resolve disputes about the rehabilitation process. Primary disputes were over selection of rehabilitation provider, cooperation with rehabilitation efforts by the employee, and willingness to enter into agreements to rehabilitation.

48 appeals of conference decisions or other administrative orders were made to the Workers' Compensation Commissioners. Of the appeals, 10 were compromised, 24 were heard by the commissioners and 14 remain to be heard.

Due to the voluntary nature of the system, there has been little formal litigation. The Commission has not established elaborate rules for hearings and appeals, and taken a "wait and see" approach.

At this point clearer rules and appeals procedures should be established, especially since mandatory retraining will probably result in significant increase in litigation, and will lead to an increased connection between rehabilitation activities and fights over benefits and benefit levels.

9. Employment Rehabilitation Fund

The Employment Rehabilitation Fund exists under 39 M.R.S.A. §57-B. It is funded by a 1% assessment against insurers based on quarterly actual paid losses in post 1/1/86 injuries. The fund is in the custody of the State Treasurer, but fund activities are administered by the Chairman of the Workers' Compensation Commission.

The fund balance on 12/31/87 was $314,096.34.

The fund is designed to encourage rehabilitation under the workers' compensation program in three ways: wage credits, reimbursements for unsuccessful rehabilitation, and reimbursements for successive injuries.

a. Wage credits can be paid to employers for hiring injured workers who have completed a rehabilitation plan, under §56-B(6). Credits will be paid for up to six months, at 50% of wages paid. 10 employers have been paid wage credits totaling $17,563.71.

b. Reimbursement for rehabilitation costs can be made when a completed rehabilitation plan does not result in job placement or when a rehabilitation plan is not completed despite compliance by the parties. See §87(6). There have been 16 insurers reimbursed costs of failed plans totaling $21,581.12.

c. Reimbursement for compensation costs of a second employer may be paid if a rehabilitated employee suffers a successive work injury. See §57-B(2). An advisory Apportionment Review Panel recommends apportionment of the responsibility. To date, no requests for reimbursement for successive injury have been made, and the Apportionment Review Panel has had no cases.

10. Employment Rehabilitation Advisory Board

The 9 person Employment Rehabilitation Advisory Board, established under §89, advises the Chairman of the Commission and the administrator as they carry out the purposes of the rehabilitation subchapter.

C. Cost and Savings of Rehabilitation

The cost of rehabilitation in Maine is borne directly by the insurer, and, through premiums, by the employer. This is in contrast to Connecticut which funds its entire voluntary rehabilitation program and administrative costs on an insurer assessment.

The direct cost of rehabilitation services for the 478 closed plans which were analyzed averaged $1,091 per case. However, evaluation and plan development costs averaged $450 per case for a total average of $1,541 per case in 1987.

This average includes only services provided for the employee under the rehabilitation law, reported to the Commission's Rehabilitation Division.

The following chart shows the cost of rehabilitation for plans closed in 1987 by type of result, excluding evaluation and plan development costs.

Chart 6

Costs of Plans
by Return to Work Status

Same Job Same Employer	$724
Modified Job Same Employer	$856
Different Job Same Employer	$994
Similar Job Different Employer	$1,026
Different Job Different Employer	$1,275
Non Return to Work	$1,132
Weighted Average All Closed Plans	$1,091

Many rehabilitation providers contract directly with the insurer, outside the scope of the State rehabilitation program, providing medical monitoring, labor market summaries, expert witness, and other services; we do not know how much money is spent on these activities, or whether such costs are reported internally as rehabilitation benefits or as claims adjustment costs.

The direct cost of rehabilitation under the Maine program is lower than other states. California averaged $18,000 to $20,000 for closed plans in 1987, including weekly benefits and retraining costs during rehabilitation, for 43,740 cases, using 14% of each premium dollar, and claimed a 75% to 85% return to work rate.

Florida averaged $3201 per plan in F/Y 86-87, not including indemnity, for 5,584 closed plans with a total cost of $17,874.384. A private research group studying 1985 closures in Florida found an average cost of $5,080, of which 49% was indemnity; a 60% completion rate, and 79% return to work for those completing rehabilitation.

Michigan averaged $2,231 for 1,537 closures, not including indemnity, for a total cost of $3,429,047, and claims a 40.6% return to work rate.

There are several reasons why the cost of rehabilitation under Maine's program is low.

First, cases to date have been voluntary only, and higher cost plans can be rejected by either side.

