Approved 3-16-90
Date

MINUTES OF THE House COMMITTEE ON Labor & Industry.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:06 a.m./~~p.m.~~ on February 27, 1990 in room 526-S of the Capitol.

All members were present except:
Representative Schauf - Excused
Representative Holmes - Excused

Committee staff present:
Jerry Donaldson - Legislative Research Department
Jim Wilson - Revisor of Statutes' Office
Cindy Wulfkuhle - Committee Secretary

Conferees appearing before the committee:
Dr. John Wertzberger - Kansas resident
John Ostrowski - AFL-CIO
Jim Shetlar - Kansas Trial Lawyers Association

The meeting was called to order at 9:06 a.m. by Chairman Douville.

HB 3069 - Concerning the workers compensation act.

Dr. John Wertzberger, a Kansas resident, appeared before the committee as an opponent of the bill. He stated the AMA Guide is not a bible and should not be strictly followed, but used as a guideline or a reference. Dr. Wertzberger gave the definition of functional impairment - the loss of or use of any body part, function or system.

Representative Hensley asked if Dr. Wertzberger knew how many other states have a fee schedule. Dr. Wertzberger stated that 31 states have a mandated fee schedule and have some savings from it.

John Ostrowski, AFL-CIO, spoke as an opponent to the bill, attachments #1,2 & 3. He said that from labor's perspective, there is concern with the quality and quantity of service. He feels that the fee schedule fails to define the problem. However, if the fee schedule should be adopted then the claimant should be able to choose his own physician.

Jim Shetlar, Kansas Trial Lawyers Association, spoke before the committee in opposition to the bill, attachment #4. KTLA's concern is that implementing a medical fee schedule would create another bureaucracy, and would limit the doctors' willingness to participate, thereby diminishing the quality of health care available. KTLA suggests that 45 days would be a more reasonable time for the Director to render his decision. If the Director has not rendered a decision in that time, the party should be allowed to appeal directly to the District Court for a decision on that level. The basis for this request is so an injured worker may receive compensation.

Representative Whiteman requested a fiscal note on HB 3069.

The meeting was adjourned at 9:58 a.m. The next meeting of the committee will be on Wednesday, February 28, 1990 at 9:00 a.m. in room 526-S.

GUEST LIST

COMMITTEE: Labor & Industry DATE: Feb 27, 1990

NAME	ADDRESS	COMPANY/ORGANIZATION
DICK THOMAS RGHABS ADM & DHR	TOPEKA	WORK COMP/DHR
Bud Langston	Topeka	KRGC
S. B. SIFERS	S. M. K. S.	
John Ostrowski	TOPEKA	AFL-CIO
Larry Magill	TOPEKA	INDEP. INS. AGENTS OF KS.
Richard Mason	"	KCTA
Jim Shetler	OP	"
Diana Burkhardt	Topeka	KS Ans. Dept.
Richard Cox	Topeka	DPS.
Robert A. Anderson, Director, Division of Workers Comp		TOPEKA, KS -
Jim Schwartz	Topeka	KECH
[illegible]	"	KDHR
BOB ANDERSON	"	KS. CHIROPRACTIC ASSOC.
Cindy Kelly	Topeka	KASB
Chip Wheelen	Topeka	KS Medical Soc.
Harold Riehm	TOPEKA	KS OSTEOPATHIC ASSN
[illegible]	Topeka	Christie Hospital
Charles V. Simpson	Topeka	KFMC
Terry Leatherman	Topeka	KCCI
Bob Williams	Topeka	KS Pharmacists Assoc
Julie Knight-Riddle	Topeka	Leg. Intern

OUTLINE OF TESTIMONY
H.B. 3069
AFL-CIO

I. FEE SCHEDULES

a) Labor agrees fees must be reasonable and not vary significantly from prevailing charges such as Blue Cross/Blue Shield.

b) Labor's concern is "availability" in terms of quality and quantity of service. This fee schedule too vague to tell if good or bad -- sounds too good to be true.

c) Are problems properly identified? We are told of "savings", but is problem simply "doctors' gouging".

d) Many problems with fee schedules

1) Not panacea for saving money
Workers' Compensation Research Institute study says just the opposite -- (not a "left-wing" publication)

2) Creation of another bureaucracy with related costs and procedures

II. IF FEE SCHEDULE - CLAIMANT WITH RIGHT OF CHOICE OF PHYSICIAN (P. 6; 10 - Balloon Bill)

a) Employer's choice is based on control of cost; if fee schedule this control not necessary

b) Constant source of litigation -- virtually every case with unauthorized medical. Doctor selected by insurance carrier always perceived as "their doctor".

c) NCCI Digest - Insurance companies research -

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savings with claimant's choice and less treatment -- quicker return to work (P. 67)

d) Majority of states allow employee choice (P. 65)

III. DELETE AMA GUIDELINE (P. 13 Balloon Bill)

a) Makes medical disability purely political and controlled by who is occupying Director's chair.
(first 2 sentences). Director under this proposal able to set worker's medical and work disability without regard to expert medical evidence.

b) AMA Guides in constant disfavor and revision; not consistent even with doctors who use them. Most states using AMA Guides allow claimant choice of physician.

c) "Medically or scientifically demonstrable" violates 1987 agreement when word "objective" removed from statute.

IV. TEMPORARY TOTAL/LIGHT DUTY

a) (P. 12 - Balloon Bill) "old topic" -- still a serious problem

V. DIRECTOR'S ORDERS

a) (P. 25 - Balloon Bill) Must have self-enacting remedy when delay is the problem. Cannot rely on same body who caused delay to remedy delay.

b) Mandamus ineffective

1) Takes time from filing of action

2) Personal lawsuit against fact finder -- person doing "suing" just shot his own client (every time)

VI. APPEALS FROM PRELIMINARY HEARINGS

a) (P. 25, Balloon Bill) Vast, vast increase in appeals from Preliminary Hearings.

b) All must do to appeal is "allege" jurisdiction exceeded.

c) Conflict with 44-534a.

d) Paying on appeal will prevent frivolous appeals and avoid starve-out of claimant.

VII. OVERRULING JOHNSTON

a) (P. 28 - Balloon Bill) Policy decision; worked well for many years.

b) No matter how sugar-coated, net effect is giving money and then taking it back.

VII. APPOINTMENT

a) (P. 7 - Balloon Bill) Selection by secretary can be political.

VIII. PAYMENT OF MEDICAL NOT IN DISPUTE

a) (P. 8 - Balloon Bill) Process of resolution looks exceedingly long.

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hours at their desks, they suffered backaches, tired eyes, and so forth. In addition, there were complaints by workers that they were being judged by how much more they produced with the electric typewriter than with the manual one because the electric was faster.

These same complaints have resurfaced with the introduction of the VDT. Workers are concerned that, since the VDT is even faster than the electric typewriter, there will be closer monitoring of their work, and they will be expected to do more.

And, as can be expected, these concerns and fears produce the same kinds of stress and pressure that was felt when the electric typewriter first replaced the manual.

> "Workers feel the same kind of stress that was felt when the electric typewriter was first introduced . . ."

Another kind of stress arising from the introduction of the VDT in the office is caused by some blurring of the lines between managers and other workers, especially in the office environment. As the VDT becomes more common in the office, more and more managers will have a terminal at hand and will become proficient enough in the use of the VDT to produce their own correspondence, eliminating a traditional secretarial task. At the same time, with much data available through computer storage, many secretaries will be able to compile reports that, until now, had been prepared only by the manager. This blurring of job tasks could pose serious stress problems as offices become more proficient in VDT use and VDT use itself expands.

One thing is certain: the VDT is here to stay. It may become more sophisticated and perform more functions, but it has, and will, become an integral part of the workplace — the office as well as the factory. It is in our best interest to understand the problems, both physical and mental, that may arise from VDTs and to develop ways of dealing with those hazards.

Resolving the physical concerns evolving from radiation and ergonomics will be the easier part of the job. Preparing for and overcoming some of the stressful psychological concerns may take more effort, but there is no way we can avoid these issues.

Although the Subcommittee on Health and Safety has no immediate plans to revisit the issue of VDTs and employee health and safety, it is an issue of great interest and, should the need arise, we will not hesitate to hold additional hearings to develop or disseminate new and important information.

Long Duration Workers Compensation Claims

by DAVID APPEL and DAVID DURBIN

David Appel, Ph.D., is Vice President, Economic and Social Research Division, National Council on Compensation Insurance. He is Adjunct Professor of Economics, Rutgers University, and is a member of the American Risk & Insurance Association and the American Economics Association.

David Durbin is a research economist for the National Council on Compensation Insurance.

The seven million people injured at work every year cost workers compensation programs over $25 billion. Most of these injured workers do not miss work as a result of their injuries. However, nearly 1.5 million workers are injured seriously enough to experience work absences that qualify them for indemnity benefits under the various state and federal workers compensation programs. Most indemnity beneficiaries experience relatively short non-work spells, but about 325,000 workers suffer permanent disability each year. The non-work spells of these workers can be lengthy.

The potentially long duration of a claim is one of the fundamental differences between workers compensation and most other lines of insurance. Other lines typically pay out a lump sum for a given occurrence. By contrast, benefits to injured workers must be paid out over time, with the final costs not known with complete certainty. Furthermore, the costs of extended duration workers compensation claims are considerable. Extended duration claims tend to lead to litigiousness and impose heavy psychological burdens on both injured workers and their families. These injuries can prove costly to employers as well. Employers have to cope with the loss of valuable employees, production delays, hiring, retraining and rehabilitation costs, and a host of other problems. Consequently, the claimant and claim characteristics of the longer duration claims deserve special consideration in efforts to measure the efficiency, equity, and cost containment potential of the workers compensation system.

