Part Three

The Future of Workmen's Compensation

The rationale for continuing the workmen's compensation program and suggestions for improvements in the program

Chapter 7

A Time for Reform

A. OVERALL EVALUATION OF WORKMEN'S COMPENSATION

The Workmen's Compensation Commission was directed to "undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation." (See Glossary for our use of "adequate" and "equitable.") This summary of the Commission's evaluation is based on the five objectives of a modern workmen's compensation program: coverage, income maintenance, medical care and rehabilitation, safety, and an effective delivery system.

1 Workmen's Compensation Should Provide Broad Coverage of Employees and Work-Related Injuries and Diseases

Although on an upward trend, workmen's compensation coverage is inadequate. Only about 85 percent of all employees are presently covered. The wide variations among the States in the proportions of the labor force covered are inequitable. Moreover, those not covered usually are those most in need of protection: the non-union, low-wage workers, such as farm help, domestics, and employees of small firms.

In the past, some work-related injuries were not compensable because certain legal tests could not be satisfied, such as the requirement that an injury be the result of an "accident." Because these legal tests have been liberalized, most work-related injuries now are compensable. The status of work-related diseases is less satisfactory. Despite considerable improvement, some 10 States still do not provide full coverage for work-related diseases, and the statute of limitations is so short in some States that many

diseases are not compensable because symptoms appear long after exposure.

2 Workmen's Compensation Should Provide Substantial Protection Against Interruption of Income

In general, workmen's compensation programs do not provide adequate income maintenance. Disabled workers in the majority of cases receive less than two-thirds of their lost wages. In most States, maximum weekly benefits for a non-farm family of four are below the poverty level of income. Many States also have limits on the duration or total amount of benefits or both. The inadequacies of benefits mean that too high a proportion of the burden of work-related disability is borne by workers and the taxpayer rather than by employers.

Workmen's compensation income benefits are not equitable. One obvious inequity is the substantial difference among the States in the adequacy of benefits. There are also intra-State inequities in those jurisdictions with low maximum weekly benefits because a higher proportion of wage loss is replaced for low-wage workers than for high-wage workers. Another source of apparent inequity in some States is the substantial amount of benefits paid for minor injuries relative to the benefits paid for serious injuries.

We do not have sufficient data to evaluate definitively promptness of payment. The better private carriers, State funds, and self-insurers are doing excellent jobs of beginning payments in uncontested cases. Such promptness appears to be one of the strengths of workmen's compensation. In contested cases, the record is less satisfactory.

3 Workmen's Compensation Should Provide Sufficient Medical Care and Rehabilitation Services

The provision of medical care, including physical rehabilitation, is generally adequate, equitable, and prompt. Serious exceptions are found in those few States which limit the duration or dollar amount of medical care.

The vocational rehabilitation record is uneven: some programs are excellent but too many are not. Poor performance is due partially to inadequate supervision by some State workmen's compensation agencies, to insufficient attention to the plight of the industrially disabled by departments of vocational rehabilitation, and to the lack of coordination between the two programs.

The potential of workmen's compensation to return rehabilitated workers to jobs is limited by the unfortunate reluctance of many firms to employ the handicapped. Working within this limitation, workmen's compensation has a reasonably good record. One device for supporting rehabilitation is the second-injury fund, which protects employers from extraordinary workmen's compensation costs associated with employment of the physically impaired.

4 Workmen's Compensation Should Encourage Safety

While there is only limited evidence of the actual influence of workmen's compensation on safety, the use of merit rating means the potential influence is significant. As income benefits and medical care and rehabilitation are provided, the assessment against the employers for the benefits should provide automatic incentives to safety. Substantially stronger safety incentives would result from the benefits recommended by this Commission. The safe way will become the economical way.

5 Workmen's Compensation Should Have an Effective Delivery System

The four basic objectives—coverage, income maintenance, medical care and rehabilitation, and safety—can be achieved only if employers, insurance carriers, State agencies, and all others involved in the workmen's compensation program are organized into an effective delivery system. With more than 5,000,000 cases a year, administration of benefits is a huge task. Many States now have reasonably effective delivery systems. Some are excellent.

The two main deficiencies in the delivery systems are rooted in attitudes that are passive rather than active. Some States do not initiate programs to protect workers, usually for lack of adequate funding and staffing of the workmen's compensation agencies.

The second deficiency, excessive litigation, results in unnecessary delay, expense, and interference with rehabilitation. Compounding the influence of passive administration, agency rules and procedures often stimulate litigious attitudes. Also, because payments of claims lead to higher costs, employers have greater incentives to resist claims than if benefits were financed by a flat rate tax or assessment.

Conclusion

The inescapable conclusion is that State workmen's compensation laws in general are inadequate and inequitable. While several States have good programs, and while medical care and some other aspects of workmen's compensation are commendable in most States, the strong points are too often matched by weak.

