1989 WORKERS' COMPENSATION ADVISORY COUNCIL

REPORT TO THE GOVERNOR AND LEGISLATURE ON WORKERS' COMPENSATION

APRIL 7, 1989

The 1989 WCAC report to the Legislature and the Governor is issued with a more complete perspective of the 1983 law. The significant changes enacted in 1983 remain controversial. Labor and employee representatives continue to question sharply the fairness and purpose of the two-tier system and the associated concept of maximum medical improvement. They also criticize the permanent partial disability rules, asserting that they are arbitrary, incomplete and often fail to rate disabilities fairly or accurately.

Employers and insurers continue to strongly support the return to work incentives and structural reforms adopted in 1983, but are disappointed with recent judicial rulings concerning temporary partial disability, claiming that these decisions have negated in part their perception of the legislature's intent to have cutoffs of temporary partial disability benefits.

Labor and employee representatives question decisions that deny temporary partial weekly benefits to unemployed claimants, asserting that employed claimants are logically entitled to weekly benefits if employed at a lower than pre-injury wage, and that the same logic should award temporary compensation to claimants who cannot work because of their partial disability.

On the other hand, these decisions should bring greater certainty to benefit calculations. Recent legislative changes, particularly in the 1987 administrative amendments, have simplified the procedures for handling cases, making a very complicated system somewhat easier to understand. WCAC comments on specific subjects are stated in the following paragraphs.

Backlog of Office of Administrative Hearings. A serious trend of an ever lengthening backlog of cases at OAH appears to have been reversed in 1988, based on information supplied by OAH and D.O.L.I. The time for hearing cases before OAH had been as great as 20 months and was growing. OAH now reports that its calendar in outstate cases shows that cases are heard six months after filing and that cases in the Twin Cities Metropolitan area are heard in nine months. This improvement is largely attributable to the addition of ten additional workers' compensation judges, and by simplification in procedures arising from the 1987 legislation. Apparently a number of cases were taken to hearing because of uncertainty regarding temporary partial disability. The clarifying judicial decisions on temporary partial disability may now enable additional cases to be settled which would further reduce the calendar. The sense is that six months is a suitable length for the calendar since most cases are not ready for trial before that time. The objective now is to reduce the calendar for the metropolitan cases to the six month level.

Permanent Partial Disability Schedules. A major change in the 1983 law was the repeal of the statutory schedules for permanent partial disability and the adoption of permanent disability rules which rate disability as a percentage of the "body as a whole." Although the rules have been in place since January 1, 1984, they continue to be very controversial. Employers and insurers argue that the rules bring needed objectivity and greater consistency to the important issue of disability ratings in the system. They contend that pre-1983 rating process was very subjective, promoted doctor shopping and generated "rating war" litigation. Objectors contend that it is a mistake to try to enforce uniform ratings on different disabilities; they urge that the schedules are unjust and impractical. Furthermore, the objectors deny that a

principal justification for the rules has been achieved; i.e., whether adoption of these rules has actually reduced litigation. Task forces are presently studying the disability rules and will report to the WCAC concerning improvements to the rules and alternatives to the disability schedules-- not the assignment of the PPD task force.

Rehabilitation. Mandatory rehabilitation has had a significant role in the Minnesota system. The department has developed elaborate rules to administer the rehabilitation process. There is not agreement concerning the effectiveness of rehabilitation in the Minnesota system. Many labor and employee representatives believe the rehabilitation process emphasizes mere job finding rather than restoring the employment competence of the injured worker. They see the qualified rehabilitation consultant as a biased agent of the insurance companies and employers, who in turn are concerned with the cost effectiveness of the whole rehabilitation process. Many employers and insurers are frustrated with the current system and believe that rehabilitation consulting has become a growth industry, with too many cases unnecessarily referred for the mandated consulting, needlessly raising costs. While supportive of private rehabilitation services, they believe that QRC's have too strong a role in the management of cases, often with no improvement in return to work results.

Medical Costs. Medical treatment represents up to 35 percent of the cost of the system and those costs are expected to continue to escalate. All sides agree that little has been done to date to in any effective way contain rapidly escalating costs, with workers' compensation being called the "last frontier of basically no cost controls." It is unlikely that the total cost of the workers' compensation system can be controlled without effective restraints on medical costs. The department is continuing its attempt to control costs by improving the medical fee schedule, by oversight of the medical services industry, through the use of medical association peer review boards, and is currently working on a major study of medical costs in the system.