Second, the statutory priority has resulted in job modification and work search plans, which are relatively cheap and fast. Retraining plans have been rare, since they can be considered only after job placement and other more inexpensive methods are found "clearly inappropriate." Retraining, which is designed to improve the employee's personal vocational assets, such as skills and education, can be expensive and slow.

Third, the Maine rehabilitation law in the context of workers' compensation is new, and the most serious cases may not have worked their way into the rehabilitation program yet.

Cost figures will increase with mandatory retraining, with its new goal of restoration of preinjury earning capacity.

Savings attributable to rehabilitation are more difficult to figure than costs, since costs are based on actual numbers. In order to figure savings you must guess what would have otherwise happened in the future, but for rehabilitation.

If rehabilitation causes an earlier return to work, or return to work at higher wages than otherwise, hypothetical savings can be substantial. Projected losses in indemnity benefits may be dramatically reduced. The savings in one big

case could theoretically justify the costs of unsuccessful services in many cases. However, the variables are too complex in disability claims to accurately quantify this projected savings. The estimate is hard to make for individual cases, and especially difficult when dealing with large numbers of varied cases.

D. Effectiveness of Rehabilitation

The purpose of the rehabilitation law is to restore injured workers to gainful employment. 54% of plan closures in 1987 indicated return to work.

The variation in the return to work rate by geographical area, highest in Portland and lowest in Bangor, confirms the obvious fact that return to work is more likely in areas where the unemployment rate is lower, and more jobs are available.

Chart 7

Return to Work Percentages
Closed Plans by Region

Region	Return to Work	Non-Return to Work
Portland	65%	35%
Lewiston	54%	46%
Augusta	55%	45%
Bangor	45%	55%
Statewide	54%	46%

Although 54% of the injured workers on closed plans returned to work, it is hard to guess how many of these people would have returned to work anyway.

Of those answering the closed case employee questionnaire, 67% of those who returned to work indicated they would have returned to similar work even without rehabilitation, and 33% indicated that rehabilitation services assisted in their return to work.

Claims managers and employers expressed serious reservations on the effectiveness of the rehabilitation program. Employer participants who responded to the survey believed they and their employees would have reached the same result without the rehabilitation program.

Looking beyond the bare fact of return to work, many of those back to work reported lower earning capacity. The following chart shows earnings recovery from a sample of 258 employees who returned to work after rehabilitation.

Nearly half of the respondents who had gone back to work after rehabilitation returned to different employers at jobs different than before the injury, and averaged 36% less pay.

Chart 8

Earnings Recovery
(Wages pre and post injury for Return to Work Closures)

	Pre Injury	Post Injury	Percent
Same Job Same Employer (45)	$399	$377	95%
Modified Job Same Employer (35)	$359	$338	94%
Different Job Same Employer (47)	$291	245	84%
Similar Job Different Employer (16)	$351	$358	102%
Different Job Different Employer (115)	$285	$183	64%

A long term study will be necessary to see whether the decrease in earnings is temporary or not.

Some employees have been pleased and thankful for rehabilitation services, while others have been bitter about their experience with rehabilitation.

Aside from dollar costs and savings, there may be some non-financial benefits which result from rehabilitation efforts which fail. For example, a seriously injured worker may benefit personally from vocational counseling, new skills or education, even if an immediate job placement falls through. Also,

vocational information about an individual claim may assist the insurance carrier or employee in making intelligent decisions about a case, even if no direct financial savings is realized.

E. Legislative Trends of Other States

At least 4 other states have made significant recent changes in rehabilitation legislation, each due at least in part to cost considerations.

Washington State repealed its entire rehabilitation system after a few years of operation, and replaced it later with a more regulated and controllable system. Colorado removed the rehabilitation program entirely in 1987; leaving rehabilitation up to the parties if they agree to it. Oregon tightened its eligibility requirements in 1987 in order to reduce excessive costs of services to injured workers who were returning to their old jobs with no significant professional assistance. Montana changed its rehabilitation emphasis from "vocational training" to "return to work." Minnesota is soon to release a study of its mandatory rehabilitation process due to concern about over-utilization, high litigation, and excessive costs.

The trend is toward the provision of less expensive return to work rehabilitation for fewer, but needier, injured employees.

F. Conclusion

54% of implemented plans report a return to work at closure. Based on rehabilitation outcomes in Minnesota and Massachusetts, a return to work rate of 75% on implemented plans would be more acceptable. We believe that too many employees are being screened into the program who are unlikely to benefit from rehabilitation.

Workers, employers, and insurance carriers have strong reservations about the system.

