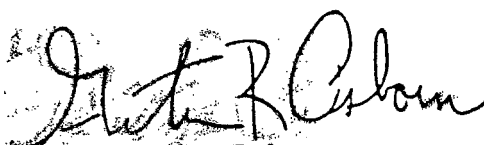


**MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL**

**ANNUAL REPORT  
1988**

  
**Arthur Osborn  
Chairman**

  
**Linda Ruthardt  
Vice Chair**

## CONTENTS

Preface	1
I. Introduction	3
II. The Advisory Council	4
III. Overview Of The Workers' Compensation System	7
Backlog	8
Post Reform Law Cases	10
Uninsured Employers	11
Legislative Reform	12
Statutory Changes	13
Financial Appropriation	15
Other Bills	16
Workers' Compensation Insurance Rate Hearing	17
Cessation Of Insurer Operations In Massachusetts	18
Medical Reimbursement Rate	20
IV. Department Overview	22
Office of Administration and E.D.P.	22
Budget Expansion	22
Section 65 Trust Fund	23
Receipts	24
Office of Safety	25
Office of Education and Rehabilitation	26
Office of Claims Administration	30
Claims Processing	30
Regional Offices	32
Conciliation Unit	32
Office of Insurance	34
Division of Dispute Resolution	37
Review Board	39
V. Health Care Services Board	43
VI. Judicial Nominating Committee	43
VII. Anti-Discrimination	44
VIII. Conclusions	45
Statutory Amendments/Backlog	45
Data Collection	47
Vocational Rehabilitation Licensure	48
Second Injury Fund	49
Division of Dispute Resolution	50
Division of Administration	51
Medical Reimbursement Rates Under Workers' Compensation	53
Appendix	
Footnotes	

## Preface

Provisions in the Massachusetts Workers' Compensation Reform Act of 1985 require the Advisory Council to report at least annually to the Executive Secretary of Labor on the state of the workers' compensation system by the last day of the fiscal year. This is the Advisory Council's second annual report. Unlike the initial report submitted last year, the 1988 report is being submitted in two distinct parts. The first part, contained here, focuses upon the major developments in the workers' compensation system and the Department of Industrial Accidents since the time that the last report was submitted. It is being filed by the June 30th reporting requirement. The second part of the report will encompass statistical information that will not be available until after the statutory deadline. It will be submitted sometime after the fiscal year's conclusion.

The Advisory Council elected to follow this two part reporting procedure for the 1988 fiscal year because it believes that a useful review of the workers' compensation system best draws upon data and information covering the entire fiscal year. Additionally, comparative analysis in the future will be enhanced by establishing a benchmark for the purpose of statistical reference.

The existence of a thorough data base is especially important given concerns expressed in the Advisory Council's 1987 report that improvements by the Department of Industrial Accidents were needed in this area in order to facilitate effective review of the system in the future. At the time, the absence of information in certain areas of departmental operation was quite obviously linked to constraints imposed by the expansion and reorganization then taking place. It was less clear that the reporting deadline itself acted to systematically exclude information and data pertaining to the end of the fiscal year from consideration. Regardless of any organizational improvements in the collection and maintenance of appropriate data files, it is now obvious that the inclusion of a full range of fiscal year information in one report is incompatible with submission by the last day of the fiscal year.

It would appear that the reporting requirements as written allow the Advisory Council to solve the dilemma. It is the Council's intent to file future annual reports during the first week of September before the budget process begins each Fall. For the current fiscal year, the Advisory Council has decided that the best solution is to prepare two complementary reports. Given the far-reaching changes introduced into the Massachusetts workers' compensation system in 1985 and the delicate

nature of the reform process, the Advisory Council believes that consistent and comprehensive reviews of the system are vital to its continued success. It is for this reason that changes have been adopted in reporting procedures.

## I. INTRODUCTION

As the second annual report by the Massachusetts Workers' Compensation Advisory Council, this report reviews the operation of the workers' compensation system during the 1987-1988 fiscal year. In many respects, the period under review provides the first true measure of the comprehensive reform enacted in 1986. Last year at this time, when the initial report was submitted, the new law had only been in effect a short while, and the Department of Industrial Accidents was in the midst of implementing sweeping organizational changes. Staffing of the expanded department was not yet complete, the relocated central Boston office and the four newly-established regional offices were all settling into their quarters, and the new computer system was still coming on line. The impact of these practical constraints made it difficult to formulate a confident appraisal of the new law's actual effectiveness.

