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Presented by James L. Francesconi

GOVERNOR'S RECOMMENDATIONS
FOR
WORKERS' COMPENSATION REFORM

April 3, 1987

NEIL GOLDSCHMIDT
GOVERNOR



OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310-1347

April 3, 1987

Honorable Barbara Roberts
136 State Capitol
Salem, Oregon 97310

Dear Secretary of State Roberts:

It is with great pleasure that I accept the report of the Governor's Policy Advisory Group on Workers' Compensation. You and your fellow task force members have accomplished what some thought was impossible. For the first time, representatives of the major interest groups involved in the workers' compensation issue have reached a consensus on what must be done to create a fair and affordable system.

As you know, this is an issue that must be addressed if we are to achieve the Oregon Comeback. For too long, workers' compensation has taken too much from the employer while giving too little to the injured worker.

The task force's historic accomplishment is a message that will be heard across Oregon and throughout the country--that we can work together to lower the cost of doing business in this state. I congratulate you and wholeheartedly accept your recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil".

Neil Goldschmidt
Governor

BARBARA ROBERTS
SECRETARY OF STATE

FELICIA TRADER
DEPUTY SECRETARY OF STATE



OFFICE OF THE SECRETARY OF STATE
136 STATE CAPITOL
SALEM, OREGON 97310-0722
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April 1, 1987

The Honorable Neil Goldschmidt
Governor
State of Oregon
State Capitol
Salem, Oregon 97310

Dear Governor Goldschmidt:

The Governor's Policy Advisory Group on Workers' Compensation has been charged with conducting a review of the Oregon workers' compensation system and recommending changes to that system. Our preliminary report was given to you during the last week of February. At that time, the Lewis report had not been completed and our members agreed to continue our group until that report was finalized. We met this past week and reviewed the proposals contained in the Lewis report, and make these final recommendations.

The total premium dollars paid by Oregon employers in 1986 was \$465 million. In 1987 the premiums will be approximately \$533 million. Oregon's rates on the average are the sixth highest in the nation. Yet Oregon workers only received approximately one-third of this amount in benefits. Our objective was to develop proposals which the group could agree upon, which we believed would reduce the premium dollars paid by Oregon employers and to increase the percentage of the premium dollar actually received by the Oregon worker.

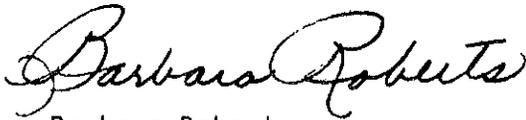
In order to accomplish both goals, we have sought to increase safety in the work place, create meaningful incentives to help our injured workers return to employment, streamline and simplify the system, and reduce the profit made from the system by interest groups and insurance companies.

Although Oregon has a reputation of having one of the most expensive workers' compensation systems in the nation, we believe our recommendations will stop the ever-increasing cost of the Oregon workers' compensation system. Our members, although from diverse backgrounds and interests, came to the conclusion that these recommendations are in the best interest of the injured worker, the

The Honorable Neil Goldschmidt
April 1, 1987
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employers of this State, and all of our citizens. These proposals represent a consensus of your advisory group on how to make Oregon's workers' compensation system both fair and affordable.

Respectfully,

A handwritten signature in cursive script that reads "Barbara Roberts".

Barbara Roberts
Secretary of State
Chairperson

Sen. Larry Hill
Rep. Bob Shiprack
Karl Frederick
Steve Socotch
Jim Francesconi
Ted Kulongoski

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I. SAFETY - (Occupational Safety and Health)

The quickest and most effective way to cut costs in the workers' compensation system is to reduce the number of accidents that are suffered by our Oregon workers. Oregon ranks in the top ten states for the number of accidents for its population.

Safety education for both the employer and employee is a critical element of any safety program. This point is evidenced by the fact that in 1985, of the 38,808 disability claims filed by injured workers, 14,178 claims (36.5% of total claims accepted in 1985) were by workers in their first year of employment with an employer.

In order to substantially reduce this accident rate, the Workers' Compensation Department, the insurers and employers must make safety the highest priority. We support HB 2104 which places greater responsibility on the insurers and self-insurers to provide occupational safety and health loss-control programs.

The Accident Prevention Division of the Workers' Compensation Department also must do a better job of enforcing the safety code in this State. The Department needs to impose more serious fines for serious safety violations. The Department also needs to encourage employers to voluntarily consult with the Department regarding innovative ways to avoid accidents without fear of penalty.