Consider the record of the States in meeting the recommended standards published by the Department of Labor. (Table 7.1) These recommendations, have been well publicized. Several are conservative compared to the recommendations of this Commission. If all 50 States were in compliance with the 16 recommended standards, the total compliance "score" would be 800. As of 1972, the actual "score" is 403 ~~402~~. The inequities of workmen's compensation are underlined by the wide variation among the States in their record of compliance. Although 9 States meet 13 or more of the recommendations, 10 States meet 4 or fewer.

TABLE 7.1. Number of jurisdictions meeting 16 recommended standards, 1 Jan. 72

Standards Met	States (50)	Other "States" (6)	Federal (2)
13-16	9	1	1
9-12	~~13~~ 14	4	1
5-8	~~16~~ 17	0	0
0-4	10	1	0

See Table 2.3 for explanatory note.

In recent years, legislatures have adopted many improvements in State workmen's compensation laws. In 1971, more than 300 changes were enacted, about 50 percent more than customary in odd-year sessions. Significant improvements in several States in 1972 include reductions in numerical exemptions to coverage and removal of limits on medical care. This recent burst of activity is encouraging, but some have suggested it was caused by the creation of this Commission and may not be sustained after our activities cease.

Moreover some improvements may slip away. For example, benefit maximums in most States must be amended from time to time to keep benefits in proper relationship to State average weekly wages. Yet wage increases due to inflation and higher productivity have not been reflected in proportionate increases in maximum weekly benefits.

No member of this Commission wishes to convey an unduly bleak assessment of workmen's compensation. The program has many virtues and the recent life signs are encouraging. Nonetheless, all of us feel that the present program has serious deficiencies. The proper remedy for these deficiencies is the concern of the balance of the report.

B. IS THERE A CONTINUING RATIONALE FOR WORKMEN'S COMPENSATION?

Does our evaluation suggest that workmen's compensation is permanently and totally disabled, or is there a continuing rationale for the program?

Only an ivory tower iconoclast would answer this question in the abstract. Properly, it must be answered by considering the realistic alternatives to workmen's compensation. While workmen's compensation has weaknesses, it also has strengths. It should be abandoned only if an alternative has a better mix of strengths and weaknesses.

Damage Suits

One possible alternative is to rely on negligence suits. From the worker's standpoint, this option may be somewhat more attractive than it was 50 years ago, when workmen's compensation was first widely adopted, because the plaintiff's burden subsequently has been eased in negligence suits. Other reasons, however, have convinced us that, for workers and others, workmen's compensation is preferable to negligence actions. For example, the issue of

negligence is particularly elusive in the work setting. Most studies of work-related impairments stress the intermingling of employee and employer responsibility in a substantial proportion of accidents. The determination of negligence tends to be expensive and the outcome uncertain. Payments tend to be delayed when negligence suits are prosecuted, and overcrowded court dockets would compound the delays. Some workers eventually would receive damage awards in excess of workmen's compensation benefits, but others would receive no protection. Moreover, even when the worker succeeded in winning monetary damages, the litigation could be a substantial deterrent to successful rehabilitation.

We conclude that damage suits are a distinctly inferior alternative to workmen's compensation.

Disassemble Workmen's Compensation and Assign the Components to Other Programs

Another alternative is to disassemble workmen's compensation and assign the components to other programs. One scheme would assign permanent total disability cases to the Disability Insurance (DI) program of Social Security and temporary total disability cases to State temporary disability insurance (TDI) programs. The medical component of workmen's compensation could be assigned to an expanded Medicare or national health insurance program, and rehabilitation could be absorbed by the State Departments of Vocational Rehabilitation (DVR). Finally, the safety aspect could be assumed by the enforcement agencies of the Occupational Safety and Health Act of 1970.

This systematic disassembling of workmen's compensation may become feasible in some other era, but we are convinced the problems associated with this approach are too serious to justify the strategy now.

Each program to which the components of workmen's compensation would be assigned has at least one serious deficiency compared to workmen's compensation. A few examples of the deficiencies are the following:

The Disability Insurance program under Social Security has eligibility requirements much more stringent than those in workmen's compensation. In workmen's compensation, the worker is eligible from the first day he is hired, whereas workers are only eligible for DI benefits after several quarters of covered employment. Insofar as short term disability is concerned, only five States plus Puerto Rico have temporary disability insurance programs. It is one thing to think about transferring short-term work-related disability cases to well established TDI programs; quite another to think about phasing workmen's compensation into largely nonexistent programs.

Even if permanent total disability cases were absorbed by DI and temporary total disability cases by TDI programs, the most important aspect of cash benefits in workmen's compensation would remain unassimilated. No generally available program other than workmen's compensation pays benefits because of permanent partial impairments. (We exclude veteran's programs from consideration because veterans comprise only about one third of the labor force.) The determination of the extent of permanent impairment is complicated and requires scarce administrative expertise as well as considerable expenditures. There would be significant startup costs if another program were assigned the permanent partial aspect of workmen's compensation.