With the completion of the logistical tasks in the start-up period, a more confident and detailed

assessment of the state of the workers' compensation system in Massachusetts is now possible. This report will focus upon three aspects of the workers' compensation system. The first of these is the system as it is broadly defined, including factors which affect the overall functioning of the system, such as legislative change, insurance rates, and medical reimbursement rates for health care providers treating injured workers. The second focus will be more specifically concerned with the internal operation of the Department of Industrial Accidents. The third focus will be upon additional areas of the workers' compensation system, specifically, the health care services board, the judicial nominating committee, and anti-discrimination protection. The final section of the report will present concluding discussion on outstanding concerns of the Advisory Council.

## II. THE ADVISORY COUNCIL

The Advisory Council was established by the 1985 reform bill to monitor and report upon all aspects of the workers' compensation system. It has been granted an active authority to continue the review of the system and to make recommendations for the system's continued improvement.

The Advisory Council is appointed by the Governor and is comprised of sixteen members, ten of whom are

voting members. Of the voting members, five represent employees and five represent employers. All employee representatives--one of whom is to be a disabled worker--are to be members of a duly recognized employee organization. Employer representatives include one each from manufacturing, small business, the construction industry, and self-insurers. At least one of the voting members is to be selected from a slate of nominees submitted by the Massachusetts AFL-CIO and at least one from a list submitted by the Associated Industries of Massachusetts. An affirmative vote from seven voting members is required for the Council to take any action.

The four non-voting members of the Council are selected to represent the claimants bar, the medical community, the insurance industry, and the rehabilitation community. In addition, the Commonwealth's Secretary of Labor and Secretary of Economic Affairs are ex-officio members of the Council.

During the course of the last year, the Governor appointed two new Council members. Douglas Mure of Perini Corporation was appointed to a full term as a representative of the contracting classifications. His term will expire on June 25, 1992. Richard Brown of the United Food and Commercial Workers' Union, Local 1459, AFL-CIO, was appointed to fill the unexpired term of Sharon Coughlin, and his term will expire on June 25,

1989. In addition, John A. Antonakes, representing the insurance industry, and Lillie Dias, representing disabled employees, were reappointed by the Governor in June of 1987 for full five-year terms. Ms. Dias was unable to complete her term and the Governor accepted her resignation on March 23, 1988. A successor has not been appointed at this writing. The statute also requires that the Chair of the Council, who is appointed by the Governor, be transferred from an employee representative to an employer representative this June. As of this date, no appointment has been made. A list of all Advisory Council members and their corresponding terms is attached as Appendix A.

During the past fiscal year, the Council met twelve times. A copy of the Council's agendas is attached as Appendix B. Since the initial members were appointed in August of 1986, the Council has held 25 meetings and one sub-committee meeting.

In addition to the present report, the Council is mandated to produce five mini-reports, as set forth in its enabling legislation. During the past year, the Council decided to take some additional time to finish these reports, in order to provide a more complete and thorough analysis. The Council has also requested funds for the upcoming fiscal year, in order to prepare the comprehensive study envisioned by the legislature in

section 60 of Chapter 572 of the Acts of 1985. Preparations for the bidding process should be completed by the end of the summer.

### III. OVERVIEW OF THE WORKERS' COMPENSATION SYSTEM

The 1985 reform sought to provide a multi-faceted institutional solution to a number of serious problems in the Massachusetts workers' compensation system. Of particular concern were problems related to delay, expense, and compensation rate. In attempting to address these concerns in ways which were equitable to both claimant and employer, the reform introduced numerous changes into the workers' compensation law, in addition to expanding the Department of Industrial Accidents and altering its funding mechanism. As the first legislation to comprehensively reorganize the workers' compensation system since the commonwealth's Workmen's Compensation Act in 1912, the final reform bill enjoyed the support of all key interest groups and was generally recognized as marking a new era in the workers' compensation system in Massachusetts.

The performance of the workers' compensation system during the past fiscal year indicated that some serious problems were developing. During the course of the year, it became apparent that some of the statutory changes were not working as intended, and that in other

areas the reforms were not adequate to the tasks at hand. Three problems which were particularly instrumental in underscoring the need for further change were the continuing existence of a large case backlog<sup>1</sup>, the DIA's estimate that it would begin to fall behind on post-reform law cases if more help was not received, and a dangerous rise in the number of claims made against the Department's Section 65 private employer trust fund. While the backlog problems were not new and were certainly not created by the reform, they did take on a greater significance within the context of the new system.