II. HELPING THE INJURED WORKER GET BACK TO WORK

It is extremely difficult for an injured worker to get back to work. The problem is made even worse by Oregon's current economic climate.

Unfortunately, our current vocational rehabilitation efforts aren't working. Oregon employers pay \$61 million a year for vocational rehabilitation. Yet only one-third of all injured workers who go through vocational rehabilitation return to work, and many of them do it through their own efforts.

Employers are understandably reluctant to hire a worker who has suffered an industrial injury. But injured workers who are willing to work complain of job discrimination. The Department of Labor reports complaints of workers' compensation discrimination at a rate three times any other kind of job discrimination complaint.

That is why we are proposing a Preferred Employment Fund. This Fund would pay the workers' compensation premium for two years for every injured worker that an employer hires, and it will also pay the costs of aggravations of old injuries.

The Preferred Employment Fund will get our workers back on the job without costing Oregon employers one additional penny. We will fund it by combining the Handicapped Workers' Reserve and Re-Employment Reserve, funds we believe aren't being fully utilized.

We propose to reform vocational rehabilitation by limiting it to those who need it most, workers without transferable job skills. We will allow those workers to choose their own vocational rehabilitation counselors with the assistance of the Workers' Compensation Department. We'll give them a greater range of choices by including our community college system and the State Vocational Rehabilitation Division in our list of providers. And we'll more carefully regulate vocational rehabilitation providers to make sure that our workers are getting the best possible assistance.

- A. Preferred Worker Program.
- B. Vocational Rehabilitation Reform.

III. MEDICAL COST CONTROL

Medical costs are the single most expensive item in the Oregon Workers' Compensation system, about 40 percent of all benefits paid. In fact, Oregon's medical costs are among the highest in the nation and almost double the average cost per case of many other states.

The overall standards of health practitioners in Oregon are among the best in the country. However, a better mechanism needs to be established within the Workers' Compensation structure for eliminating excessive or inappropriate treatment. Health care practitioners who repeatedly are found to harm their patients must be removed from the system. The medical community must be better educated on their rights and responsibilities in the Workers' Compensation system. Pilot projects need to be established in an effort to cut rising hospital and medical costs. The workers' right to select a treating physician must be protected, but employers must be protected from abuse of that right.

- A. Physicians Panel to review questions of excess or inappropriate treatment.
- B. Finding a medical provider ineligible for future reimbursement.
- C. Workers' Compensation Education Program.
- D. Medical audits.
- E. Pilot project on HMO and PPO plans.
- F. Limit employees' selection of treating physician from 5 to 3.
- G. Establish panel of medical experts to review disputes over purely medical issues.

- H. Allow employers to pay deductible up to \$250 per claim on medical bills.

IV. REDUCE ADMINISTRATIVE COST AND STREAMLINE THE PROCESS

Oregon Workers' Compensation system is perceived as one of the most complex, bureaucratic and litigious.

In order to reduce the administrative costs, streamline the process, and reduce litigation, comprehensive change is necessary.

Carriers should have the first opportunity to rate the disability of the worker.

Litigation can be reduced by requiring that disputes which do not directly involve the rights of the injured worker be resolved in an informal and inexpensive process. Formal hearings are not needed when the only dispute is between insurance companies or when the only issues are penalties and attorney fees. Also, attorneys should be sanctioned for bringing frivolous appeals or defenses.

One of the most costly features of our present system is that a claim can never be permanently closed. This requires the insurance companies to set up large reserves that literally must last the lifetime of the worker, and which dramatically increases the premium paid by the employer. We are now proposing to limit this process to five years. This change should result in a significant reduction in the premium paid by employers.

- A. Carrier closure.
- B. Arbitration of .307 cases (Insurance Company disputes).
- C. Provide informal hearings when only issues are penalties and attorney fees.
- D. Sanctions against attorneys for frivolous appeal or defense.
- E. Prior approval of all attorney fees (Plaintiff and Defense).
- F. Small claims process when amount in dispute is less than \$1000.
- G. Eliminate "de novo" review in Court of Appeals.
- H. Abolish Board "own motion" jurisdiction.

V. STRESS - Limit compensability of mental stress claim.

In addition to its tremendous costs, the Oregon Workers' Compensation system has a credibility problem. This credibility problem stems primarily from the publicity both inside and outside the State over stress claims.

We support HB 2271 which appears to strike a reasonable balance between legitimate management concerns and workers' rights to be compensated for genuine mental illness which is clearly caused by stressful work.

VI. INJURED WORKER BENEFITS - Increase permanent partial disability benefits from \$125 to \$145 per degree for scheduled disabilities.