Moreover, any scheme that would assign permanent total and temporary total cases to other programs but leave permanent partial cases to workmen's compensation would be an administrative nightmare. The typical workmen's compensation case paying permanent partial benefits also involves payments of temporary total benefits, and often eligibility for permanent partial and permanent total benefits is determined at the same time. Unless this component of workmen's compensation were abandoned, an option which we strenuously oppose, there is no choice but to continue workmen's compensation as a source of permanent partial benefits.

We do not believe there is likely to be available in the near future a satisfactory alternative to workmen's compensation as a source of medical care. If national health care were to be extended to cover all work-related impairments, employees would in general be affected adversely. Most proposals for national health insurance contain "deductibles" and other limitations

on benefits not found in most workmen's compensation statutes.

We would be reluctant also to see the rehabilitation component of workmen's compensation assigned to another program. One of the difficult tasks of workmen's compensation is the coordination of the medical care and physical and vocational rehabilitation services. The difficulties of coordination would be accentuated if rehabilitation were completely removed from the workmen's compensation system.

The assignment of the safety aspect of workmen's compensation to another program also has disadvantages. The Federal government now has a substantial safety program established by the Occupational Safety and Health Act of 1970. We believe this role will be constructive, but the OSHA approach will require extensive appropriations through the decades to assure its effectiveness. Workmen's compensation has the virtue that the linkage of benefits paid to insurance costs should automatically provide a strong incentive for safety.

Finally, no other delivery system is generally superior to workmen's compensation. Most alternatives to workmen's compensation involve an expanded role for the Federal government. This Commission has seen no evidence to suggest that Federal programs are better administered than State workmen's compensation programs. It is true that the administrative costs of workmen's compensation are higher than in some other social insurance programs. These comparisons, however, can be misleading because other programs do not face the same complexities of administration. In particular, because cash benefits for permanent partial disability are the most expensive component of workmen's compensation, and because the determination of permanent impairment requires substantial administrative expense, we caution against any assumption that administrative costs could be significantly reduced by absorbing the services now provided by workmen's compensation into another program.

Conclusion

We have written this report neither to praise nor to bury workmen's compensation. We would liken our attitude to Winston Churchill's views on democracy.

> Many forms of government have been tried and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.

Perhaps in another decade or two, an attractive alternative to workmen's compensation will emerge. We are unable to predict the social insurance programs that will appear in our social evolution.

For the present and the foreseeable future, we are convinced that, if our recommendations for a modern workmen's compensation program are adopted, the program should be retained.

C. PREVIOUS EFFORTS TO IMPROVE WORKMEN'S COMPENSATION

The work of this Commission is not the first effort to improve State workmen's compensation programs. This section briefly recounts some earlier efforts and attempts to isolate the factors which explain the successes and failures.

Individual State Reforms

In several States, improvements in the law were preceded by concentrated efforts at reform. In New York, the amendments which restructured the administration of the program followed a series of studies by Moreland Act Commissioners. The most recent study was presented to Governor Rockefeller in 1962 by a Governor's Workmen's Compensation Review Committee.

A California commission, composed of representatives from management, labor, the insurance industry, the medical and legal professions, and the public, issued a report in April 1965 which led to improvements directed toward reducing litigation and separating the administrative and adjudicative functions.

In Oregon, the Act was entirely restructured in 1965 as a result of an intensive negotiating process among management, labor, and other interest groups.

A Governor's Study Commission in Maryland, in continuous existence since 1956, devel-

ops its own recommendations and presents them to the legislature and the Governor. Its recommendations are considered a major factor in recent improvements in the Maryland Act.

Idaho revised its workmen's compensation law extensively in 1971 following a two-year study by a commission appointed by the Governor. Improvements included a basic maximum weekly benefit on a sliding scale allowing 60 to 90 percent of the average weekly wage in the State, full coverage of occupational diseases, and a second-injury fund with broad coverage of impairments.

In Pennsylvania, substantial reforms achieved early in 1972 included the requirement that all hearing examiners be full-time employees. These reforms were not preceded by a formal study but represented a consensus arrived at by the current State administration and the many groups interested in workmen's compensation. Late in 1971, the Pennsylvania AFL-CIO and the Pennsylvania State Chamber of Commerce supported the pending legislative changes with an unprecedented joint press release.

No one model describes the route of these achievements. Only a few elements appear consistently in many States. Reforms can be achieved by a relatively small number of advocates, but their characteristics and following differ from State to State. In general, reforms have resulted from investigations supported or initiated by State officials, although in Oregon the workmen's compensation officials did not participate until the reform effort was underway. Usually two or more years elapse from the initiation of a reform to legislative enactment.

Aside from these few generalizations, perhaps the most important conclusion to be drawn about workmen's compensation reforms in individual States is that they are all too rare. There is no guarantee that a State which needs a thorough review of its workmen's compensation law will spontaneously generate such an investigation.