The data used in this report are from the April 1985 National Council on Compensation Insurance Call For Detailed Claim Information (DCI). Instituted in 1979, DCI is a random sample of workers compensation

claims from 13 states designed to yield at least 1,200 permanent partial disability claims per state and year. DCI is a unique data base combining demographic information with injury and claims information. Further, DCI captures claim information at different points in time, allowing one to view the claim maturation process. The data construction provides a natural laboratory for examining characteristics of injured workers.

> "Employers have to cope with the loss of valuable employees . . ."

The analysis in this report is restricted to claims that remained open a minimum of 18 months (second report) and a maximum of 42 months (fourth report) after the date of filing. This sample comprises approximately ten percent of the total number of DCI claims, but accounts for close to 49 percent of the total claim costs.

This report will analyze the individual components that contribute to the overall cost of long duration claims. Differences in geographic, demographic, and claim characteristics will be presented in Section I. In Section II, statistical measurement of the differences identified in Section I will be considered. Specifically, the distribution of total claim costs will be analyzed, aggregated by various claimant and claim characteristics. This section will include an econometric modeling of long duration claims with an emphasis on the predictability of total claim costs. Consideration of a relatively new statistical technique will also be undertaken. Finally, in Section III, the results will be summarized and implications of the efficiency of workers compensation as a benefit delivery system will be considered.

I. DESCRIPTIVE STATISTICS

Table I contains mean values of claimant and claim characteristics of the sample of long duration claims. The means have been weighted by the inverse of the state sampling ratios to remove the effects of different state sampling probabilities. Reading from the "All" row of Table I gives the mean values for the entire sample of long duration claims. The sample consists mostly of men (76.1 percent) and married workers (62.5 percent). The average age at the time the claim is filed is 38.7 years. The incurred (estimated) temporary total duration averages 61.2 weeks while the total incurred duration averages 124 weeks, implying an average of 62.8 weeks in some sort of permanent claim status. This sample of long duration claims has incurred mean total medical benefits of $7,913.18 and incurred mean indemnity benefits of $21,078.11. The indemnity benefits are a function of the pre-injury weekly wage, which averages $290.48 for this sample. Further, injured workers with long duration claims were hospitalized an average of almost eight days. More than one-third (36 percent) of the workers hired an attorney.

The differences in characteristics by claim type can also be identified in Table I. For example, temporary total claims comprised approximately 39 percent (12,391 out of 31,813) of the sample of long duration claims. Notice this subsample is also predominantly male (75.1 percent), married (60.5 percent), and averaged 38.1 years of age at the time of filing a claim. Those numbers are all just slightly less than the corresponding figures for the full sample. However, as might be expected, the incurred duration for the temporary total only claims is lower (85.1 weeks) than the full sample. Both the mean incurred medical benefit ($6,492.63) and the mean incurred indemnity benefit ($14,678.74) are lower. These lower amounts reflect, in part, the nature of temporary total claims as compared to all claims as well as the lower average pre-injury weekly wage for temporary total claimants of $285.85. Moreover, injured workers on a temporary total claim status spend, on average, less time in the hospital (6.6 days) compared to the full sample, and this particular type of claim is less contentious, with only 25 percent of the claimants retaining an attorney.

	BENEFIT TYPE									
	Temporary Total	Permanent Total	Permanent Partial	Permanent Partial	Temporary Partial	Death	Other	Eye Loss	All	Not Sample
	MEAN	MEAN	MEAN	MEAN	MEAN	MEAN	MEAN	MEAN	N	MEAN
Duration Total	85.101	66.276	41.227	45.561	43.165	58.582	47.569	81.094	31813	61.224
Duration Incurred	85.101	486.803	120.891	174.917	127.160	567.484	97.620	150.856	31813	123.955
Benefits	14678.742	91773.881	19586.398	21962.291	16719.009	94585.116	19372.295	30486.209	31813	21078.114
Married	0.605	0.746	0.623	0.655	0.655	0.818	0.623	0.456	31813	0.625
Male	0.751	0.868	0.767	0.763	0.662	0.952	0.748	0.793	31813	0.761
Total Benefits	21171.168	139649.094	27209.041	29192.559	22587.199	100576.249	25978.012	44782.400	31813	28991.282
Duration Of Benefits	0.000	420.538	79.614	129.379	83.795	508.902	50.091	69.802	31813	62.710
Injury Age	38.111	47.998	38.998	38.683	38.477	45.161	38.658	38.124	31813	38.734
Total Medical	6492.627	41075.213	7678.643	7500.269	5858.150	6091.195	6605.737	14296.191	31813	7913.177
Lawyer	0.251	0.465	0.145	0.514	0.430	0.434	0.479	0.299	31813	0.361
Hospital Days	6.625	21.270	7.958	13.139	4.182	4.873	6.964	12.245	31813	7.984
Incurred Rehab.	204.023	751.959	179.452	331.936	168.177	10.702	602.937	2719.682	31813	382.991

TABLE I
DESCRIPTIVE STATISTICS FOR LONG DURATION CLAIMS
SOURCE: DCI, APRIL 1985

In contrast to the temporary total claims are permanent total claims. Excluding death claims, these claims cover the most severe injuries, as confirmed by the summary statistics. Permanent total claims account for 3.6 percent of the total sample of long duration claims (1,151 of 31,813 claims). These claimants are even more likely to be male (84.8 percent) and married (74.6 percent). They are also substantially older, with an average age of 48 years. The amount

> "Two major claim categories: permanent partial and temporary partial . . ."

of time spent as a temporary total claim prior to classification as a permanent total is only 66.3 weeks, but the mean total incurred duration is 486.8 weeks. The severity of these injuries is indicated by the mean incurred medical benefits of $43,675.21 and the mean incurred indemnity benefits of $91,773.88. Furthermore, the average 21.3 days spent in the hospital is greater than both the full sample and the subsample of temporary total claims. Finally, it is interesting to note that a larger proportion of permanent total claimants retain the services of an attorney (46.5 percent) than either the full sample or the subsample of temporary total claims.

The discussion of temporary total and permanent total claims has centered, except for death claims, on the two extremes in terms of injury severity and claim cost. In the sample of long duration claims. Between these extremes there are two other major kinds of claims: permanent partial and temporary partial. Permanent partial claims make up 29.2 percent of the sample and temporary partial claims account for less than one percent of the total. The sample is also stratified into two benefit types of a different nature: death claims, which comprise one percent of the sample; and two "other" categories that may include wage loss benefits, impairment benefits, or some combination of the other benefit types, which account for 25.6 percent of the sample of long duration claims. Excluding death claims, the permanent partial and hybrid claims fall between the extremes of temporary total and permanent total claims in terms of claim duration and claim costs. Moreover, the demographic characteristics—age, sex, marital status—follow a related pattern.

On the other hand, death claims far exceed permanent total claims in virtually all categories. A tremendously high proportion of death claimants are male (95.2 percent) and married (83.8 percent). Although the mean incurred medical benefit is lower ($6,091.14), because the mean incurred total duration is longer! (567.48 weeks) and the mean pre-injury weekly wage is higher ($323.36), the mean incurred total benefits (medical plus indemnity) is much greater ($100,676.25) than any other kind of claim.

The preceding analysis of claimant and claim characteristics broken down by benefit type has been further stratified by each state in the sample. Table 2 contains the highlights of the state comparisons. The longest duration claims are observed in Pennsylvania, with a mean incurred total duration of 237.55 weeks. Not surprisingly, the highest claim costs are also observed in Pennsylvania, with mean incurred medical benefits of $12,327.57 and mean incurred indemnity benefits of $45,027.88. The shortest duration claims are in Illinois (73.12 weeks), although the least costly claims are observed in New York, with mean incurred medical benefits of $4,999.45 and mean incurred indemnity benefits of $11,030.97. These results must be viewed in light of the different industrial mix of each state and the different structure of each state's workers compensation program, including such factors as fee schedules,

State	Incurred Duration	Incurred Medical	Incurred Indemnity
Connecticut	82.04	$ 6,507.93	$19,860.16
Florida	129.17	13,056.47	18,832.80
Georgia	142.36	12,130.24	17,776.52
Illinois	73.12	5,253.20	15,992.06
Kentucky	217.51	9,764.10	29,077.66
Maine	176.03	7,383.45	38,652.70
Massachusetts	129.10	7,193.52	24,341.59
Michigan	131.66	6,982.98	22,645.71
Minnesota	123.43	8,531.53	27,777.27
New York	95.69	4,999.45	11,030.97
Pennsylvania	237.55	12,327.57	45,027.88
Virginia	148.95	11,529.05	29,775.75
Wisconsin	95.03	8,101.40	12,601.09

TABLE 2
STATE COMPARISONS OF DURATION AND COST

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tial physician.

Intrastate comparisons of benefit types generally conform to the trends observed in the all states sample. The duration and costs of permanent partial claims fall between the extremes of temporary total and permanent total claims. More significantly, however, demographic and claim characteristics also follow this pattern. This is true, with some minor exceptions, for age at the time of claim filing, sex, marital status, pre-injury wage, hospital days, and the amount of attorney involvement. Indeed,

> "The longest duration claims are observed in Pennsylvania . . ."

even though there are distinct duration and cost differences across states, the above claim and claimant characteristics would appear to be significant indicators of claim cost. The older the worker, the higher the proportion of males and married people, the higher the wage, and the more hospitalization and attorney involvement, the greater are the associations with higher costs.

In the next section, using the statistical technique of multiple regression analysis, we will attempt to measure more precisely the impact of these factors. We will also consider differences in claim durations and costs across states and broken down by different industry classifications.

II. Statistical Analysis

From the previous section, several claim and claimant characteristics were shown to be linked with longer durations and higher claim costs. The regression analyses will focus on the estimation of two different equations. First, we will attempt to quantify those factors associated with claim duration. Second, given the severe nature of the claims in this study, total incurred medical benefits will be investigated. The technique of regression analysis allows for an isolation of the effect of individual factors on the factor in question. That is, the technique filters out any cross-effects, thereby allowing explicit measurement of the association between each explanatory variable and the variable being considered. The purpose is to identify those factors captured by DCI that have the largest impact on medical costs and, accordingly, might be suitable as candidates for cost-containment measures.

