

REPORT AND RECOMMENDATIONS
of the
JOINT LEGISLATIVE TASK FORCE ON
INNOVATIONS IN WORKERS' COMPENSATION INSURANCE
to the
SIXTY-SIXTH LEGISLATIVE ASSEMBLY

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EXECUTIVE SUMMARY

The Joint Legislative Task Force on Innovations in Workers' Compensation Insurance was established by SB 1198 (Section 6, Chapter 1, Oregon Laws 1990), and was charged with reexamining the role of the workers' compensation system as originally established in 1913, and evaluating the purpose and function of workers' compensation for the 21st century. The Task Force was specifically directed to recommend changes in Oregon's occupational and health insurance system to ensure a fair and cost-effective system for the delivery of medical care and financial benefits to injured workers and their dependents, to help reduce litigation, and to eliminate the adversarial nature of the current compensation proceedings.

Significant increases in the costs of the system as well as mounting dissatisfaction with it are prompting massive efforts to correct the problems nationwide. The problems facing all states, including Oregon, are multiple: increasingly prohibitive workers' compensation premium costs; escalating medical costs; and inefficient, expensive, and litigious administrative systems for delivering benefits and services.

The Task Force examined many of the policies and practices upon which the workers' compensation system is based. Testimony was presented from invited expert witnesses on eight subjects: (1) national trends in workers' compensation revisions and reform; (2) systems of health promotion or workers' compensation in countries other than the United States; (3) the coordination or consolidation of employee health insurance benefits with workers' compensation medical benefits; (4) employee health promotion and wellness programs; (5) employer safety training programs and safe work methods; (6) the role of the Health Division and Occupational Safety and Health Division (OR-OSHA) in implementing methods of health and safety prevention and intervention; (7) dispute resolution and public policy mediation programs; and (8) the application of the Unfair Claim Settlement Practices Act to all Oregon workers' compensation insurance carriers.

During the Task Force's hearings, two themes emerged. First, fewer and less costly workers' compensation claims are filed when management assumes direct responsibility and accountability for the safety and well-being of its employees. Second, fewer and less costly workers' compensation claims and a corresponding increase in worker productivity result in more profitable businesses.

The Task Force made six major findings: (1) Many states have recently passed legislation responding to the numerous problems in workers' compensation; (2) Employee health promotion programs are one method of decreasing health and workers' compensation costs; (3) Employer safety training programs and safe work methods are effective ways of preventing accidents and injuries in the workplace; (4) Developing a 24-hour health care policy that coordinates or consolidates employee health benefits with workers' compensation benefits, eliminating the distinction between work-related and non-work related injuries and illnesses, should be pursued; (5) Dispute resolution alternatives should be utilized to resolve workers' compensation disputes; and (6) All insurers who provide workers' compensation insurance in Oregon should be subject

to the provisions of the Unfair Claims Settlement Practices Act.

The Task Force introduced a legislative package that will implement the recommendations it found to be the most significant. The package includes six bills that would accomplish the following:

- Continue Task Force efforts to develop an alternative system to the current workers' compensation insurance system;
- Implement enabling legislation allowing an employer to offer 24-hour health insurance benefits and indemnity benefits rather than workers' compensation benefits;
- Require that health promotion and prevention programs be a component of an 24-hour health policy;
- Require that research and analysis of various components of the current workers' compensation system and proposals for alternatives to workers' compensation insurance be conducted that will guide further development of an alternative system;
- Allow workers' compensation disputes to be resolved with the assistance of a trained mediator;
- Extend and enhance the provisions of the Unfair Claims Settlement Practices Act.

The policy and legal issues are extremely complex. The committee did not have adequate time to address each of these issues in detail, but believe that they are sufficiently important to warrant further legislative review. Restructuring a system that adequately protects the health and safety of its citizens and that results in a healthy and more productive workforce must be done slowly and deliberately. However, the Task Force is resolved that ultimately this may be accomplished by developing an integrated health, safety, and disability system that protects individuals against the consequences of injury and illness by emphasizing prevention and early intervention; provides necessary medical care to ill or injured workers, regardless of the cause; provides income support to all disabled workers, their dependents, and to deceased workers' dependents; and offers employment and training services to those unable to return to their previous type of work.

The Task Force recommends that these efforts be continued so that true reform can be realized. The main policy alternative is to allow the cyclical revisions of workers' compensation to continue without achieving true reform.