Standards Recommended by National Organizations

Another approach to improving workmen's compensation has been the promulgation of recommended standards by national organizations. The 16 recommended standards published by the Department of Labor are based on the standards recommended by other organizations such as the American College of Surgeons, the National Rehabilitation Association, and the Council of State Governments. The Department of Labor recommendations were first published in 1959 and, with some modifications, have since appeared in four bulletins together with a record of State compliance.

The International Association of Industrial Accident Boards and Commissions (IAIABC), the professional organization of State workmen's compensation administrators, also has recommended standards. The IAIABC has encouraged States to meet its 22 recommended standards by techniques such as sending a certificate to each Governor indicating the number of standards met by his State. The extent of compliance with these standards was evaluated in 1972 by the IAIABC. The 50 States plus the District of Columbia and Puerto Rico were reported on average to comply in full with 14 of the 22 standards.

States might be expected to comply with IAIABC standards more readily than those published by the Department of Labor since the IAIABC members administer the State programs and presumably have an intimate and realistic understanding of State needs. However, it is sometimes awkward for an administrator to pursue his own views aggressively when he faces a recalcitrant Governor or State legislature. This ambivalence was reflected in our hearings when a representative of the IAIABC said that while the organization strongly supported its own recommended standards, it "specifically rejects the proposition that a State act which does not meet all standards is an inadequate or undesirable act or that such act is not substantially meeting the needs of the worker."

The Atomic Energy Commission since 1965 also has recommended standards for State workmen's compensation laws. The AEC interest in workmen's compensation stems from the issue of compensability for workers whose exposure to ionizing radiation show no clinical effects until long after the time allowed in some States for claiming workmen's compensation benefits. Several States have modified provisions of their laws relating to radiation hazards, especially with respect to the time allowed for filing claims. The IAIABC mentions effects of radiation in its recommended standards. The Atomic Energy Commission has had reasonable

success in promoting its standards, perhaps because it is well financed and has concentrated on a narrow range of issues which encompass a compelling need.

In general, past efforts to improve workmen's compensation merely by recommending the adoption of standards have a sparse record of success. Moreover, the standards recommended tend to be limited in number and detail.

Lobbying or Other Promotional Efforts

Some interest groups have attempted to improve workmen's compensation by lobbying or other promotional activities. For example, trade unions, by use of their political influence, were a key factor in changes in California and Michigan laws. As their strength varies considerably among the States, unions have not been successful in all their efforts to improve workmen's compensation. Moreover, in States where labor is weak, reform of workmen's compensation has generally received lower priority than goals such as repeal of "open shop" or "right to work" laws.

The insurance industry also has attempted to promote changes in workmen's compensation laws. The industry is in a difficult position, however, because its clients are employers and it is tempted to avoid any stand which could possibly antagonize them. Historically, the insurance industry attempted to be at best "neutral" on any issue about workmen's compensation. Much of its lobbying energy was devoted to opening up exclusive-fund States to the private insurance industry. During the last decade, there has been a heartening change of attitude by the private carriers, which are taking a more active part in promoting needed improvements.

It seems clear that, in efforts to improve workmen's compensation by lobbying or other promotional efforts, one interest group seldom can succeed by itself. In general, reform has been successful only where several interest groups have acted in concert.

The Model Act Approach

During the 1960s, a coordinated effort among the interest groups in workmen's compensation to improve the program nationally resulted in the proposed "Workmen's Compensation and Rehabilitation Law." This Model Act was drafted by a committee of the Council of State Governments chaired by Arthur Larson, former Under Secretary of Labor. The committee included representatives from industry, labor, State agencies, insurance carriers, the medical profession, the academic community, and Federal agencies interested in workmen's compensation. The law, drafted over a four year period, was published in 1963 and 1965 by the Council of State Governments in *Suggested State Legislation.*

Despite the impressive credentials of the drafting committee and the prestige of the sponsoring organization, no State has adopted the act either in its entirety or in substantial part. In contrast, another model act, the Uniform Commercial Code, has been adopted with only minor modifications in 49 States. Since the U.C.C. is perhaps even more controversial than the model workmen's compensation act, the lack of success in workmen's compensation can best be explained by other factors.

Evaluation of Previous Efforts

Past efforts to improve workmen's compensation have had some success, but it is evident from our evaluation of the workmen's compensation program, that these efforts have been insufficient. The crucial question is why? There appear to be several reasons.

Lack of interest or understanding. Workmen's compensation is relatively complex. During our hearings a bewildering array of provisions were described. The terms used have different meanings according to context. We can appreciate that State legislators and other officials have difficulty in understanding workmen's compensation and that lack of understanding too often has led to lack of attention.

Moreover, workmen's compensation is seldom the most compelling topic of the day. The program generally receives far less notice than pollution, or minimum wage laws, or auto insurance. This low visibility persists even though there are millions of workmen's compensation cases a year. The average employee is indifferent perhaps because thinking about industrial accidents is unpleasant; it is only human to assume "It won't happen to me."