Competitive Rating. A significant law change adopted in 1983 was fully implementing a competitive rating insurance law effective January 1, 1984. The 1983 legislature accelerated the effective date of an earlier adopted law, which basically rejected the old system of state established rates. Employers and insurers strongly supported this change because the old system was unresponsive to rapidly changing costs and not conducive to a healthy competitive market. They believe that Minnesota has had a very favorable experience over the period of 1984-1987, with insurance rates increasing 51 percent, of which 23 percent was caused by increased state mandated assessments and surcharges. On the other hand, labor believes that the increases in insurance costs since 1983 is without precedence and occurred even though there were substantial benefit cuts in the 1983 law. This has led labor to call for a return to some review and control of insurance rates such as existed prior to 1984.

Special Compensation Fund. An area of great concern to all groups is the large, growing financial impact of this fund. Minnesota is unique in the nation as to the scope and financial condition of their fund with its 31 percent assessment rate, needed to fund the $98 million annual budget, which pays for supplemental benefits, second injury liabilities, and the budgets of

the Workers' Compensation Court of Appeals, the workers' compensation judges at OAH, and the Workers' Compensation Division of the Department of Labor and Industry, in addition to uninsured employer claims. This $98 million is more than double the expenditures for fiscal year 1984. The fund has a $65.8 million operating deficit in fiscal year 1988 ($2 million higher than 1987) and total unfunded liabilities of about $1.5 billion. The security fund for self-insured employers, enacted in 1988, will eliminate claims for employees of bankrupt self-insurers from the fund.

Employers and insurers believe the fund has become a dumping ground for more and more liabilities. They do not support paying for the costs of government through this assessment but believe these costs should be run through the general revenue. They assert that cash-flowing the significant amount of liabilities involved in supplemental benefits and second injury fund reimbursements understates the total costs of Minnesota's system. They believe reforms to this aspect of the system are essential to control costs.

Labor representatives suggest the study of a process by which payment of supplementary benefits and second injury claims would be shifted, over time, to the insurers and self-insured employers responsible for the claims. Labor believes that the expenditures of the fund could be reduced substantially by that process. There would also be savings in friction costs and more direct accountability for injured workers if claims were paid by the responsible insurer or self-insured employer rather than the fund.

Assigned Risk Plan. This state required plan is intended to be a market of "last resort" for employers who cannot obtain a policy in the voluntary market. The premium is required to be higher than that charged employers by private insurers in order for the Plan to not compete with or influence rates charged by private insurers. Since 1983, when the authority to set rates in the Plan was transferred to the Commerce Department, the number of employers insured by the Plan and premium volume has gone from 16,000 and $14 million to 36,000 and $100 million. the Plan is the largest single market in the state today.

The Plan assessed insurers $39 million in 1986 (payable in 1987 and 1988) to make up for inadequate premiums collected (5 percent subsidy from nonplan employers). The most recent financial statement indicates a deficit of about $65 million in 1987.

Employers and insurers are concerned about the Assigned Risk Plan functioning as a competitive market rather than a market of "last resort." The Plan's financial condition worries them as they see prospects for further forced subsidies from employers not insured by the Plan to make up for inadequate premium charges. They want the Plan to function as a market of "last resort" at prices above those charged employers in the voluntary market. Labor representatives believe that the growth of the Assigned Risk Plan may be the result of a lack of competitive pricing of workers' compensation coverage by insurers.

Workers' Compensation Reinsurance Association. This unique nonprofit organization was created by the 1979 legislature to be the required source of reinsurance for all licensed workers' compensation insurers and approved self-insurers, at statutorily defined levels of coverage. Liabilities are funded

up to an annually escalated level, with liabilities beyond this level handled on a pay as you go basis. By capturing all the investment income on the long-tail of workers' compensation claims, discounting reserves, and not fully funding liabilities, employers premiums are reduced compared to any other states' premium level. As of June 30, 1988, the W.C.R.A. has registered 5,345 claims, has funded discounted reserves of $483 million, and catastrophic reserves (unfunded liabilities) of $887 million on an undiscounted basis. The discounted liability of these catastrophic reserves would be in the range of $26-54 million. Employers and insurers state that the W.C.R.A.'s funding of overall system liabilities results in understating Minnesota's level of costs when compared to all other states where private insurers sell, which in all cases is done on the traditionally fully funded basis.

Competitive State Fund. The last significant and controversial change adopted in 1983 was the creation of a competitive state fund selling workers' compensation insurance. Employers and insurers opposed this on the basis that with over 200 licensed private insurers there was not any need for another competitor. Labor and employee representatives supported the fund on the basis of the need to have an objective benchmark to check how the private sector is performing. Since its creation, the state fund has become one of the largest writers of workers' compensation coverage in the state, insuring by year-end 1988 some 5,000 employers, with a premium volume of almost $42 million.