The theoretical underpinnings for the regression model measuring the total duration of a claim are well established in the economics literature.[2]

In addition, in modeling claim durations and claim costs for the full sample of long duration claims, it is necessary to account for variations in state workers compensation programs. This is accomplished by using a dichotomous (zero/one) variable for the initial choice of physician.[3] Most state laws allow the employee initial choice of physician after a workplace injury. However, a few states stipulate that the employer may specify the physician. The structure of the

variable is such that a "one" indicates the employee has the initial choice of physician and a "zero" indicates the employer has the initial choice. The physician choice variable not only serves as a proxy for differences across state workers compensation programs, but it also allows for a test of the proposition that allowing employers the choice of physician is more cost-efficient. In addition to the factors considered in the descriptive statistics section, a zero/one variable for employment status is included that equals "one" if the worker was employed at the time of claim filing. The rationale is that this variable proxies the probability of a job offer

> "Most state laws allow the employee initial choice of physician after a workplace injury"

and will measure any back-to-work incentives (disincentives) for employed (unemployed) workers. Finally, to highlight some of the concerns in ratemaking for workers compensation, dichotomous variables are included for three broad industrial classifications (manufacturing, construction, and other).

The first column in Table 3 contains the parameter estimates for the regression equation. The sign of the parameter indicates the direction of the influence. For example, eliminating the cross-effects (i.e. holding all other factors constant), male workers have shorter durations compared to females. This is indicated by the negative sign. All the factors in the model are statistically significant.

More meaningful, perhaps, are the elasticity measures shown in column two of Table 3. These measures transform the parameter estimates of column one into explicit measures of the association between the individual factors and the duration of workers compensation benefit receipt. Thus, the elasticity measure for male workers means they have nine percent shorter workers compensation spells than women. This may be explained by the fact that men are typically the principal wage earner in a household and may have a higher opportunity cost to being out of work. The estimated sign of the latest benefit received is negative. This implies that, as benefits increase, the duration of a claim is shortened. The elasticity estimate is interpreted to mean that a ten percent increase in benefits will be associated with a 3.6 percent decrease in duration, a finding which seems to contradict established notions regarding benefit utilization. Similarly, the positive sign on the pre-injury wage variable may at first seem counterintuitive. The elasticity indicates that as wages increase by ten percent, durations increase by 2.3 percent. While this finding is contrary to earlier empirical work, given the specific nature of the sample under consideration, a compensating wage differential argument is suggested, implying that this sample of more severe injuries emanates from higher-paying occupations.

Variable	(1) Coefficient	(2) Elasticity†
Intercept	2.256	—
Employment Status	0.135 (3.567)	0.144
Male	−0.092 (4.131)	−0.088
Marital Status	0.120 (6.259)	0.127
Attorney Representation	0.617 (33.738)	0.853
Hospital Days	0.004 (20.673)	0.0329
Latest Benefit	−0.361 (12.762)	−0.361
Pre-Injury Wage	0.233 (8.449)	0.233
Age	0.635 (23.839)	0.635
Manufacturing	−0.117 (5.851)	−0.110
Construction	0.245 (9.428)	0.278
Physician Choice	−0.655 (31.579)	−0.481
	.123	
N	27,020	

* T-statistics are in parentheses.

† Hospital days was entered in linear form

‡ For the dichotomous variables the value for the elasticity is computed by $d\ln Y = \exp X\beta - 1$

TABLE 3
TOTAL DURATION REGRESSION*

The parameter estimate on the physician choice variable indicates that durations are shorter in instances where the employee chooses the physician. The elasticity measure is an astonishing 48 percent. The dichotomous variables for the broad industrial classifications indicate that, compared to the base group of all others, manufacturing injury durations are shorter (11 percent) and construction injuries are longer (27.8 percent). Other variables perform as expected: married people, claims with attorney involvement, and older workers are associated with longer duration claims. These findings must be tempered by the fact that only 12.3 percent of the total variation in injury duration is explained by the model, although the results are statistically significant.[5]

The preceding regression analyses have been based, in part, on the trends and influences highlighted in the descriptive statistics. The intent was to use regression analyses to make explicit the associations between claim costs and durations with claimant and claim characteristics. One primary assumption has been the constancy of development factors across states and over time. The regression analyses focus on incurred (estimated) costs and durations. However, a significant proportion (57 percent) of the longer duration claims are still open, with the final resolution uncertain. Consequently, using regression analyses to predict final claim costs and durations may be misleading.

An alternative statistical technique involves using the latest undeveloped or paid information rather than incurred information. The technical discussion and results are presented in Appendix A. The results are similar to the above duration regression analysis with the exception of the signs on the employment status variable and the benefit variable. This includes the finding that males are likely to have shorter durations after controlling for other factors. Further, older workers, higher paid workers, workers who hired an attorney, and workers spending more time in the hospital are all associated with longer durations. The sign on the physician choice variable also confirms the prior results; when the worker chooses the physician, relatively shorter duration spells are observed. A sidelight to this particular technique is that it allows the generation of a predicted mean duration, given the claim and claimant characteristics. For our sample, the predicted mean duration of a claim is 181.25 weeks.

> "When the worker chooses the physician, relatively shorter duration spells are observed . . ."

III. CONCLUSIONS

It seems that for the workers compensation system as a whole, or for various subsets, such as different states or even different benefit levels, some very definite claimant and claim characteristics are associated with more serious injuries, claims and costs. In general, married workers, males, higher paid employees, and older workers have longer durations and more expensive claims. Further, claimants who hire an attorney, have their physician chosen by the employer, or work in the construction industry also experience longer duration non-work spells and higher medical expenses. Moreover, these factors become more prevalent as the severity of the injury increases.

Explaining completely all the factors that determine claim durations and costs is not possible. The very nature of an injury is that it is an accidental, unplanned event and, therefore, subject to probability and chance. Yet, even though our predictions may fall short of the mark, and even though there are a myriad of factors at work, once an injury occurs, it is possible to identify those workers who are likely to have longer duration and more expensive claims. This is especially important because the most severe injuries, although relatively small in number, account for a large percent of total costs. It makes sense to target these claims for cost-containment measures. Some relevant factors have been considered in this report. From a "systems" viewpoint, we have seen that allowing the injured worker the choice of physician is associated with shorter duration and less costly claims. Finally, even though we can identify the differences in claim durations and costs across different states, at present there are few quantifiable measures of the differences in the way states administer their workers compensation programs. Further research in this area seems war-

Attachment #2

ranted to gain a more complete understanding of how injured workers interact with the benefit delivery system.

APPENDIX A

Maximum Likelihood Estimation Techniques

One possible alternative involves using the latest undeveloped or paid information in regression analyses. However, use of the data in this form is problematic: the so-called censoring problem (data is incomplete for the open claims) is encountered. Research in this area has shown that regression analysis yields biased

> "... there are few quantifiable measures of the differences in the way states administer ..."

results when incomplete data is considered.[6] To turn the question from association of factors to predictability using current actual data, a different econometric technique must be used to correct for the censoring problem.

Maximum likelihood techniques have been developed allowing for estimation of censored data. The estimation technique uses the probability density and distribution functions of a given distribution to derive the likelihood function. This allows a predicted mean to be generated by reinserting the parameter estimates into the density function for the given distribution. Previous research by the NCCI Economic and Social Research Division has produced the computer software necessary for estimating the parameters of the Weibull distribution. This particular distribution has the added feature of flexibility in instances where the data may be long-tailed.[7]

Table 4 presents results of the maximum likelihood estimation for the Weibull distribution for our sample of long duration claims. Computer memory constraints necessitated that a random sample of one in ten claims be taken. The dependent variable is the current (undeveloped) duration of each claim with the explanatory variables the same as used for the regression analyses (excluding the industry classification controls).

It should be noted that the nature of the estimating procedure yields parameter estimates whose signs are opposite what they would be under ordinary least squares analysis. The specification is analogous to regression specification on duration in Table 3. The results are similar except for the signs on the employment status variable (Employ) and the natural logarithm of benefits (Lnben). This includes the finding that males are likely to have shorter durations after controlling for the other factors. Further, older workers, higher paid workers, workers who hired an attorney, and workers spending more time in the hospital are all associated with longer durations. Although the sign of the estimate on the benefit variable is negative, suggesting that higher benefits lead to longer durations, the estimate is not statistically significant at the usual levels. The positive sign on the physician choice variable indicates that when the worker chooses the physician, relatively shorter duration spells are observed. This finding corroborates the multiple regression results even though the t-statistic is not statistically significant. Finally, plugging the parameter estimates back into the cumulative density function generates a predicted mean (expected duration) of 181.25 weeks for our sample of long-duration claims.

Variable	(1) Coefficient
Intercept	-11.826
Employment Status	0.709 (4.117)
Male	0.214 (2.689)
Marital Status	-0.011 (1.554)
Attorney Representation	-0.024 (3.426)
Hospital Days	-0.002 (7.356)
Latest Benefit	-0.013 (1.367)
Pre-Injury Wage	-0.020 (2.226)
Age	-0.038 (3.915)
Physician Choice	0.016 (.221)
Gamma	2.941 (98.646)
N	3065
Log Likelihood	-6057.2
Expected Duration	181.25

* Sampling 1 in 10 claims. T-statistics are in parentheses.

TABLE 4
PARAMETER ESTIMATES FOR POOLED STATE DATA: WEIBULL MAXIMUM LIKELIHOOD RESULTS*

An interesting feature of this type of flexible distribution model involves the calculation of a hazard rate. This measures the instantaneous rate of change from, in this instance, open- to closed-claim status. The interpretation of the Gamma parameter is used in this regard. If subtracting one from the estimated parameter yields a non-negative result, then positive duration dependence is indicated. This means the longer the injured worker has been on claimant status the greater the probability the claim will close in the next very small time interval. Conversely, a negative result after subtracting one from the Gamma estimate indicates negative duration dependence — claims will tend to stay open.