For the average employer, workmen's compensation costs represent only about one percent of payroll, a relatively unimportant charge compared to the wages or to other fringe benefits which add about 25 percent to straight-time wages. For trade unions, items such as wages or retirement benefits receive prior attention because these items affect more employees and represent more money and because they are handled by direct negotiations with the employer. Collective bargaining usually is a much more productive use of union time than lobbying to improve workmen's compensation benefits.

Legislators and other State officials for their part are faced with competing demands from many sources on issues which generally command more public attention than workmen's compensation. Too rarely do State workmen's compensation administrators take the initiative to educate the electorate or to espouse legislation to improve the program. They usually respond to requests for assistance from others promoting changes, but in few States do administrators assume responsibility for initiating reform.

In short, deficiencies in workmen's compensation in many States result from lack of leadership, understanding, and interest.

Veto power of the interest groups. In many States, substantial reform is difficult because there is more than one interest group with power to veto proposed changes in the law, and it is difficult to find a package of amendments acceptable to all parties. Under these circumstances, a State may be locked into a program despite serious abuses.

This veto power takes strength from the general lack of understanding about workmen's compensation. In some States, the legislatures have reacted to complexities by in effect delegating authority for workmen's compensation to important interest groups. Under the "agreed bill" procedure, legislatures adopt amendments mutually acceptable to labor and management. Unfortunately, these parties often deadlock: employers block action because they object to cost increases associated with general improvements in the law; trade unions because they will not surrender certain cherished practices, such as the right to a de novo trial, which labor in some States considers an important element of protection. Also, some labor officials are unwilling to give up the disproportionate awards in minor permanent partial cases in exchange for increased benefits for serious permanent impairments.

The difficulties confronting labor and management in reaching agreement are sometimes compounded by their use of agents. Employers often rely on trade associations, whose staff people sometimes prove their worth by fighting benefit increases and claiming savings. Attorneys representing the various interest groups abound, and their clients are not always well served. For example, trade unions often are represented by plaintiffs' attorneys who too often view litigation as an end in itself to be protected at the expense of other reforms.

Competition among States. The economic system of the United States encourages the forces of efficiency and mobility. These forces tend to drive employers to locate where the environment offers the best prospect for profit. At the same time, many of the programs which governments use to regulate industrialization are designed and applied by States rather than the Federal government. Any State which seeks to regulate the by-products of industrialization, such as work accidents, invariably must tax or charge employers to cover the expenses of such regulation. This combination of mobility and regulation poses a dilemma for policymakers in State governments. Each State is forced to consider carefully how it will regulate its domestic enterprises because relatively restrictive or costly regulation may precipitate the departure of the employers to be regulated or deter the entry of new enterprises.

Can a State have a modern workmen's compensation program without driving employers away? Our analysis of the cost of workmen's compensation has convinced us that no State should hesitate to adopt a modern workmen's compensation program. Interstate differences in workmen's compensation costs for the average employer rarely exceed one percent of payroll. Surely no rational employer will move his business to avoid costs of this magnitude. For most employers, the costs are relatively insignificant compared to other differences among States, such as wage differentials or access to markets or materials. There are, to be sure, a small minority of employers for whom work-

men's compensation costs are significant because of their adverse loss experience, but it seems folly for a State to contrive a cheap workmen's compensation program in order to keep these employers from moving elsewhere. In any event, the incentive to relocate is dampened because the Federal corporate profits tax would substantially reduce the benefit an employer would gain by moving to a State with low workmen's compensation costs.

While the facts dictate that no State should hesitate to improve its workmen's compensation program for fear of losing employers, unfortunately this appears to be an area where emotion too often triumphs over fact. Given the degree of uncertainty about the factual costs of workmen's compensation, State legislators cannot be expected to become experts on interstate differences in such costs to employers. Furthermore, whenever a State legislature contemplates an improvement in workmen's compensation which will increase insurance costs, the legislators likely will hear claims from some employers that the increase in costs will force a business exodus. It will be virtually impossible for the legislators to know how genuine are these claims. To add to the confusion, certain States have abetted the illusion of the runaway employer by advertising the low costs of workmen's compensation in their jurisdiction.

When the sum of these inhibiting factors is considered, it seems likely that many States have been dissuaded from reform of their workmen's compensation statute because of the specter of the vanishing employer, even if that apparition is a product of fancy not fact. A few States have achieved genuine reform, but most suffer with inadequate laws because of the drag of laws of competing States.

D. NEW STRATEGIES FOR IMPROVING WORKMEN'S COMPENSATION

The main body of this report has been devoted to evaluation of the present workmen's compensation program and to our recommendations for a modern workmen's compensation program. We are required by the Act to discuss the "methods of implementing the recommendations of the Commission." At least five methods to improve workmen's compensation were suggested at our hearings.