Oregon pays less money for injuries to the hands, arms, feet, legs, eyes or ears than almost any other state in the country. For example, the loss of an arm is worth \$24,000 in Oregon, \$36,000 in Washington, \$70,560 in North Carolina, and \$120,275 in Illinois.

We need to immediately increase the dollar benefits paid for these injuries. We also need to study whether permanent disability benefits should be more uniform and whether we can increase the benefits paid for the most serious injuries.

VII. INSURANCE REFORM

Once costs are reduced in the Workers' Compensation program, we must ensure that money saved passes through insurance companies and ends up in employers' pockets.

The private carriers need to be better regulated by an active Insurance Commissioner with the resources to prevent excessive profits from ever being taken from the system; SAIF Corporation must be better managed and must be again oriented toward helping the small employers.

I.

SAFETY

Legislation

HB 2104 filed at the request of the Workers' Compensation Department.

Requires workers' compensation insurers and self-insurers to provide occupational safety and health loss-control programs in accordance with standards adopted by the Director of Workers' Compensation Department. Makes civil penalty provisions consistent for insurers and self-insured employers.

Administration

1. There must be higher fines for serious or repeated violations and less plea bargaining.
2. There must be more unannounced, on-site enforcement inspections.
3. Voluntary consultation services for employers should be reinstated.
4. APD should add compliance officers and industrial hygienists within current budget.
5. Continuing education is needed for APD staff.
6. The Department needs to sponsor on-going employer workshops covering all aspects of workers' compensation in all parts of the State.

II.

HELPING THE INJURED WORKER GET BACK TO WORK

Legislation

1. Increase rehiring and hiring incentives

A. Preferred Employment Fund

1. Combine the Handicap Workers' Reserve and Re-Employment Reserve and create a PREFERRED EMPLOYMENT FUND.
2. Qualifications
 - a. Workers must be permanently unable to perform previous employment; and
 - b. Employer must offer permanently modified site or permanently modified work.
3. Incentives
 - a. Premiums on the injured worker will be paid by the Fund
 - i) For both old and new employers;
 - ii) Excluding self-insurers;
 - iii) For two years after rehire.
 - b. Aggravation claim will continue to be paid by the Fund for all employers, including self-insurers;
 - c. The insurer who received premium payments from the Fund is responsible for new injuries;
 - d. Costs of any new or aggravated injuries that occur to worker during the two year period cannot be calculated into rates;
 - e. Any employer is eligible for monies from Fund for job site modification;
 - f. Limited wage subsidy remains available on Workers' Compensation Director's determination.

VOCATIONAL REHABILITATION REFORM

1. Limit the availability of mandatory Voc-Rehab services to workers who have no transferable skills to a different occupation that pays a substantially similar wage.
2. Permit greater employee involvement in the selection of the provider. The workers select the first provider from a list supplied by the Director. Subsequent choice by the Director.

3. Department certification of vocational providers.
4. Private vendors and public agencies such as the Vocational Rehabilitation Division and Community Colleges may be certified as providers.
5. The Director will provide a system for bid/proposals for specific services from previous certified providers. No hourly fees will be permitted.
6. Insurance Commissioner to review the vocational rehabilitation component of pure premium rate.

III.

MEDICAL COST CONTROL

Legislation

1. Create a case-by-case panel of physicians to review questions of excessive or inappropriate medical treatment.
 - a. Panel members will include those selected by the insurer and the worker;
 - b. The Panel's report will go to the Director;
 - c. The Director issues the Order;
 - d. The Order is appealable to the Hearings Division.
2. The Director may find a medical provider ineligible for future reimbursement for repeated findings of "abuse."
 - a. The minimum period of ineligibility is one year;
 - b. The maximum period of ineligibility is three years;
 - c. A medical provider who is found ineligible will not be reimbursed for any workers' compensation billings during the "sanction" period and may not bill the worker for any such billings.
3. Compulsory Workers' Compensation Education.
 - a. Each group or association must have a continuing education program on workers' compensation in place by July 1, 1988;
 - b. All medical providers must meet these continuing requirements in order to qualify for reimbursement;
 - c. The Workers' Compensation Department will set standards for the continued education programs.
4. SAIF medical audits.
 - a. SAIF will establish a two year pilot project to audit all hospital billings;
 - b. They will report their first year findings to the 1989 Legislative Session by April 1st of that legislative year;
 - c. The final two year report will be submitted to the Governor by April 1, 1990.
5. A pilot project will be established to study whether employees should be permitted to voluntarily waive their rights to multiple selection of treating physicians in order to accommodate HMO and PPO plans.