FINDINGS AND RECOMMENDATIONS

The Task Force investigated numerous components of both the current workers' compensation system and a proposed integrated system of occupational health and safety. These Findings and Recommendations contain relevant portions of testimony and informational materials presented to the committee by various witnesses and serve as the basis of the Final Report and Recommendations formulated by the Task Force and presented to the Sixty-sixth Legislative Assembly.

National Trends

A. Findings

Approximately twelve states have recently enacted "reform" legislation. The primary purpose of these revisions is to reduce the employers' cost of workers' compensation insurance. Workers' compensation revisions may be categorized into six major headings: containing escalating medical costs; provisions to reduce reliance on litigation; changes in benefits; additional responsibilities for employers and insurance carriers; requirements to improve workplace safety; and new provisions concerning drug use in the workplace. The National Conference of State Legislatures (NCSL) has appointed a task force to investigate the current system to determine if it is amenable to successful revision, and to determine if creation of a new type of program is feasible or desirable.

B. Recommendations

1. Extend the Task Force until June 30, 1995 so it may continue to pursue the stated goals and objectives, monitor national activities in this area, oversee implementation of task force sponsored legislation and related legislation, and evaluate the effectiveness of programs as they are implemented. (SB 18)

Systems of Employee Health Promotion

A. Findings

Traditionally, the focus of the workers' compensation system has been on the employer and the employee after an injury or illness has occurred and a claim has been filed. Experience and research support the premise that decreasing the number of claims will reduce the cost of employer health and workers' compensation premiums. One method of working to reduce claims is by aggressively pursuing and promoting employee health and wellness. There are

many ways both small and large employers can accomplish this, including, for example: comprehensive assessments which include blood chemistry, health risk profile, body fat measurement, fitness evaluation and individual counseling. Assessments can be administered by a private provider such as Wellness, Inc., a company employee, or a county health department. Businesses can adopt corporate health strategies in order to achieve greater employee health per dollar spent. Healthworks, a Portland-based company, offers a unified package of consulting services and wellness programs called CHAMP - The Comprehensive Health Affairs Management Program. CHAMP has two components. One strives to upgrade the health status of the workforce by offering employee wellness programs. The other is health cost containment planning - a business guide to the health care marketplace, health benefit design, and corporate health policy. A critical element of wellness programs are an analysis of the major causes of disability and an analysis of the causes of absenteeism within the client's company. Generally, international and national experience indicates that the cost of operating health promotion programs is approximately one to two percent of operating costs. Companies concerned about the rising cost of doing business recognize the value of a healthy workforce and are willing to take innovative actions in an acknowledged problem area.

A significant problem lies in designing a system which clearly delineates responsibility for worksite health and safety promotion, which encourages an employer to place their skills and resources into health care promotion and prevention as well as treatment, and which motivates both employers and employees to cooperate and comply. The objectives of this system will be to establish and maintain a high standard of performance and accountability for the safety and well-being for all employees.

B. Recommendations

1. Educate employers and insurers about the personnel and fiscal benefits which can be achieved through the implementation of prevention and early detection programs.
2. Health and safety programs should not be considered an additional employee benefit, but rather a component of an employer's and insurer's basic health policy. Incentives should be developed which encourage employers and insurers to reimburse providers for health prevention treatment and wellness services. (SB 19)
3. Support innovative approaches to employee benefit programs. For example, give incentives to employers to pay a larger share of employees' health premiums if the employees or dependents do not smoke, maintain a healthy weight, or exercise regularly.

Employer Safety Training Programs and Safe Work Methods

A. Findings

The Task Force identified seven essential elements of health and safety management: (1) commitment of top management to do business in a safe and healthy way; (2) employee participation in developing and implementing workplace health and safety programs; (3) planning and maintaining a healthy and safe work environment; (4) assignment of responsibility, authority, and accountability to all employees; (5) safety education and training for all employees; (6) accident and illness investigation and prevention of future occurrences; (7) periodic review and follow-up activities.

Both large and small employers stressed that a critical aspect of maintaining a strong, efficient and cooperative workforce is to give employees the training and environmental protection necessary to perform their jobs in a safe and efficient manner, and for supervisors and managers to be accountable for the safety and well-being of their people. This can be accomplished by providing comprehensive safety education and awareness programs for all employees regularly. Elements of effective safe work methods programs include: good hiring practices, strong disciplinary and rehabilitation programs, comprehensive job training, easing new or returning employees into a job by beginning their work week on Thursday or Friday, use of safety committees, on-going supervisor training, on-going personal contact between managers and injured workers, early return to work programs, and use of temporary alternative work.