The interpretation of positive duration dependence is sustained for our specification. Thus, even though our sample was designed to capture the most serious claims and 57 percent of the claims are still open, the probability is that any particular claim will close in the next small time period.

1. Incurred duration figures on DCI are adjusted for lump sum awards. Such awards are usually estimated as a number of weeks times the pre-injury weekly wage, subject to the mandated state minimums and maximums.

2. See, for example, Worrall, Butler, Borba, and Durbin, "Age and Incentive Response: Illinois Low Back Workers Compensation Claims," NCCI Seminar, November 1984.

3. Data on physician choice comes from U.S. Chamber of Commerce publication, *Analysis of Workers Compensation Laws* 1985.

4. Elasticity is defined as the percentage change in the dependent variable given a one percent change in an independent variable. For the dichotomous variables, it is interpreted as the percentage change in the dependent given the characteristic in question.

5. It bears repeating that there is a difference between this study and previous empirical work: The sample of claims considered here contains a mixture of temporary and permanent disabilities, while other studies have concentrated exclusively on temporary total disability. In the earlier research, hypotheses regarding the impact of wages and benefits on duration of disability were founded on a behavioral choice model, in which injured workers receive benefits only if they remain out of work. Under such a scenario, higher benefits (wages) should lead to increased (decreased) durations disability. Since in this data set, benefit receipt is not necessarily conditioned on workplace disability, the same behavioral choices are not present. Therefore, the interpretation of the wage and benefit variables is ambiguous.

6. See, for example, Heckman, James J. and Burton Singer (1982). "The Identification Problem in Econometric Models for Duration Data," in W. Hildebrand (ed.) *Advances in Econometrics*. Cambridge University Press, 39-77.

7. Worrall, et. al., op. cit.

Session of 1990

HOUSE BILL No. 3069

By Committee on Labor and Industry

2-21

AN ACT concerning the workers compensation act; relating to the administration thereof and benefits provided thereunder; amending K.S.A. 44-515, 44-516, 44-518, 44-519, 44-551, 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501, 44-508, 44-510, 44-510c, 44-510e, 44-510g, 44-512a, 44-528 and 44-556 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1989 Supp. 44-501 is hereby amended to read as follows: 44-501. (a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

(b) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

(c) Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

(d) If it is proved that the injury to the employee results from the employee's deliberate intention to cause such injury, or from

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the employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer, or substantially from the employee's intoxication, any compensation in respect to that injury shall be disallowed. The employer shall not be liable under the workers compensation act where the injury, disability or death was substantially caused by the employee's use of any drugs, chemicals or any other compounds or substances, including but not limited to, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens, except such drugs or medications which are available to the public without a prescription from a ~~physician~~ *health care provider* and which are used for the treatment of an illness, or which were obtained and used by the employee pursuant to and in accordance with such a prescription.

(e) Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

(f) Except as provided in the workers compensation act, no construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(g) It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

Sec. 2. K.S.A. 1989 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

(a) "Employer" includes (1) any person or body of persons, corporate or unincorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, asso-

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ciation or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the director to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work, "governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, ambulance attendants, mobile intensive care technicians, firemen or firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. ~~1988~~ *1989* Supp. 48-3302 *and amendments thereto*; volunteers in any employment, if the employer has

filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a and amendments thereto, such terms shall not include individual employers, limited or general partners or self-employed persons.

(c) (1) "Dependents" means such members of the employee's family as were wholly or in part dependent upon the employee at the time of the accident.

(2) "Members of a family" means only surviving legal spouse and children; or if no surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section, parents include stepparents, children include stepchildren, grandchildren include stepgrandchildren, brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section, a surviving spouse shall not be regarded as a dependent of a deceased employee or as a member of the family, if the surviving spouse shall have for more than six months willfully or voluntarily deserted or abandoned the employee prior to the date of the employee's death.

(3) "Wholly dependent child or children" means:

(A) A natural or adopted child of the employee except such a child whose relationship to the employee has been severed by adoption;

(B) a stepchild of the employee who lives in the employee's household;

(C) any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity; or

(D) any child as defined in subsections (3)(A), (3)(B) or (3)(C) who is less than 23 years of age and who is not physically or mentally capable of earning wages in any type of substantial and gainful employment or who is a full-time student attending an accredited institution of higher education or vocational education.

(d) "Accident" means an undesigned, sudden and unexpected

event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

(e) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence.

(f) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

(g) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.

(h) "Director" means the director of workers' compensation as provided for in K.S.A. 75-5708 and amendments thereto.

(i) ~~The words "physician," "surgeon" or "doctor" shall mean and include~~ *"Health care provider" means* any ~~person~~ licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry ~~or podiatry~~.

(j) "Secretary" means the secretary of human resources.

(k) "Construction design professional" means any person who is an architect, professional engineer, landscape architect or land surveyor who has been issued a license by the state board of technical professions to practice such technical profession in Kansas or any corporation organized to render professional services through the practice of one or more of such technical professions in Kansas under the professional corporation law of Kansas or any corporation issued a certificate of authorization under K.S.A. 74-7036 and amendments

physician, surgeon or doctor

,podiatry, psychology, or psychiatry.

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thereto to practice one or more of such technical professions in Kansas.

(l) "Community service work" means (1) public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary of social and rehabilitation services.

(m) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on accepted standards of the health care profession involved. Such evaluation is accomplished by means of a system which identifies the utilization of health care services above the usual range of utilization for such services, which is based on accepted standards of the health care profession involved, and which refers instances of possible inappropriate utilization to the director for referral to a peer review committee.

(n) "Peer review" means an evaluation by a peer review committee of the appropriateness, quality and cost of health care and health services provided a patient, which is based on accepted standards of the health care profession involved and which is conducted after utilization review.

(o) "Peer review committee" means a committee composed of health care providers licensed to practice the same health care profession as the health care provider who rendered the health care services being reviewed.

Sec. 3. K.S.A. 1989 Supp. 44-510 is hereby amended to read as follows: 44-510. Except as otherwise provided therein, medical compensation under the workers compensation act shall be as follows:

(a) It shall be the duty of the employer to provide the services of a ~~physician~~ *health care provider*, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

(1) The director shall prepare and adopt rules and regulations which establish a schedule for the state, or schedules limited to

as selected by the employee

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defined localities, fixing the maximum fees for medical, surgical, hospital, dental, nursing, vocational rehabilitation or any other treatment or services provided or ordered by health care providers and rendered to employees under this section, which shall include costs and charges for medical records and testimony.

(2) The schedules of maximum fees shall be reasonable, shall promote health care cost containment and efficiency with respect to the workers compensation health care delivery system, and shall be sufficient to ensure availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury.

(3) (A) In every case, all fees, transportation costs and charges under this section and all costs and charges for medical records and testimony shall be subject to approval by the director and shall be limited to such as are fair, reasonable and necessary.

(B) There is hereby created an advisory panel to assist the director in adopting schedules of maximum fees as required by this section. The panel shall consist of the commissioner of insurance, one representative each from the Kansas medical society, the Kansas hospital association and the Kansas chiropractic association, and two members appointed by the secretary. One member appointed by the secretary shall be classified as a representative of employers on the basis of previous vocation, employment or affiliation. The other member appointed by the secretary shall be classified as a representative of employees ~~on the basis of previous vocation, employment or affiliation~~.

and recommended to the secretary by the Kansas AFL-CIO

(C) The panel shall annually review and approve the schedules of maximum fees for such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury. All fees and other charges paid for such treatment, care and attendance, including treatment, care and attendance provided by any health care provider, hospital or other entity providing health care services, shall not exceed the amounts provided by the schedules of maximum fees established under this section. A health care provider, hospital or other entity providing health care services shall be paid either such health care provider, hospital or other entity's usual charge for the treatment, care and attendance or the maximum fees as set forth in the applicable schedule, whichever is less. In reviewing and approving the schedules of maximum fees, the panel shall consider the following:

(i) The levels of fees for similar treatment, care and attendance imposed by other health care programs or third-party payors in the locality in which such treatment or services are rendered;

(ii) The impact upon cost to employers for providing a level of fees for treatment, care and attendance which will ensure the availability of treatment, care and attendance required for injured employees;

(iii) The potential change in workers compensation insurance premiums or costs attributable to the level of treatment, care and attendance provided; and

(iv) The financial impact of the schedule of maximum fees upon health care providers and health care facilities and its effect upon their ability to make available to employees such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury.

(4) Any contract with or any billing or charge by any health care provider, hospital, person, or institution to any patient for services rendered in connection with injuries covered by the workers compensation act or a fee schedule adopted under this section, which are or may be in excess of or not in accordance with such fee schedule are unlawful, void and unenforceable as a debt.

(5) The director shall have jurisdiction to hear and determine all disputes as to such charges and interest due thereon *and shall prescribe procedural rules to be followed by the parties to such disputes.*

(6) The director is hereby authorized to investigate health care providers and health care facilities to determine ~~if any health care providers or health care facilities are in~~ compliance with the provisions of the workers compensation act and rules and regulations adopted by the director thereunder or if any health care provider or health care facility is requiring unjustified treatment, hospitalization or office visits. If the director finds that a health care provider or health care facility has made excessive charges or required unjustified treatment, services, hospitalization or visits, the health care provider or health care facility shall not receive payment pursuant to this section from an insurance carrier, employer or employee for the excessive fees or unjustified treatment, hospitalization or visits and such health care provider or health care facility shall repay any such fees or charges collected therefor.