To its credit, the Department's administration early in the year began discussions with the Advisory Council on the causes of these problems and potential ways of resolving them. The effort culminated in the passage of additional legislative reform towards the end of the fiscal year. Further background on activity leading up to the reform and the actual substance of the reform is provided below.

### 1. Backlog

One of the most alarming trends in the Massachusetts workers' compensation system prior to the 1985 reform was the perpetual existence of a large number of claims and complaints in the department's backlog, many of which dated back several years. While staff expansion

and the introduction of new procedures to expedite case resolution enabled the department to initially keep pace with incoming claims after the reform was enacted, it was not possible to do so and simultaneously resolve backlog cases. Moreover, an unexpected increase in the number of claims filed during the first months of the fiscal year led the Commissioner of the Department to warn that the backlog problem would almost certainly grow worse without timely intervention.

In initial discussions on ways to address the backlog, the Advisory Council suggested that removing "Section 36" cases--those involving the loss of function as a result of an injury or concerning compensation for disfigurement--from the backlog could potentially reduce the backlog by some degree with relatively little difficulty. Because such cases are largely decided on the basis of objective evidence, it was believed that they could be resolved at conciliation without requiring referral to the Division of Dispute Resolution. It was thus felt that Section 36 cases in the backlog might be resolved without delaying the resolution of incoming cases.

The Department decided to act upon the Advisory Council's suggestion, and Section 36 cases in the backlog were scheduled for conciliation as a special project during the week of August 7 to August 14, 1987. Of 759 conciliations scheduled for the week, 639 were

section 36 cases. While it is not possible to specifically document the number of successful conciliations involving Section 36 cases, the overall success rate for the week was 59.2 percent. In comparison, the average success rate for the preceding three weeks averaged 34.7 percent, and for the three subsequent weeks, 30.2 percent. It would therefore appear that the strategy was an effective one.

Many cases nevertheless remained in the backlog, and some means still had to be found to cope with the volume of new claims entering the system. At the request of the Advisory Council, the Department of Industrial Accidents formulated a proposal for resolving the problem by adding seven new temporary judges and support staff paid for by the General Fund to work solely on eliminating the backlog. A draft proposal was presented to the Council at its September meeting, and support was voted unanimously.

## 2. Post Reform Law Cases

Due to the Department's new ability to more accurately predict the flow of cases, it became clear that the increased workload would cause the Department's judges to fall behind the statutorily required timetable. The Department brought this important issue to the attention of the Advisory Council and the Joint Committee on Commerce and Labor in a timely fashion.

Recommendations were made to the Legislature by the Advisory Council and the Department to add five new permanent judges, paid for by the Workers' Compensation Special Fund, to help again meet the statutory timetables.

Delays in the appointment process have prevented these new judges, as well as those designed to address the backlog, from being available to the department to perform their assigned tasks. The Department is now at least seven weeks behind its statutory timetables at the Boston office, and two weeks behind in regional offices other than Lawrence.

Since the appointment process may not be completed until late summer, these timelines can be expected to worsen. The Advisory Council will monitor this situation closely and, should the situation deteriorate further, may be in the position of holding oversight hearings, requesting decisive Department action, or seeking help by the Legislature by the time the September report is issued.

### 3. Uninsured Employers

Another critical issue which drew the attention of the Department and the Advisory Council early in the year and was addressed in the proposed reform was an apparent increase in the number of employers in the Commonwealth illegally operating without workers' compensation insurance. The problem first surfaced in

concerns over the high number of claims filed against the private employer Section 65 trust fund which provides payments to injured employees of uninsured employers.<sup>2</sup> In a presentation at the Advisory Council's July 1987 meeting, the Department's legal counsel reported payments of \$190,000 in such cases, with 53 cases still under investigation.

The increasing incidence of uninsured employers was broadly regarded as a problem with widespread repercussions for the compensation system. It raised concerns about care to injured employees, posed an administrative and financial drain on department resources, and unfairly penalized employers who, although in compliance with the statute, faced the potential prospect of additional assessments to protect the solvency of the Section 65 fund. In addition, this latter concern raised the more serious fear that continued abuses might prompt a movement to do away with the fund altogether. The Advisory Council decided at the July meeting to review enforcement provisions in other states and to draft a proposal that would strengthen sanctions against uninsured employers and encourage adherence to the legal statutes.