First, the States could be left to improve their laws without Federal guidance or assistance. This position was supported by witnesses who believed that the present State programs are acceptable, particularly in light of the rate of recent improvements and current reform movements.

Second, additional guidance could be presented to the States, and State action encouraged. This guidance in the form of recommendations by this Commission, especially if endorsed by Congress, could be expected to stimulate State improvements by drawing national attention to the critical needs of injured employees. Reforms might then proceed on a State by State basis, or multistate action might occur through techniques such as an interstate compact.

Third, State action could be mandated by the Federal government. For example, Congress could enact basic minimum standards for State workmen's compensation laws and provide an enforcement procedure. Support for this position was urged by some witnesses because of the lack of extensive compliance with previous recommendations by eminent national organizations.

Fourth, State action could be encouraged by Federal assistance, such as grants to develop additional data on the operation of State programs.

Finally, workmen's compensation could be taken over entirely by the Federal government, which would control the substantive terms and administer the program.

These five methods, though not exhaustive, cover the range of possible methods for improving workmen's compensation most commonly suggested to the Commission at its hearings. The second, third, and fourth methods are not mutually exclusive; indeed, most proposals to this Commission have consisted of a mixture of the three.

The members of this Commission have devoted much time and effort to considering the possible methods of implementing our recommendations. No topic received more attention at our hearings. Because we all believe so fervently that the present program must be strengthened, we have thoroughly debated the issues. The result of our debates is that we are in substantial or complete agreement on most aspects of implementation.

We reject the suggestion that Federal administration be substituted for State programs at this time.

The States have the distinct advantage of having personnel and procedures in place: a Federal takeover would substantially disrupt established administrative arrangements. Moreover, most Commissioners believe there is no evidence that Federal administrative procedures are superior to those of the States. Several Commissioners believe that a Federal takeover of workmen's compensation may be appropriate in a few years if present deficiencies in the State program are not repaired promptly, but they also believe these deficiencies can be overcome by the States.

We believe that our recommendations should be adopted by the States as soon as possible.

In preceding chapters, we have presented the five major objectives of a modern workmen's compensation program and our specific recommendations for achieving these objectives. Although not every aspect of a workmen's compensation program is included in our prescriptions, we believe we have presented sufficient guidance to enable each State to modernize its workmen's compensation program thoroughly.

Adoption of our recommendations will increase the costs of workmen's compensation in all States and for most employers, but we believe that employers and States have the resources to meet these costs.

Reform of the workmen's compensation programs largely can and should take place at the State level. Nonetheless, we believe that the virtues of a decentralized, State-administered workmen's compensation program can be enhanced by creative Federal assistance.

This assistance should take two forms: (1) appointment by the President of a new commission and (2) a 1975 review of the States' record of compliance with the most essential of our recommendations. This review should culminate in Federal mandates if necessary to guarantee compliance.

A New Commission: An Immediate Opportunity for Federal Assistance

We urge the President immediately to appoint a Federal workmen's compensation commission to provide encouragement and technical assistance to the States.

One critical role for the commission will be to provide encouragement to the States to modernize their workmen's compensation programs. Another role will be to help the States learn from one another. We have been impressed by the evidence in our hearings that a superior method in one State is not adopted swiftly by other States. This lag is partially explained by the complexity of workmen's compensation.

The specific activities of the new commission should include:

1 Providing assistance to the States to help them establish committees both to reexamine the State laws in light of our report and to develop support for needed reforms. Some of our recommendations will be modified by each State to reflect variations in size, population, and economic activity. The assistance of the new Federal commission to the State committees should include technical services and, if available, commission funds.

2 Reporting annually to the President and to the Congress on the progress of the States in meeting the recommendations in our report.

3 Analyzing certain critical areas of workmen's compensation, as described below, which could not be adequately examined by this Commission during its limited term.

4 Advising the States on whether their laws are in compliance with the mandates discussed below. The advice could be given to individual States or employers who are uncertain about their compliance status.

5 Assisting in the development of uniform or comparable data, and analyzing data and the operation of State workmen's compensation programs.

Federal Guarantee of Essential Reform

All of our recommendations are important.

Nonetheless, certain of our recommendations are essential and particularly suitable for Federal support to guarantee their adoption.

Each State act should incorporate the following essential recommendations:

Compulsory coverage. (Recommendation 2.1.)

2 **Coverage with no occupational or numerical exemptions: Coverage should include farm workers, household workers, and State and local employees.** (Recommendations 2.2, 2.4, 2.5, 2.6, and 2.7.)

3 **Full coverage of work-related diseases.** (Recommendation 2.13)

4 **Full medical care and physical rehabilitation services without limitation as to time or dollar amount.** (Recommendations 4.2 and 4.4)

5 **Employees may file claim in the State where injured, or where hired, or where employment is principally localized.** (Recommendation 2.11)

6 **Temporary total benefits.** A worker's benefit should be no less than 66 2/3 percent of his average weekly wage (Recommendation 3.7), subject to a maximum weekly benefit of at least 66 2/3 percent of the State's average weekly wage by July 1, 1973, and at least 100 percent of the State's average weekly wage by July 1, 1975. (Recommendation 3.8) There shall be no limit on duration or total dollar amount during the period of disability (Recommendation 3.17).