(7) The director shall develop and implement, or contract with a qualified entity to develop and implement, utilization review procedures and standards of the services rendered by a health care provider, which services are paid for in whole or in part pursuant to this section. The director shall contract with a private foundation or organization to provide peer review after utilization review, as appropriate, of entities providing health care services pursuant to this section. Under the terms of such contract, the foundation or

In the event of any controversy rising under the act, payments shall not be delayed for any sums not in dispute or controversy. Acceptance by any provider of services of less than the full amounts charged does not constitute waiver of the remaining amounts.

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organization shall establish and maintain a procedure by which a peer review committee shall review the services rendered by a health care provider or health care facility, which services are paid for in whole or in part pursuant to this section.

(8) By accepting payment pursuant to this section for treatment or services rendered to an injured employee, a health care provider or health care facility shall be deemed to consent to submitting all necessary records and other information concerning such treatment to utilization review and peer review under this section. Such health care provider shall comply with any decision of the director pursuant to subsection (a)(9).

(9) If it is determined by a peer review committee that a health care provider improperly overutilized or otherwise rendered or ordered unjustified medical treatment or services or that the fees for such treatment or services were excessive, the director may order the health care provider to show cause why the health care provider should not be required to repay the amount which was paid for rendering or ordering such treatment or services and shall provide the health care provider a hearing thereon if requested. If a hearing is not requested within 30 days of receipt of the order and the director decides to proceed with the matter, a hearing shall be conducted and if a prima facie case is established a final order shall be issued by the director. If the final order is adverse to the health care provider, the director shall provide a report to the licensing board of the health care provider with full documentation of any such determination, except that no such report shall be provided until after judicial review if the order is appealed.

(10) All reports, information and records submitted to the director for the purposes of this section shall be confidential and privileged and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding, except those authorized pursuant to this section.

(11) A health care provider or health care facility may not improperly charge or overcharge a workers compensation insurer or charge for services which were not provided, for the purpose of obtaining additional payment.

(12) Any violation of the provisions of this section which are willful or which demonstrate a pattern of improperly charging or overcharging workers compensation insurers constitute grounds for the director to impose a civil fine not to exceed $5,000.

(b) Any ~~physician~~ *health care provider*, nurse, medical supply establishment, surgical supply establishment, ambulance service or

Appeals from such director's Order shall be taken to Shawnee County.

subject to judicial review in Shawnee County. Any fines collected hereunder shall be paid directly to the Kansas Worker's Compensation Fund.

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hospital who accept the terms of the workers compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above the amounts approved by the director. ~~If the employer has knowledge of the injury and refuses or neglects to reasonably provide the benefits required by this section, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director.~~ No judgment ~~may be~~ entered by any district court in any action for the payment of an amount for medical services or materials provided under the workers compensation act and such ~~action~~ shall be stayed until final adjudication of any claim for compensation for which an application for hearing is filed with the director under K.S.A. 44-534 and amendments thereto. In the case of an action stayed hereunder, any award of compensation shall require any amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments.

(c) If the services of the ~~physician~~ *health care provider* furnished as provided in subsection (a) are not satisfactory to the injured employee, the director may authorize the appointment of some other ~~physician~~ *health care provider* subject to the limitations set forth in this section and the rules and regulations adopted by the director. Without application or approval, an employee may consult a ~~physician~~ *health care provider* of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such ~~physician~~ *health care provider* up to a total amount of $350.

(d) An injured employee whose injury or disability has been established under the workers compensation act may rely, if done in good faith, solely or partially on treatment by prayer or spiritual means in accordance with the tenets of practice of a church or religious denomination without suffering a loss of benefits subject to the following conditions:

(1) The employer or the employer's insurance carrier agrees thereto in writing either before or after the injury;

(2) the employee submits to all physical examinations required by the workers compensation act;

(3) the cost of such treatment shall be paid by the employee unless the employer or insurance carrier agrees to make such payment;

(4) the injured employee shall be entitled only to benefits that would reasonably have been expected had such employee undergone

Injured workers shall have the right in the first instance, to select a health care provider. Either party can request changes in the health care provider pursuant to a preliminary hearing before an Award; or K.S.A. 44-536(a) after final Award or judgment.

bill may be turned to collection, nor

actions

OR employer

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medical or surgical treatment; and

(5) the employer or insurance carrier that made an agreement under paragraph (1) or (3) of this subsection may withdraw from the agreement on 10 days' written notice.

(c) In any employment to which the workers compensation act applies, the employer shall be liable to each employee who is employed as a duly authorized law enforcement officer, ambulance attendant, mobile intensive care technician, fireman or firefighter, including any person who is serving on a volunteer basis in such capacity, for all reasonable and necessary preventive medical care and treatment for hepatitis to which such employee is exposed under circumstances arising out of and in the course of employment.

Sec. 4. K.S.A. 1989 Supp. 44-510c is hereby amended to read as follows: 44-510c. Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510 and amendments thereto and as follows:

(a) (1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to 66 2/3% of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511 and amendments thereto, but in no case less than $25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

(2) Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, shall, in the absence of proof to the contrary, constitute a permanent total disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) (1) Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510 and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during

such temporary total disability, in a sum equal to 66⅔% of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511 and amendments thereto, but in no case less than $25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto, per week. The payment of compensation for temporary total disability shall continue for the duration of any such disability, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

(2) Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment.

(3) Where no award has been entered by the director, a return by the employee to any type of substantial and gainful employment or a release by a treating ~~physician~~ *health care provider* or examining ~~physician~~ *health care provider*, who is not regularly employed or retained by the employer, to return to any such employment, shall suspend the employee's right to the payment of temporary total disability compensation, but shall not affect any right the employee may have to compensation for partial disability in accordance with K.S.A. 44-510d and 44-510e and amendments thereto.

A release to work with temporary medical restrictions or light duty work, shall not suspend the payment of temporary total disability where no such light duty is available with the employer at the time of injury; and the injured employee can not reasonably obtain light duty work.

(c) When any permanent total disability or temporary total disability is followed by partial disability, compensation shall be paid as provided in K.S.A. 44-510d and 44-510e and amendments thereto.

Sec. 5. K.S.A. 1989 Supp. 44-510e is hereby amended to read as follows: 44-510e. (a) If the employer and the employee are unable to agree upon the amount of compensation to be paid in the case of injury not covered by the schedule in K.S.A. 44-510d and amendments thereto, the amount of compensation shall be settled according to the provisions of the workers compensation act as in other cases of disagreement, except that in case of temporary or permanent partial general disability not covered by such schedule, the employee shall receive weekly compensation as determined in this subsection during such period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks. Weekly compensation for temporary partial general disability shall be 66⅔% of the difference between the average gross weekly wage that the employee was earning prior to such injury as provided in the workers compensation act and the amount the employee is actually earning after such injury in any type of employment, except that in no case shall such weekly compensation exceed the maximum as provided for in

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K.S.A. 44-510c and amendments thereto. Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence. ~~*In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairments, the director shall adopt and use a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule shall be adopted in rules and regulations of the director and shall be based on generally accepted medical standards for determining impairments and may incorporate all or part of any one or more generally accepted schedules used for such purpose, such as the Guides to the Evaluation of Permanent Impairment of the American Medical Association. On and after July 1, 1990, and pending the adoption of rules and regulations which adopt a permanent schedule, the Guides to the Evaluation of Permanent Impairment, copyright 1988 by the American Medical Association (Third Edition), shall be the temporary schedule and shall be used for the purposes of this section*~~. There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury. The amount of weekly compensation for permanent partial general disability shall be determined: (1) By multiplying the average gross weekly wage of the worker prior to such injury by the percentage of permanent partial general disability as determined under this subsection; and (2) by then multiplying the result so obtained by 66 2/3%. The amount of weekly compensation for permanent partial general disability so determined shall in no case exceed the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of permanent disability as a result of the compensable injury, there shall be a presumption that disability existed immediately after such injury. In any case of permanent partial disability under this section, the employee shall

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be paid compensation for not to exceed 415 weeks following the date of such injury, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

(b) If an employee has received an injury for which compensation is being paid, and the employee's death is caused by other and independent causes, any payment of compensation already due the employee at the time of death and then unpaid shall be paid to the employee's dependents directly or to the employee's legal representatives if the employee left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such employee shall cease and be abrogated by the employee's death.

(c) The total amount of compensation that may be allowed or awarded an injured employee for all injuries received in any one accident shall in no event exceed the compensation which would be payable under the workers compensation act for permanent total disability resulting from such accident.

(d) Where a minor employee or a minor employee's dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action against the employer shall inure or accrue to or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee.

(e) In any case of injury to or death of a female employee, where the female employee or her dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or action shall inure, accrue to or exist in favor of the surviving husband or any relative or next of kin of such female employee against such employer on account of any damage resulting to such surviving husband or any relative or next of kin on account of the loss of earnings, services, or society of such female employee or on any other account resulting from or growing out of the injury or death of such female employee.

Sec. 6. K.S.A. 1989 Supp. 44-510g is hereby amended to read as follows: 44-510g. (a) A primary purpose of the workers compensation act shall be to restore to the injured employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. To this end, the director shall appoint, subject to the approval of the secretary, a specialist in medical,

physical and vocational rehabilitation, who shall be referred to as the rehabilitation administrator. The director shall appoint, subject to the approval of the secretary, four assistant rehabilitation administrators. The rehabilitation administrator and the assistant rehabilitation administrators shall be in the classified service under the Kansas civil service act. The rehabilitation administrator and the assistant rehabilitation administrators, subject to the direction of the rehabilitation administrator, shall: (1) Continuously study the problems of physical and vocational rehabilitation; (2) investigate and maintain a directory of all rehabilitation facilities, public or private, in this state, and, where such rehabilitation administrator determines necessary, in any other state; and (3) be fully knowledgeable regarding the eligibility requirements of all state, federal and other public medical, physical and vocational rehabilitation facilities and benefits. With respect to private facilities and agencies providing medical, physical and vocational rehabilitation services, including rehabilitation service programs provided directly by employers, the director shall approve as qualified such facilities, institutions, agencies, employer programs and ~~physicians~~ *health care providers* as are capable of rendering competent rehabilitation services. No such facility, institution, agency or employer program shall be considered qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury or disease, and is staffed with trained and qualified personnel and, with respect to medical and physical rehabilitation, unless it is supervised by a ~~physician~~ *health care provider* qualified to render such service. No ~~physician~~ *health care provider* shall be considered qualified unless such ~~physician~~ *health care provider* has had such experience and training as the director may deem necessary.