#### 4. Legislative Reform

The Advisory Council and the Department collaborated closely in formulating their recommendations regarding

the backlog and uninsured employer issues into a proposal for legislative reform. The Department presented a draft proposal at the Council's September meeting, and the Council voted its support. Subsequently, at the legislative hearing held by the Joint Commerce and Labor Committee in October, seven Advisory Council members were in attendance, and six of them made statements to voice the Council's support of the bill. The Committee, under the guidance of its Chairs, Representative Marilyn Travinski and Senator Lois Pines, reported the bill favorably and were instrumental in its passage. The bill was ultimately signed by the Governor on January 6, 1988. A brief summary of the changes is attached as Appendix C.

#### A. Statutory Changes

While not nearly as far-reaching as the 1985 reform, the new legislation nevertheless introduces important changes into the workers' compensation system. Among the amendments intended to encourage employer compliance with their legal obligations to secure workers' compensation insurance coverage is the provision of the department with the authority to issue "stop work" orders when it finds that an employer hasn't complied with the law. Civil fines up to \$100 per day may be set, payable into the private employer trust fund. This fine may be increased to \$250 per day if the department

finds non-compliance after the appeal of an order. Any employee affected by the stop work order is to be paid for the first 10 days of lost work. The purpose of this legislation is not to close down businesses, but rather to ensure compliance with a mandate set by the legislature and to eliminate the competitive disadvantage of complying employers.

Provisions in the reform also require the production of evidence of workers' compensation insurance before the issuance of certain licenses or permits or the awarding of contracts by public entities. It is hoped that this provision will provide some remedial measures to cut back on the large number of uninsured employers, as well as offer unwitting violators the necessary information for complying with legal requirements.

A number of administrative changes introduced by the new law seek to reduce the backlog and facilitate the claims flow process. To enhance the effectiveness of conciliation, the new law gives conciliators the authority to transmit their recommendations in a report as the case is referred to dispute resolution. The recommendations will refer to whether compensation should or should not be paid, whether weekly compensation should be modified or terminated, or whether insufficient information is available at conciliation to support either of these.

Other administrative changes in the reform seek to improve various areas of the administrative process. In order to provide a full opportunity for the "pay without prejudice" period to work effectively, the bill establishes a waiting period of 30 days from the onset of disability for the filing of a claim. The new amendments also permit an extension of the "pay without prejudice" for an additional sixty days by written agreement.

The bill eliminates the procedure which initially scheduled both the conference and the hearing, upon the referral of the case into dispute resolution, within forty-nine days. It also reintroduces the requirement that dissatisfied parties must affirmatively appeal a conference order. While the new appeal process may extend the total period from referral to decision, the department has indicated that it intends to maintain the timeframes set forth in the initial reform bill.

The legislation adds sanctions when representatives of claimants and insurers fail to attend conciliations for reasons not beyond their control. The new law also provides for the payment of attorney fees at the conciliation stage, but reduces the fee payable at the conference level.

#### B. Financial Appropriation

In addition to its statutory changes, the legislation included a financial appropriation to support the goals

of the reform. All appropriation requests attached to the legislation were reviewed by the Advisory Council during discussions on the impending legislation.

The total appropriation of the reform bill was \$948,680. Of this total, \$343,677 was devoted to expenditures for the backlog. These funds were not to be included in the assessments upon employers, but were to be funded by the state. Included in this sum was \$236,000 in personnel costs for 20 temporary positions assigned to the backlog. These positions comprise 7 administrative judges, 7 head clerks, 3 principal clerks, and 3 stenographers. The remaining \$605,033 included \$385,808 in personnel costs for 46 full-time positions to be added in the spring of 1988.

Other Bills: A number of other bills have been filed in the past Spring seeking additional changes to the law. One bill that has been reported favorably out of the Committee on Insurance, and is currently in the Senate Steering and Policy Committee, would eliminate the exclusion of workers' compensation from the coverage of the Insurers insolvency Fund.<sup>3</sup> Other bills have been filed that concern notification requirements under the law and that would allow municipal self-insurers to establish reserves funds for the payment of claims.

#### 4. Workers' Compensation Insurance Rate Hearings

On February 23, 1987, the Massachusetts Workers' Compensation Rating and Inspection Bureau (WCRIB) filed a request with the Commissioner of Insurance for a 31.5% increase in workers' compensation premium rates. In the subsequent hearings held by the Commissioner on the rate filing, the Advisory Council intervened as an interested party in accordance with its statutory rights set forth in M.G.L. c.152, s.52A. A statement by the Advisory Council expressed its concern on the potential impact of the proposed increase on the overall operation of the system.