Although a number of injured workers responding to our survey were satisfied with their rehabilitation experience, an approximately equal number were dissatisfied.

About 1/3 of injured workers responding to our survey who had been through the system and gone back to work believed that rehabilitation was the key.

Employers responding to our survey believed they and their employees would have reached the same result without rehabilitation.

Employers and insurers do not regard the system as cost effective. The fact that many of the rehabilitation plans result in a return to work with the preinjury employer in the same or similar job, and that many employees felt that the same outcome would have been achieved without rehabilitation services, accounts for some of this impression.

Carrier compliance with filings of initial rehabilitation screening reports is a problem. In addition to not filing initial 120 day reports on time, they are not being filed at all in a number of cases. This problem, now that it is identified, can be addressed administratively. The Workers' Compensation Commission will soon have the data processing capability to match 120 day benefits cases with reports received, and can assess penalties against those insurers who are not routinely complying.

The close relationship of some private rehabilitation providers with the insurance industry has created some situations where injured workers view the rehabilitation provider as an adversary. Injured workers are quick to understand that the type of information gathered during evaluation and medical monitoring is the same type of information used during litigation to seek termination of benefits.

There needs to be clarification of the dual role of private rehabilitation agencies whose employees work as Approved Rehabilitation Providers under the workers' compensation program, but who also perform direct medical management, consulting,

expert witness, and adjustment services for insurers, outside the regulatory scope of the Commission. The Workers' Compensation Commission is exploring administrative and statutory alternatives for accomplishing this.

There is nothing easy about the problem of assisting injured workers in returning to employment. The problems that Maine is experiencing with rehabilitation are paralleled in other jurisdictions, which are moving away from the concept of mandatory rehabilitation and are attempting to tighten up eligibility criteria for rehabilitation to target employees most likely to benefit.

Evidence on the effectiveness of rehabilitation in returning injured employees to gainful employment is inconclusive. We recommend that the legislative review be extended to the Second Session of the 114th Legislature.

The 1987 case closures are only the first wave of results, and may not be representative of other cases still in the pipeline. The new mandatory retraining provision is a significant change in the rehabilitation law, and might result in useful comparative data.

Such a study would allow for more accurate and meaningful data on which to make policy decisions about rehabilitation in the workers' compensation system.

BIBLIOGRAPHY

1. California Workers' Compensation Institute, A Report to the Industry: Vocational Rehabilitation, San Francisco, CA, Nov. 1983.

2. California Workers' Compensation Institute, Vocational Rehabilitation: 1985 Costs & Results, San Francisco, CA, Nov. 1985.

3. Gardner, J.A., A WCRI Sourcebook: Vocational Rehabilitation in Workers' Compensation - Issues and Evidence, Workers' Compensation Research Institute, Cambridge, MA, June 1985.

4. Gardner, J.A., Vocational Rehabilitation Outcomes: Evidence From New York, Workers' Compensation Research Institute, Cambridge, MA, 1986.

5. International Association of Industrial Accident Boards and Commissions, An Overview of Vocational Rehabilitation in Workers' Compensation, Jackson, MS, 1984.

6. International Association of Industrial Accident Boards and Commissions, Workers' Compensation Rehabilitation Laws and Programs, Eleanor Ross, ed., Jackson, MS, 1987.

7. Langhan, D.K., 1986 Vocational Rehabilitation Cost Effectiveness Study, Michigan Department of Labor, Lansing, MI, Oct. 1987.

8. Larson, The Law of Workmen's Compensation, Volume 2, "§61.20 Rehabilitation," pp. 10-912 to 10-951, 1987.

9. Maine Law Review; Volume 32, page 237, "Eligibility for Vocational Rehabilitation: Troubling New Standards," 1980.

10. Matkin, R.E., Insurance Rehabilitation, Pro-ed, Austin, TX, 1985.

11. National Foundation for Unemployment Compensation & Workers' Compensation, The Bulletin: State W.C. Legislation as of November 6, 1987, Washington, D.C., Nov. 1987.

12. Parker, R.M., Rehabilitation Counseling, Allyn & Bacon, Inc., Boston, 1981.

13. Rubin, S.E., and Roessler, R.T., Foundations of the Vocational Rehabilitation Process, University Park Press, Baltimore, MD, 1983.

14. U.S. Chamber of Commerce, 1987 Analysis of Workers Compensation Laws, U.S. Chamber of Commerce, Washington, D.C., 1987.

15. Wright, G.N., Total Rehabilitation, Little, Brown & Co., Boston, MA, 1980.