(b) Under the direction of the director, and subject to the director's final approval, the rehabilitation administrator shall have the duties of directing and auditing medical, physical and vocational rehabilitation of employees in accordance with the provisions of this section.

(c) An employee who has suffered an injury shall be entitled to prompt medical and physical rehabilitation services as may be reasonably necessary to restore to such employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, and as provided in this section.

(d) When as a result of an injury or occupational disease which

is compensable under the workers compensation act, the employe is unable (1) to perform work for the same employer at a comparabl wage with or without accommodation or (2) to enter the open labo market to perform work for which such employee has previous train ing, education, qualifications or experience and earn a comparabl wage, such employee shall be entitled to such vocational rehabili tation services, including retraining and job placement, as may b reasonably necessary to restore to such employee the ability to pe form work in the open labor market and to earn comparable wage as determined pursuant to subsection (a) of K.S.A. 44-510e an amendments thereto, and as provided in this section.

(c) (1) If the employee has remained off work for 90 days or i it is apparent to the director the employee requires vocational re habilitation services and, in either case, if approved rehabilitatio services are not voluntarily furnished to the employee by the em ployer, the director, on such director's own motion or upon appl cation of any party, may refer the employee to a qualified publi agency, if the employee is eligible, or private agency or facility, c the employer's rehabilitation service program, if qualified, for ~~eva uation~~ *assessment* and for a report of the practicability of, need fo and kind of service, treatment, training or rehabilitation which is o may be necessary and appropriate to render such employee able to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. The costs of such ~~evaluation~~ *assessment* and report shall be at the expense of the employer. Each repor shall contain a rehabilitation plan which shall adhere to the followin priority listing of rehabilitation goals:

(A) The first priority is to return the employee to the same wor for the same employer;

(B) the second priority is to return the employee to the sam work, with accommodation, for the same employer;

(C) the third priority is to return the employee to other wor with or without accommodation, for the same employer;

(D) the fourth priority is to return the employee to the sam work for another employer;

(E) the fifth priority is to return the employee to other work f another employer; and

(F) the sixth priority is to provide vocational rehabilitation, ree ucation and training.

(2) Within 50 days after such referral, the report shall be sub mitted to and reviewed by the rehabilitation administrator and copie shall be furnished to each party. If all parties do not agree with th

report, the rehabilitation administrator shall confer with the rehabilitation service provider, the employee and the employer to review the ~~evaluation~~ *assessment* and the proposed rehabilitation plan in the report. The rehabilitation administrator shall ensure the ~~evaluation~~ *assessment* and the rehabilitation plan are objective and reasonable and the rehabilitation goal is reasonably obtainable. Within 20 days after the initial review of the report, the rehabilitation administrator shall deliver copies of the report, together with the rehabilitation administrator's recommendations and any revisions of or objections to the rehabilitation plan, to each party, to the director and to the assigned administrative law judge, if there is one. Within 10 days after receipt of such report, any party may request a hearing before the director on any matter contained in the report or any such recommendations or revisions. After affording the parties an opportunity to be heard and present evidence, the director:

(A) May order any treatment, or medical and physical rehabilitation, as recommended in the report or as the director may deem necessary, be provided at the expense of the employer;

(B) may order the employer to pay temporary total disability compensation, computed as provided in K.S.A. 44-510c and amendments thereto, or temporary partial disability compensation, computed as provided in K.S.A. 44-510e and amendments thereto, during the period of rehabilitation ~~evaluation~~ *assessment* and continuing through the date the rehabilitation plan is delivered to the director as provided in subsection (e)(2). Temporary total or temporary partial disability compensation paid solely because of involvement in the rehabilitation ~~evaluation~~ *assessment* process shall not be payable for more than 70 days from the date of the ~~evaluation~~ *assessment*, except such temporary total or temporary partial disability compensation may be continued by the director for an additional period of not more than 30 days if circumstances outside the control of the employee prevents completion of the ~~evaluation~~ *assessment* or the formulation of the rehabilitation plan;

(C) where vocational rehabilitation, reeducation or training is recommended in the report, or is deemed necessary by the director to restore to the employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, may direct the employee to the appropriate federal, state or other public facility or agency where such services will or may be provided at no cost to the employer, except as otherwise provided in this section, or, upon the request of the employer, to a qualified rehabilitation service program provided directly by the employer; and

(D) if the employee is not eligible for such vocational rehabilitation, reeducation or training through any such state, federal or other public facility or agency, or where such services through such facilities or agencies are not available to the employee within a reasonable period of time, may order such services be provided at the expense of the employer by any qualified private agency or facility in this state or any state contiguous to this state or by a qualified rehabilitation service program provided directly by the employer.

(3) Any vocational rehabilitation, reeducation or training to be provided at the expense of the employer under subsection (e)(2) shall not extend for a period of more than 36 weeks, except, in extremely unusual cases, after a hearing and the presentation of evidence, the director, by special order, may extend the period for not more than an additional 36 weeks. The employer shall have a right to appeal to the district court any such special order by the director for any extension of the initial thirty-six-week period, within the time and in the manner provided in K.S.A. 44-556 and amendments thereto and any such special order shall be stayed until the district court has determined the appeal. There shall be no right of appeal to the Kansas supreme court or court of appeals from a judgment of the district court sustaining or overruling any such special order of the director.

(f) Where vocational rehabilitation, reeducation or training is to be furnished at the expense of the employer under this section, and such services require that the employee reside at or near a facility or institution, away from the employee's customary county of residence, either in or out of the state of Kansas, the reasonable costs of the employee's board, lodging and travel, not to exceed a maximum total of $3,500 for any thirty-six-week period, shall be paid by the employer, except, in unusual cases where, after a hearing and the presentation of evidence the director finds the costs are clearly reasonable and necessary, the director may require by special order that the employer pay an additional amount for the costs of the employee's board, lodging and travel of not more than $2,000.

(g) The employer shall pay temporary total disability compensation during any period of vocational rehabilitation, reeducation or training, computed as provided in K.S.A. 44-510c and amendments thereto, but the employer shall receive credit for any weekly, monthly or other monetary payments made to the employee or such employee's family by any state, federal or other public agency during any such period, exclusive of any such payments for the board, lodging and travel expenses of the employee. Subject to a maximum

of 26 weeks, the number of weeks during which temporary total disability compensation is paid during vocational rehabilitation, reeducation or training shall not be deducted from the maximum number of weeks available for the payment of disability compensation under the schedule provided in K.S.A. 44-510d and amendments thereto.

(h) The director shall cooperate with federal, state and other public or private agencies for vocational rehabilitation, reeducation or training, or medical or physical rehabilitation. The employer shall not be required to pay the reasonable costs of the employee's board, lodging and travel where such costs are borne by any federal, state or other public agency, nor shall any costs for vocational rehabilitation, reeducation or training be assessed to the employer if such vocational rehabilitation, reeducation or training is in fact furnished by and at the expense of any federal, state or other public agency.

(i) Whenever the director determines there is a reasonable probability that with appropriate medical, physical or vocational rehabilitation, reeducation or training, a person, who is entitled to compensation for permanent total disability, partial disability or any other disability under the workers compensation act, may be rehabilitated to the extent such person can become able to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, and it is for the best interests of such person to undertake such rehabilitation, reeducation or training, if the injured employee without good cause refuses to undertake the rehabilitation, educational or training program determined by the director to be suitable for such employee or refuses to be evaluated under the provisions of subsection (e) and the refusal is not due to the employee's physical or mental ability to do so, the employee shall be considered as having elected not to participate in such rehabilitation, reeducation or training and the director may suspend the payment of any disability compensation until the employee consents to undertake such program or to be so evaluated. The director may reduce the disability compensation otherwise payable if any such refusal persists for a period in excess of 90 days, except disability compensation shall not be reduced to less than that payable for permanent partial disability in accordance with K.S.A. 44-510d and amendments thereto or for permanent partial general disability for functional impairment in accordance with K.S.A. 44-510e and amendments thereto.

(j) At such time as any medical, physical or vocational rehabilitation, reeducation or training has been completed under this section, the employer shall have the right, by the filing of an application

with the director, to seek a modification of any award which has been rendered granting any compensation to the employee for any disability. Upon at least 20 days' notice by registered mail to all parties, the director shall set the application for hearing and the parties shall present all material and relevant evidence. In the event the director determines the employee is rehabilitated so such employee is able to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, the director shall modify any award of compensation or, if no such award has been made, the director shall make an award to reflect only such disability, if any, as exists at the conclusion of such rehabilitation. Any award of partial disability, or modification of an existing award, made pursuant to this subsection (j) shall be subject to the provisions of K.S.A. 44-510d and 44-510e and amendments thereto.

(k) For any week with respect to which the employee is receiving unemployment compensation benefits under the employment security law or any other unemployment compensation law of any other state or a similar federal law, no temporary total disability compensation or temporary partial disability compensation shall be payable under this section.

(l) As used in this section, "assessment" means the process of determining services and the vocational potential of the injured worker. The assessment process includes the appointment of a rehabilitation vendor to review the injured worker's medical restrictions, education, experience and training, the worker's aptitude and abilities, and the job the worker was doing at the time of injury. The assessment must include a documented decision of the need for vocational rehabilitation services, and if needed, an individualized rehabilitation plan that identifies realistic vocational goals. The assessment must identify the obstacles to returning to a comparable wage position in the open labor market and the plan must provide a step-by-step procedure that will either circumvent or alleviate the obstacles identified in the counselor's determination that services are needed.