The goals of United Parcel Services' program are noteworthy: prevent injuries from occurring through proper training, maintain a high level of safety awareness, obtain the best medical care for their employees after an injury or illness occurs, preferably from a provider who is familiar with the workplace and the particular job requirements; deliver benefits in a timely manner, minimize disputes, and return employees to gainful employment as soon as possible.

B. Recommendations

1. Establish a comprehensive "safety management" policy rather than one which focuses on the individual components of materials, conditions or practices which encompass less precise areas, and define minimum acceptable standards for how safety should be managed.
2. Evaluate the effectiveness of safety committees and develop methods to increase employer and employee investment and participation. (SB 22)
3. Enhance the consultative and preventative services offered by OR-OSHA, as well as the compliance programs, increase penalties for serious violations and enhance the occupational health prevention and intervention research programs administered by the Health Division.
4. Provide consultative and educational services to small businesses.

24-Hour Health Coverage

A. Findings

Comprehensive employee "health coverage" provides health care insurance, health promotion activities, provision and use of sick leave for self and dependents, including spouse, children, parents, or significant others, income support during medical leave, and long-term disability benefits for those individuals whose disability prevents them from working.

Cost concerns have pushed workers' compensation to the front of the agenda in many states. Medical care is a significant component of workers' compensation, and medical costs are skyrocketing in workers' compensation at least as fast, and perhaps faster, than in other medical care delivery systems. In addition, the cost of medical care in Oregon is higher than in most other states. Recognizing the hidden tax in cost-shifting of health coverage, policy makers must directly address the question of cost allocation and distribution between employers, employees, and the public.

There is mounting evidence of interest in twenty-four hour coverage as a public policy issue deserving serious consideration. Twenty-four hour coverage has neither a precise nor a single definition. Generally, it attempts to remove the barriers between work-related and non work-related injuries and illnesses.

HealthChoice Administrators, Inc.'s "Twenty Four Hour Coverage Design Continuum" (see Exhibit A) describes four options. The first provides for a coordination of health benefits and workers' compensation administration. One company coordinates claims payments for two separate insurance companies into a single claims filing system. Such a program could significantly reduce duplicate payments and improper classification of claims.

The second type of program is a merged administration of claims - both health and workers' compensation. It is basically a twenty-four hour claims management program handling both workers' compensation and medical claims. Some of the advantages of a combined system, identified by Kipp and Company, who offer this service to members of the Oregon Hospital Association, are: elimination of double billing; benefit shifting; tracking secondary injury claims; coordination of benefits of medical, workers' compensation and spousal medical coverage; employee demographics; and employee education. Under current Oregon law, self-insureds/self-funded programs could utilize this option.

The third type of twenty-four hour coverage would be payment of a single premium which merged health insurance and the health portion of workers' compensation. The fourth would be a comprehensive merged health insurance, sick leave, short term disability, life insurance, and workers' compensation health and time loss and death benefits. While the Task Force is extremely interested in exploring these policy options, it is unaware of any combined products currently available on the market.

Originally, the discussion occurred exclusively among those associated with workers' compensation. Now, those concerned with providing health insurance to the presently uninsured, especially the employed uninsured, are interested. Merging workers' compensation medical coverage with some form of mandatory health coverage for non-occupational health problems is viewed as a way to provide more coverage at a lower price than could be accomplished through two separate programs.

There are, at a minimum, nine significant policy issues which must be addressed when considering the concept of 24-hour health insurance coverage: (1) use of co-pays and deductibles which are common in employee health benefits and presently banned in workers' compensation; (2) use of managed care; (3) guaranteed issue of insurance coverage; (4) scope and level of benefit coverage; (5) employee/family coverage issues; (6) confidentiality issues; (7) access to allied health providers; (8) integrating workers' compensation disability and indemnity benefits with other available benefits to create a single, comprehensive scheme, commonly called a universal disability plan; and (9) validity of alternative workers' compensation benefit programs under ERISA (Employment Retirement Income Security Act of 1974).

B. Recommendations

1. Enact enabling legislation making the provision of 24-hour health insurance benefits and a policy to provide indemnity benefits rather than workers' compensation benefits permissible for an employer with approval of the Department of Insurance and Finance. The department shall establish criteria for the exemptions and collect sufficient information to evaluate the alternative programs. (SB 19)

2. Track implementation of SB 935 (Chapter 381, Oregon Laws 1989), which mandate health insurance coverage, and work with the Insurance Pool Governing Board and others to expand authority of pool and develop a combined policy.