7 **Death benefits.** Surviving dependents should receive no less than 66 2/3 percent of the worker's average weekly wage (Recommendation 3.21), subject to same maximums as temporary total (Recommendation 3.23), with no limit on duration or total dollar amount of benefits during the period of statutory dependency (Recommendation 3.25).

8 **Permanent total benefits.** A worker's benefit should be no less than 66 2/3 percent of his average weekly wage (Recommendation 3.12), subject to same maximums as temporary total (Recommendation 3.15) with no duration or total dollar limits on benefits. (Recommendation 3.17.) The Commission's recommendation for the definition of permanent total disability should be used. (Recommendation 3.11.)

We urge the States to incorporate these essential recommendations into their workmen's compensation programs as soon as feasible. We realize that time is required for this achievement. Some State legislatures meet only biennially. Most States will need time to review these statutes carefully on the basis of all our recommendations. Nonetheless, we believe these essential recommendations are so feasible and essential that every jurisdiction can be expected reasonably to adopt them within three years.

We believe that compliance of the States with these essential recommendations should be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should guarantee compliance.

We believe the most desirable method to insure that each State program contains our essential recommendations would be to include these recommendations as mandates in Federal legislation, applicable to all employers specified by our essential recommendations.

Compliance with the mandates could be insured by two complementary methods. Any employer within the scope of the Federal legislation not already covered by a State workmen's compensation act would be required to elect coverage under the act in an appropriate State. Also all employers affected by the Federal law would be required to insure or otherwise secure the mandated recommendations. Employer compliance with the election and security requirements of the Federal legislation would be assured by a penalty enforceable through law suits filed by the U.S. Attorney's office in the appropriate Federal District Court.

Most employers can be expected to comply voluntarily with the Federal mandates. For the remaining recalcitrant employers, the most common enforcement mechanism probably will involve suits by the U.S. Attorney's office. There is a second enforcement mechanism that would rely on individual employee action. A workman would file his claim with his State workmen's compensation agency, which would be authorized by Federal law to make awards consistent with the Federal mandates. The workman and his employer would have the right to appeal issues concerning the mandates to the State courts, with an eventual right of appeal to the Federal courts on the compliance issue. Should the State workmen's compensation agency refuse to assist in the implementation of the Federal mandates, the employee would be entitled to sue his employer for payment in State or Federal courts. If he requests, he should have the assistance of the U.S. Attorney.

The enforcement methods we have recommended lack the attribute of instant intelligibility. Nonetheless, we believe they represent a workable solution to our desire to preserve workmen's compensation as essentially a State program while providing Federal assurance that injured workmen, no matter where they live, receive prompt, adequate, and equitable protection. For the vast majority of workers, the mandate approach we have recommended would affect only the substance, not the procedure, of their claims compared to the present program.

The Costs of Adopting Our Essential Recommendations

The estimated costs of adopting our essential recommendations in the 50 States and the District of Columbia are summarized in Tables 7.2 and 7.3. (Individual State estimates and a brief description of the estimation procedures are included in Appendix B.)

The National Council on Compensation Insurance, the actuarial organization for the workmen's compensation insurance industry, has estimated for 51 jurisdictions the impact of incorporating certain of our essential recommendations into the actual State law in effect on January 1, 1972. These recommendations are: full coverage of work-related diseases; full medical care and physical rehabilitation services; and the designated improvements in temporary total, permanent total, and death benefits. Our benefit recommendations have 1973 and 1975 stages for maximum weekly benefits but even the more expensive stage could be met in 46 jurisdictions by a less than 50 percent increase in workmen's compensation costs. (Table 7.2)

Data on workmen's compensation premiums as a percentage of payroll for a sample of insurance classifications are available for 41 States and the District of Columbia. (Table 7.3) These estimates by the Commission staff indicate that the average employer in 37 jurisdictions now expends one percent or less on workmen's compensation premiums. If our 1975 essential recommendations were adopted, the average employer in 37 jurisdictions would spend 1.25 percent or less on workmen's compensation premiums. Workmen's compensation costs would be somewhat more expensive in a small minority of States. Those employers

TABLE 7.2. Distribution of 50 States and the District of Columbia according to estimated increase in workmen's compensation costs resulting from incorporating our essential recommendations into each jurisdiction's present laws

Percentage increase in costs over costs of present State program	Cost of adopting our essential recommendations	
	With 1973 maximum weekly benefits	With 1975 maximum weekly benefits
	Number of States	Number of States
Less than 10%	12	5
10/29.9%	25	20
30/49.9%	14	21
50/69.9%	0	5
70.0% or more	0	0

See Appendix B, especially Table B.1, for explanation of Table 7.2.