Sec. 7. K.S.A. 1989 Supp. 44-512a is hereby amended to read as follows: 44-512a. (a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the director and assessed against the employer or insurance carrier liable for such compensation in an amount of not more than $100 per week for each week any disability compen

and reasonable attorneys fees

sation is past due and in *an amount for each past due medical bill equal to the larger of either* the sum of $25 ~~for each~~ *or the sum equal to 10% of the amount which is* past due *on the* medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.

(b) After the service of such written demand, if the payment of disability compensation or medical compensation set forth in the written demand is not made within 20 days from the date of service of such written demand, plus any civil penalty, as provided in subsection (a), if such compensation was in fact past due, then all past due compensation and any such penalties shall become immediately due and payable. Service of written demand shall be required only once after the final award. Subsequent failures to pay compensation, ~~including medical compensation~~, shall entitle the employee to apply for the civil penalty without demand. The employee may maintain an action in the district court of the county where the cause of action arose for the collection of such past due disability compensation and medical compensation, any civil penalties due under this section and reasonable attorney fees incurred in connection with the action.

(c) The remedies of execution, attachment, garnishment or any other remedy or procedure for the collection of a debt now provided by the laws of this state shall apply to such action and also to all judgments entered under the provisions of K.S.A. 44-529 and amendments thereto, except that no exemption granted by any law shall apply except the homestead exemption granted and guaranteed by the constitution of this state.

Sec. 8. K.S.A. 44-515 is hereby amended to read as follows: 44-515. (a) After an employee sustains an injury, the employee shall, upon request of the employer, submit to an examination at any reasonable time and place by any one or more reputable ~~physicians, as defined in K.S.A. 44-508 and amendments thereto~~ *health care providers*, selected by the employer, and shall so submit to an examination thereafter at intervals during the pendency of such employee's claim for compensation, upon the request of the employer, but the employee shall not be required to submit to an examination oftener than twice in any one ~~(1)~~ month, unless required to do so in accordance with such orders as may be made by the director. Any employee so submitting to an examination or such employee's

per week

a preliminary or

Delete

authorized representative shall upon request be entitled to receiv
and shall have delivered to such employee a copy of the ~~physician's~~
health care provider's report of such examination within ~~fifteen~~ ~~(15~~
15 days after such examination, which report shall be identical t
the report submitted to the employer. If the employee is notified
to submit to an examination before any ~~physician~~ *health care pro*
ider in any town or city other than the residence of the employe
at the time that the employee received an injury, the employe
shall not be required to submit to an examination until such em
ployee has been furnished with sufficient funds to pay for transpor
tation to and from the place of examination at the rate prescribe
for compensation of state officers and employees under K.S.A. 7
3203a and amendments thereto, for each mile actually and necessari
traveled to and from the place of examination, and in addition th
sum of ~~fifteen~~ ~~dollars~~ ~~($15)~~ *$15* per day for each day or a par
thereof that the employee was required to be away from such em
ployee's residence to defray such employee's board and lodging an
living expenses. The employee shall not be liable for any fees o
charge of any ~~physicians~~ *health care provider* selected by the em
ployer for making any examination of the employee. The employe
or the insurance carrier of the employer of any ~~workman~~ *employee*
making claim for compensation under the ~~workmen's~~ *workers* com-
pensation act shall be entitled to a copy of the report of any ~~phy-~~
~~sician~~ *health care provider* who has examined or treated the
employee in regard to such claim upon written request to the em-
ployee or the employee's attorney within ~~fifteen~~ ~~(15)~~ *15* days after
such examination or treatment, which report shall be identical to
the report submitted to the employee or the employee's attorney.

(b) If the employee requests, such employee shall be entitled to
have ~~physicians~~ *health care providers* of such employee's own se-
lection present at the time to participate in such examination.

(c) Unless a report is furnished as provided in subsection (a) and
unless there ~~be~~ *is* a reasonable opportunity thereafter for the ~~phy-~~
~~sicians~~ *health care providers* selected by the employee to participate
in the examination in the presence of the ~~physicians~~ *health care*
providers selected by the employer, the ~~physicians~~ *health care*
providers selected by the employer or employee shall not be per
mitted afterwards to give evidence of the condition of the employe
at the time such examination was made.

Except as provided ~~herein~~ *in this section*, there shall be no dis
qualification or privilege preventing the furnishing of reports by o
the testimony of any ~~physician~~ *health care provider* who actuall
makes an examination or treats an injured employee, prior to o

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after an injury.

Sec. 9. K.S.A. 44-516 is hereby amended to read as follows: 44-516. In case of a dispute as to the injury, the director ~~as hereinafter provided may,~~ ~~at his,~~ *in the director's* discretion, or upon request of either party, *may* employ one or more neutral ~~physicians~~ *health care providers*, not exceeding three ~~(3)~~ in number, who shall be of good standing and ability~~,~~ ~~whose duty it shall be to~~. *The health care providers shall* make such examinations of the injured ~~workman~~ *employee* as the director may direct.

Sec. 10. K.S.A. 44-518 is hereby amended to read as follows: 44-518. If the employee refuses to submit ~~himself for~~ *to an* examination upon request of the employer as provided for in K.S.A. 44-515~~,~~ *and amendments thereto* or if the employee or ~~his physician or surgeon~~ *the employee's health care provider* unnecessarily obstructs or prevents such examination by the ~~physician or surgeon~~ *health care provider* of the employer, the employee's right to payment of compensation shall be ~~and remain~~ suspended until ~~he shall submit~~ *the employee submits* to *an* examination and until such examination ~~shall have taken place, and~~ *is completed.* No compensation shall be payable under ~~this~~ *the workers compensation* act during the period of suspension: ~~*Provided further,* That in the event~~. *If* the employee ~~shall refuse~~ *refuses* to submit ~~himself~~ to *an* examination while any proceedings are pending for the purpose of determining the amount of compensation due, ~~said~~ *such* proceedings shall be dismissed upon showing being made of ~~said~~ *the* refusal of ~~said~~ *the* employee to submit ~~himself for~~ *to an* examination.

Sec. 11. K.S.A. 44-519 is hereby amended to read as follows: 44-519. No report of any examination of any employee by a ~~physician or surgeon, as hereinbefore in this act provided for, nor any~~ *health care provider, as provided for in the workers compensation act and no* certificate issued or given by the ~~physician or surgeon~~ *health care provider* making such examination, shall be competent evidence in any proceeding for the determining or collection of compensation unless supported by the testimony of such ~~physician or surgeon~~ *health care provider*, if this testimony is admissible, ~~nor~~ *and shall not be* competent evidence in any case where testimony of such ~~physician or surgeon~~ *health care provider* is not admissible.

Sec. 12. K.S.A. 1989 Supp. 44-528 is hereby amended to read as follows: 44-528. (a) Any award or modification thereof agreed upon by the parties, except lump-sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it does not, may be re-

viewed by the director for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. In connection with such review the director may appoint one or two ~~physicians~~ *health care providers* to examine the employee and report to the director. The director shall hear all competent evidence offered and if the director finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the director may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act.

(b) If the director finds that the employee has returned to work for the same employer in whose employ the employee was injured or for another employer and is earning or is capable of earning the same or higher wages than the employee did at the time of the accident, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages the employee was earning at the time of the accident, or finds that the employee has absented and continues to be absent so that a reasonable examination cannot be made of the employee by a ~~physician~~ *health care provider* selected by the employer, or has departed beyond the boundaries of the United States, the director may modify the award and reduce compensation or may cancel the award and end the compensation.

(c) The number of reviews under this section shall be limited pursuant to rules and regulations adopted by the director to avoid abuse.

(d) Any modification of an award under this section on the basis that the functional impairment or work disability of the employee has increased or diminished shall be effective as of the date that the increase or diminishment actually occurred, except that in no event shall the effective date of any such modification be more than six months prior to the date the application was made for review and modification under this section.

Sec. 13. K.S.A. 44-551 is hereby amended to read as follows: 44-551. (a) The duties of the assistant directors of workers' compensation shall include but not be limited to acting in the capacity of an administrative law judge and the conducting of director reviews, provided the director shall be the final approving authority for such director reviews.

(b) *(1)* Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts and papers, and under the direction of the director, may conduct an investigation, inquiry, or hearing in the same manner and with like effect as if done by the director. All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge, shall be subject to review and approval by the director upon written request of any interested party within 10 days and if no such request is made, then the director shall approve such actions, findings, awards, decisions, rulings or modifications of findings or awards of the administrative law judge. The filing of such a request for review shall not be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto.

(2) If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a director's review shall not be conducted under this section unless it is believed that the administrative law judge exceeded the authority of administrative law judge in entering the preliminary award. Director's orders on review of preliminary findings or preliminary awards issued pursuant to K.S.A. 44-534a and amendments thereto shall be issued within 30 days from the date the review was submitted on the record where oral arguments were not requested and within 30 days from the date oral arguments were presented by the parties. Director's orders on any other acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be issued within 90 days from the date the review was submitted on the record where oral arguments were not requested or within 90 days from the date oral arguments were presented by the parties.

(c) Each assistant director and each administrative law judge or special administrative law judge shall be allowed all reasonable and necessary expenses actually incurred while in the actual discharge of official duties in administering the workmen's compensation act, but such expenses shall be sworn to by the person incurring the same and be approved by the secretary.

(d) In case of emergency the director may appoint special local administrative law judges and assign to them the examination and hearing of any designated case or cases. Such special local administrative law judges shall be attorneys and admitted to practice law in the state of Kansas and shall, as to all cases assigned to them, exercise the same powers as provided by this section for the regular administrative law judges. Special local administrative law judges

Any request for review shall not stay the payment of compensation, including medical compensation, ordered by the Administrative Law Judge.