3. Developing data in this area will be extremely valuable and important, as many states will be watching Oregon. In addition, data comparable to this is not currently maintained. Therefore it is recommended that a Workers' Compensation Research Institute be established and directed to conduct the following research and analysis: (SB 22)

(a) evaluate use of workers' compensation system by employees who also have employee health coverage with those who do not have employee health coverage (this is a utilization/usage study, not an actual cost study);

(b) compare employee health benefit premium costs (medical) with workers' compensation medical costs, both in terms of premiums spent and cost of actual dollar amount spent on medical services (compares premium dollars spent);

(c) compare employee disability coverage premium costs with workers' compensation premium costs for disability coverage (compares premium dollars spent),

(d) compare usage dollars for non-workers compensation medical services with workers' compensation medical service dollars;

(e) studies designed to answer questions about the nature, prevalence, and

incidence of occupational illness and injuries in Oregon.

(f) studies evaluating the effectiveness of preventative strategies for the prevalent and/or particularly costly occupational injuries and diseases.

(g) studies designed to recommend how to streamline coverage so that families are not covered under two separate and duplicative insurance programs.

(h) studies designed to evaluate whether the use of reasonable deductible and co-payments discourages frivolous use of health programs.

(i) studies designed to evaluate the outcomes of Task Force enacted legislation.

(j) studies designed to evaluate use of alternative dispute resolution programs applicable to individual disputes and public policy consensus building within workers' compensation law.

4. Seek a private insurance company model.
5. Seek a private employer participant model.
6. Support enactment of legislation which guarantees issuance of health insurance coverage.

Alternative Dispute Resolution Options

A. Findings

Alternative dispute resolution (ADR) refers to a broad range of mechanisms and processes designed to assist parties in resolving differences. The three primary processes are adjudication, including arbitration, mediation, and negotiation. These alternative mechanisms are not intended to supplant court adjudication but rather to supplement it. Use of dispute resolution techniques should result in a reduction of costs, reflected in fewer cases being brought, cases being settled earlier, and cases being resolved with the interests of all parties being satisfied.

Political bodies can achieve significant policy changes by using collaborative problem-solving processes. This is defined as a process of joint decision making among key stakeholders concerned about the future of a public policy issue. There are four key elements: the stakeholders are interdependent; solutions emerge by dealing constructively with differences; there is joint ownership of decisions involved; and stakeholders assume collective responsibilities for the future direction of the public policy issue. Examples of these processes include negotiated rulemaking, policy round tables, and negotiated investment strategies, all of which have been used in Oregon.

B. Recommendations

1. Evaluate and recommend use of alternative dispute resolution programs for workers' compensation. (SB 22)
2. Enact enabling legislation which allows workers' compensation disputes to be resolved with the assistance of a trained mediator, and which establishes training requirements for mediators and procedures for election to mediate the claim. (SB 20)

Unfair Claims Settlement Practices Act - ORS 746.230 and 746.240

A. Findings

Insurers who provide workers' compensation insurance are regulated in part by the Insurance Code and in part by the Workers' Compensation Act. General insurance practices are covered within the Insurance Code; specific workers' compensation provisions are regulated by the Workers' Compensation Law.

The provisions of the Unfair Claims Settlement Practices Act under the Insurance Code regulates the conduct of insurers or other persons regarding claims investigations, claim handling, and claims settlement. Given that this is an insurance practice, all workers' compensation insurance carriers, with the exception of SAIF Corp., are subject to its provisions. The statutory remedy for a violation of this act lies with the director of the Department of Insurance and Finance who has the authority to impose civil penalties.

The predecessor to the SAIF Corp. was a state owned and operated insurance agency. As a state agency providing workers' compensation insurance, it was exempted from many provisions of the Insurance Code. However, after the creation of the SAIF Corp. as an independent corporation operating like a regular insurance company, the legislature saw a need to make applicable to SAIF certain provisions of the Insurance Code. These are listed at ORS 731.028. To date, the specific provisions of the Unfair Claims Settlement Practices Act have not been statutorily applied to the SAIF Corp. even though it provides workers' compensation insurance to a significant number of employers in this state.

Remedies arising from violations of the Workers' Compensation Act are exclusively statutory. Remedies arising from violations of the Insurance Code are found both in statute and in civil and common law. The director can assess penalties for violations. However, there are no provisions which directly compensate an party injured by an action which is regulated by the Unfair Claims Settlement Practices Act.

B. Recommendations

1. Extend the provisions of ORS 746.230 and 746.240 to the SAIF Corp. (SB 24)
2. Establish a private right of action for claimants and employers injured by a violation of the Unfair Claims Settlement Practices Act. (SB 25)

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