TABLE 7.3. Distribution of 41 States and the District of Columbia according to estimated percentage of payroll devoted to workmen's compensation premiums by employers in a representative sample of insurance classifications

Workmen's compensation premiums as a percentage of payroll	Number of States in which premiums are the indicated percentage of payroll		
	Actual in 1972	If our essential recommendations were adopted	
		With 1973 maximum weekly benefits	With 1975 maximum weekly benefits
Less than 0.50%	7	4	0
0.50/0.749%	17	14	15
0.75/0.999%	13	~~13~~ 12	12
1.00/1.249%	3	~~8~~ 7	10
1.25/1.499%	2	4	3
1.50/1.749%	0	1	~~2~~ 1
1.750% or more	0	0	~~8~~ 1

See Appendix B, especially Table B.2, for explanation of Table 7.3.

whose workmen's compensation premiums now are above the average for their State would, unless their loss experience improves, continue to pay premiums above the State averages shown for 1973 and 1975. Despite these qualifications, we believe our essential recommendations are realistic as to their cost significance.

Other Critical Areas of Workmen's Compensation

Certain subjects of vital importance in a modern workmen's compensation program are not appropriate for the mandates approach at the present time. These areas are more elusive; necessary data are unavailable; and the means of insuring compliance unclear. Still these issues are so important that the vitality of the State system will be tested by the ability of States to resolve them satisfactorily. A primary responsibility of the new Federal commission we have recommended is consideration of the following subjects.

Permanent partial benefits. States vary widely in their approach to these benefits. More data are needed to answer questions such as how well do schedules predict actual wage loss and why is an apparently disproportionate amount of resources devoted to these benefits in some States?

Administration. Although there is broad consensus on the general requisites of good administration, such as adequate financing, a permanent staff with tenure, an active informal procedures unit, and supervision of medical and rehabilitation services, the methods of insuring compliance with these criteria warrant further examination. Other aspects of administration, such as the appropriate place for compromise and release agreements and the effective use of second-injury funds, presently are matters of controversy and require additional intensive examination.

Rationale for Commission's Views on Methods of Implementing our Recommendations

Having now indicated our recommended implementation procedures, it is necessary to indicate our primary reasons for choosing this course.

We are unanimous in concluding that Congressional intervention may be necessary to bring about the reforms essential to survival of a State workmen's compensation system. The major difference among us concerns the time for urging Congressional action. A majority of the Commission believes there are two major reasons why Congress should not be asked to mandate any State action until after the States are given an opportunity for self-reform.

First, many recommended reforms of a fundamental nature are not susceptible to immediate Federal mandates, and some probably can never be mandated. If only the recommendations which can be Federally mandated are adopted by a State, many needed reforms will be neglected. If our list of mandates is adopted and made immediately applicable to the States, some States are likely to forego the thorough review of their workmen's compensation program which we believe is essential.

Second, an immediate push for Congressional legislation mandating some of our recommendations could precipitate a confrontation at the Federal level which could delay positive action at the State level pending the outcome and would divert energies and resources from reform efforts at the State level.

Conclusion

The members of the National Commission on State Workmen's Compensation Laws were asked by the Occupational Safety and Health Act of 1970 to provide an effective study and objective evaluation of State workmen's compensation laws. We have done our best to fulfill that assignment. But in the process, we have produced a report which undoubtedly has some limitations imposed by the complexities of the subject and the pressures of time—pressures we felt were justified by the urgency of our task. As a result of these limitations, we know that our report can be misused. We know we cannot entirely stop the possible misuses, but in order to eliminate one possible misapplication, we wish to stress one central point which may be submerged in the details of our recommendations:

We are without exception supporters of the basic principles of workmen's compensation.

We have criticized the present State workmen's compensation programs, but not because we believe the basic principles are inherently wrong. Indeed they are right. We voice our criticism because present practice falls so far short of the basic principles, and because there is no possible justification for this short-fall.

Our report must then be understood as a repudiation of the old saw that even your best friends won't tell you. We believe we are workmen's compensation's best friends and, as friends, we are telling those who control the fate of the program that it should and can and must improve. Our disagreements within the Commission as to the exact nature of the program's present impairment and as to precisely how the improvements must occur are far overshadowed by our agreement that the time has now come to reform workmen's compensation substantially in order to bring the reality of the program closer to its promise.

REFERENCES FOR CHAPTER 7

Section A, See *Compendium*, Chapters 3, 4, and 20
Section B, See *Compendium*, Chapter 19
Section C, See *Compendium*, Chapter 17
Section D, See *Compendium*, Chapter 20

The *Compendium on Workmen's Compensation* was prepared for the National Commission on State Workmen's Compensation Laws. References for data cited in this *Report* are included in the *Compendium*, but the Commission does not endorse all ideas expressed in the *Compendium*.