6. Limit employee's right to select treating physician from 5 to 3 doctors.
7. Establish a panel of neutral medical experts selected by worker and employer/ carrier to assist the Hearings Officer in resolving disputes over purely medical issues.
8. Allow employers to pay deductibles of up to \$250 per claim on medical bills.

Administration

1. The medical fee schedule will be based on the reasonable and customary charges of similar providers as determined by an appropriate state agency.
2. The Workers' Compensation Director will require out-patient surgery in all appropriate medical situations.
3. Research medical cost and utilization issues in order to establish criteria regarding the scope and duration of treatment.

IV.

REDUCE ADMINISTRATIVE COST AND STREAMLINE THE PROCESS

Legislative

1. "Modified" carrier closure.

Insurance carriers and self-insured employers will be able to close claims without the Evaluation Division of the Workers' Compensation Department, if:

- a. Worker has already returned to work;
- b. Worker is medically stationary;
- c. Department guidelines on permanent disability must be followed;
- d. One-year appeal by the worker to the Hearings Division. Agreements not to appeal are void;
- e. Penalties and attorney fees will be paid by insurer/self-insured employer if unreasonable carrier closure.

2. Insurance Company conflicts (.307 cases).

- a. Mandatory arbitration will replace current hearings;
- b. The insurance companies will share cost of arbitration;
- c. No appeal from the arbitration;
- d. Voluntary apportionment of the costs of the claim will be allowed;
- e. If worker's rights are at stake, issues must go to hearing.

3. Limit formal hearings when issues are only penalties and attorney fees.

In any case where the only issue is penalties and attorney fees, formal hearings will only be held if:

- a. A Referee has determined a case cannot be decided on stipulated facts;
- b. A mandatory pre-hearing settlement conference has been held (the participants need not be lawyers);
- c. The claim has been closed;
- d. Allow lay representation in workers' compensation cases when the amount in controversy is less than \$1000.

4. Attorney sanctions for frivolous appeals or defenses.

Require attorneys to pay hearing costs if they pursue frivolous claims or defenses.

5. Require prior approval of all attorney fees and require the establishment of fee schedule for attorneys representing workers and representing the insurance companies or self-insured employers.
6. Establish a small claims process in workers' compensation cases when the amount in dispute is less than \$1000.
7. Eliminate "de novo" review in the Court of Appeals. The standard will be "substantial evidence."
8. Abolish "own motion" jurisdiction (limit the tail).
 - a. The cutoff for filing aggravations for time loss will be five years from the time of the first closure;
 - b. Workers' Compensation Board can no longer reopen claims for time loss on their "own motion."
 - c. Medical care continues for life.

Administrative

1. Require uniformity of medical reports to assist in carrier closure.
2. Change emphasis of Department's monitoring function to active enforcement of a limited number of issues.
3. Provide detailed enforcement by audit.
4. Encourage use of computerized data transfer.

V.

STRESS

HB 2271 redefines mental stress.

Mental stress is compensable only if:

1. There is real and objective stress in the work place;
2. The stress is not inherent in every working situation;
3. The stress is not a result of political responsibilities or the supervisory responsibilities of a chief executive officer;
4. That there is clear and convincing evidence that the stress arose during the course and scope of employment.

VI.

INCREASE INJURED WORKER BENEFITS

Legislation

Increase permanent partial disability benefits from \$125 to \$145 per degree for scheduled disabilities (\$2.4 million per year/\$4.8 million per biennium).

Administration

1. Director shall undertake a study during the interim to determine whether a single benefit standard should be adopted (combine scheduled and unscheduled disabilities).
2. Director shall undertake a review to determine whether the dollar amount of disability payments should be redistributed by increasing the dollars per degree for serious permanent partial disability cases (and by reducing the dollar per degree for less serious permanent partial disability cases).

VII.

INSURANCE REFORM

Legislative

1. Increase actuarial resources available to Insurance Commissioner.
2. Switch burden of proof to the insurer in rate appeals.
3. Include employers who have under-reported or mis-reported in the Governor's Tax Amnesty Program.
4. Allow the Insurance Commissioner, upon his determination of need, to establish an Oregon Rating Bureau, or to contract with out-of-state bureaus that meet the Commissioner's established standards.

Administrative

1. Eliminate the surcharge in the assigned risk plan.
2. Stop retroactive rate increases by prohibiting delayed experience rating modification factors.
3. No SAIF funds to be used by State government for any purpose outside of SAIF.