In the event the director's order is not issued within the 90 days so indicated, any party to the proceeding may immediately petition the District Court of the county of the accident for review, and the decision of the Administrative Law Judge shall become the final director's order by operation of law.

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shall receive a fee commensurate with the services rendered as fixed by rules and regulations adopted by the director. The fees prescribed by this section prior to the effective date of this act shall be effective until different fees are fixed by such rules and regulations.

(e) All special local administrative law judge's fees and expenses shall be taxed as cost in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.

Sec. 14. K.S.A. 1989 Supp. 44-556 is hereby amended to read as follows: 44-556. (a) Any action of the director pursuant to the workers compensation act shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions. Such review shall be upon questions of law and fact as presented and shown by a transcript of the evidence and proceedings as presented, had and introduced before the director. The venue of the action shall be the county where the cause of action arose or the county mutually agreed upon by all of the parties. Any such action shall have precedence over all other hearings except those of like character, and shall be heard not later than the first term of the district court after the appeal has been perfected, and the court shall decide all such cases within 60 days after submission. The appealing party shall notify the director when judgment is issued by the court. If judgment is not issued within 60 days of submission, ~~the appealing party shall~~ *any party may* notify the director to that effect. The director will advise the judge to whom the case was submitted that 60 days has elapsed since submission of the case and request that a decision be rendered. If no decision is forthcoming within 30 days of such request by the director, the director will advise the supreme court justice having jurisdiction over such judge of all of the facts in regard to the review and the failure of the judge to render a decision as required by this section.

(b) On any such review the district court shall have jurisdiction to grant or refuse compensation, or to increase or diminish any award of the director as justice may require. No compensation shall be due or payable until the expiration of the time for commencing an action for review and then the payment of past due compensation awarded by the director shall not be payable if, within such time a petition for review, has been filed in accordance with the act for judicial review and civil enforcement of agency actions. The right of review shall include the right to make no payments of such compensation until the review has been decided by the district court if the employer is insured for workers compensation liability with an

insurance company authorized to do business in this state, if the employer is maintaining membership in a qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto, if the employer is maintaining membership in a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act, or if the employer is currently approved by the director as a self-insurer and has filed a bond with the district court in accordance with K.S.A. 44-530 and amendments thereto. Commencement of an action for review shall not stay the payment of compensation due for the ten-week period next preceding the director's decision and for the period of time after the director's decision and prior to the decision of the district court on review.

(c) If review of the decision of the district court is sought pursuant to K.S.A. 77-623 and amendments thereto, the compensation payable under the decision of the district court shall not be stayed pending such review. Review of the decision of the district court shall take precedence over other cases except cases of the same character.

(d) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by the district court or by appellate courts and the amount of compensation awarded by the director or the district court is reduced or totally disallowed by the decision on the appeal or review, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on review. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review by the district court or by appellate courts, and the employer, the employer's insurance carrier or the workers compensation fund,

which was held liable for and ordered to pay all or part of the amount of compensation awarded by the director or the district court, is held not liable by the final decision on the appeal or review for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such appeal or review to pay the amount of compensation to the worker that was erroneously ordered paid by the director or district court. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

(f) As used in subsections (d) and (e), "employers' insurance carrier" includes any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

(g) ~~*If any temporary or permanent partial disability or temporary or permanent total disability benefits have been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by the district court or by appellate courts and the amount of compensation awarded for such benefits by the director or the district court is reduced by the decision on the appeal or review and the balance of compensation due the worker exceeds the amount of such reduction, the employer and the employer's insurance carrier shall receive a credit which shall be applied as provided in this subsection for all amounts of such benefits which are in excess of the amount of such benefits that the worker is entitled to as determined by the final decision on review or appeal. If a lump-sum amount of compensation is due and owing as a result of the decision of the district court, the credit under this subsection shall be applied first against such lump-sum amount. If there is no such lump-sum amount or if there is any remaining credit after a credit has been applied to a lump-sum amount due and owing, such credit shall be applied against the last compensation payments which*~~

Delete

~~*are payable for a period of time after the final decision on review or appeal so that the worker continues to receive compensation payments after such final decision until no further compensation is payable after the credit has been satisfied. The credit allowed under this subsection shall not be applied so as to stop or reduce benefit payments after such final decision, but shall be used to reduce the period of time over which benefit payments are payable after such final decision.*~~

Sec. 15. K.S.A. 44-5a04 is hereby amended to read as follows: 44-5a04. *(a)* Except as ~~hereinafter~~ otherwise provided in this act "disablement" means the event of an employee ~~or~~ ~~workman~~ becoming actually incapacitated, partially or totally, because of an occupational disease, from performing ~~his~~ *the employee's* work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated~~:~~ ~~*Provided,*~~.

(b) The director may cancel the award and end the compensation if the director ~~shall find that the workman~~ *finds that the employee* *(1)* has returned to work for the same employer in whose employ ~~he~~ *the employee* was disabled or for another employer and is capable of earning the same or higher wages than ~~he~~ *the employee* did at the time of the disablement, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages ~~he~~ *the employee* was earning at the time of the disablement~~,~~ ~~or shall find~~*;*

(2) finds that the ~~workman has absented himself~~ *employee is absent* and continues to *be* absent ~~himself~~ so that a reasonable examination cannot be made of ~~him~~ *the employee* by a ~~physician or surgeon~~ *health care provider* selected by the employer~~,~~; or

(3) has departed beyond the boundaries of the United States~~,~~ ~~the director may cancel the award and end the compensation~~.

Sec. 16. K.S.A. 44-5a18 is hereby amended to read as follows: 44-5a18. Upon the filing or service of a claim for compensation for death from an occupational disease where an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the director ~~of workers' compensation~~. Such autopsy shall be made under the supervision of a medical examiner appointed by ~~said~~ *the* director. ~~Such~~ *The* medical examiner shall be a ~~duly licensed physician,~~ *health care provider* who is a specialist in such examinations ~~and~~. *The medical examiner* shall perform or attend such autopsy and shall certify ~~his or her~~ *the medical examiner's* findings in a report of ~~such~~ *the* autopsy. ~~Such~~ *The* report of autopsy shall be filed with the director

and shall be a public record. The employer and claimants shall be given reasonable notice of such autopsy and each shall have the right to have a ~~physician~~ *health care provider* of ~~his~~ ~~or~~ ~~her~~ *the employer or claimant's* own choosing present at the time. The director also may exercise such authority on ~~his~~ ~~or~~ ~~her~~ *the director's* own motion or on application made to the director at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease.

Sec. 17. K.S.A. 44-515, 44-516, 44-518, 44-519, 44-551, 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501, 44-508, 44-510, 44-510c, 44-510e, 44-510g, 44-512a, 44-528 and 44-556 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

February 27, 1990

TO: HOUSE LABOR AND INDUSTRY COMMITTEE

FROM: JIM SHETLAR, ATTORNEY, ON BEHALF OF KTLA

RE: HB 3069

The Kansas Trial Lawyers Association appreciates the opportunity to comment on provisions of HB 3069.

Many comments concerning the proposed medical fee schedule were made yesterday by members of the Kansas Medical Society and the Kansas Hospital Association. It is also KTLA's concern that implementing a medical fee schedule would create another bureaucracy, with additional reports and personnel, and would limit the doctors' willingness to participate, thereby diminishing the quality of health care available to citizens of the State of Kansas.

Just a little over three years ago, in the spring of 1987, the Legislature enacted significant legislation affecting injured workers in Kansas. That new legislation went into effect on July 1, 1987, and since that time there have been no appellate decisions on the "new act," as it is commonly called.

Section 5

The Director has proposed, under Section 5, the use of disability guidelines for disability ratings--specifically, the AMA guidelines. He has also indicated he would adopt those guidelines temporarily, until permanent guidelines can be implemented. Allowing this action by the Director effectively gives him the freedom to adopt anything he wants.

The Director is appointed by the Governor and typically changes as the Governor changes. By allowing the Director unrestrained freedom to set medical guidelines, we are transferring to him a past prerogative of the medical doctors who normally treat and rate injured workers.

The other difficulty with any kind of disability rating, and specifically the AMA guidelines, is ensuring they are used merely as guidelines, and not a bible. In fact, the AMA's 1988 Guides to Evaluation of Permanent Impairment are presently being reevaluated.

Most injured workers in Kansas have sustained orthopaedic injuries, so the doctors who usually testify in workers' compensation cases are doctors of orthpaedic medicine. Most of them prefer the guidelines established by the American Academy of Orthopaedic Surgeons. Many orthopaedic doctors have indicated that a number of conditions are not listed in the AMA guidelines, and adhering strictly to those guidelines does not allow them enough

Section 6

Section 6 deals with K.S.A. 44-510g. KTLA believes the better bill is HB 3028, concerning K.S.A. 44-510g, which was prepared by the joint advisory committee.

Section 13

The Director suggests that he should be allowed 90 days to render a decision. KTLA suggests that 45 days would be a more reasonable time for the Director to render his decision, and that if the Director has not rendered a decision in that time, either party should be allowed to appeal directly to the District Court for a decision on that level. The basis for this request is so that an injured worker may receive compensation. Presently, an injured worker does not receive any compensation until after the Director has entered his order. If the Director failed to enter his order within 45 days, the case would be appealed to the District Court, and compensation would begin to be paid based on the Administrative Law Judge's award. This would eliminate significant hardship on the injured worker and his family, who would not be receiving any compensation while the decision was pending with the Director, and many of the Director's orders have taken from four to six months up to a year.

Section 14

Section 14(g) refers to credits for overpayment. KTLA's position is that the better practice is to allow the credit to be taken at the end of the award, and not at the time the injured worker receives the lump sum. The difficulty here is that injured workers are often in dire need of funds because they have had to wait for a substantial period of time for compensation. During that wait, they have accumulated significant debt.