In addition, the Advisory Council voted to expend a portion of its funds for an analysis of the rate request by two separate experts in the field. This analysis was made available to the State Rating Bureau, and the experts provided testimony for the Bureau as part of its case in the matter.

A decision by the Department of Insurance rejected the requested increase on August 20, 1987. On October 15, the WCRIB submitted a refiling of its rate request with a request for a 22.8% rate increase. This request was rejected by the Department of Insurance on October 28. A request for a 19.9% increase was then filed by the WCRIB on November 16. At a hearing before the Department of Insurance on December 14, all interested parties were provided an opportunity to comment on the

filing. The rate request was subsequently approved by the Commissioner of Insurance on December 31 and became effective on January 1, 1988.

The Commissioner's decision to approve a 19.9% increase was subject to a number of substantive and legal challenges shortly after it was issued. Each of the appeals--which sought equitable relief from the increase--was denied by a single justice of Supreme Judicial Court. The full appeals on the matter were processed and the parties filed briefs on the matter in mid-March, and oral arguments were held on May 4, 1988. A decision is expected this summer.

##### 5. Cessation of Insurer Operations in Massachusetts

Another major concern in the area of insurance during the past fiscal year has been the indication by a number of insurance companies of their intentions to cease doing business in Massachusetts. Published statements by the companies involved have cited the adverse business impact of writing auto insurance in the commonwealth. Since insurers cannot write workers' compensation insurance without also providing auto insurance coverage, the loss of insurance companies will necessarily have a ripple effect on other lines of insurance, including workers' compensation.

At present, only the Fireman's Fund insurance company has officially relinquished its license to

operate in the state, and it is no longer renewing any of its policies. Peerless Insurance Company has attempted to withdraw from the auto insurance market within the Commonwealth. As a result of this action, the Commissioner of Insurance has suspended its license to sell any form of insurance other than auto, effective June 30, 1988, until it resumes the issuance of auto policies. This matter is currently under appeal to the courts. Several other companies have announced similar plans.

According to statistics provided by the WCRIB, Fireman's Fund wrote 5.65% and Peerless wrote 2.47% of all workers' compensation policies in the state in the period from 8/1/86 to 7/31/87. The loss of this policy-writing coverage not only stands to place greater pressure on other insurers, particularly those in the assigned risk pool, but will affect the Department as well, since any employer who does not purchase workers' compensation coverage may be liable under the new sanctions imposed by the legislature this year.<sup>4</sup>

Provisions in the workers' compensation law regulate the withdrawal of insurers based outside Massachusetts. Under section 62 of Chapter 152, any foreign insurer must deposit with a trustee at least 25% of its current or future obligations within five days of withdrawal from the state. An amount covering the remainder of the

obligations must be deposited with the trustee within thirty days of withdrawal. At present the Department is investigating how this trusteeship will be established and administered, and therefore no information is available on the application and effectiveness of the trusteeship at the time of this writing.

#### 6. Medical Reimbursement Rates

Towards the end of the fiscal year, concern was raised in Advisory Council meetings about problems arising in medical treatment for injured employees. The problems, which centered upon medical care for employees and reimbursement fees for health care services, were not new. In testimony at the state-wide hearings held by the Governor's Task Force on Workers' Compensation prior to the 1985 reform, there were numerous indications that employees often experienced difficulty in obtaining medical care for injuries sustained during the course of employment. To address the issue, the reform legislation provided for an increase in the reimbursement rate to physicians of up to 50 percent in the medicare rate in effect on July 1, 1985. The Rate Setting Commission--which sets reimbursements for health care providers--set the rate at the maximum amount. The Commission was also directed to review the adequacy of the rates on or before July 1, 1988.

The Advisory Council notified the Rate Setting

Commission of its concern in this serious matter. In particular, concern was expressed that employees injured at work were still experiencing difficulties in obtaining treatment.

While recognizing that costs have increased over the last few years, the Council is also sensitive to the importance of prompt and professional medical treatment for the workers' compensation system. The Council believes that any solution that addresses the legitimate concerns of the health care community must also take into account the entitlement of injured employees to medical treatment.

A public hearing was held by the Rate Setting Commission on May 24, 1988, at which time the agency explained its proposed rates. The commission explained these rates as incorporating a change from a charge-driven system to one based upon costs, and stated that most major insurers base reimbursement rates upon doctor's charges.<sup>5</sup> The model used by the Commission is the same as that used to determine surgical and related anesthesia rates and incorporates a Relative Value Scale developed by two physicians from the Harvard School of Public Health.<sup>6</sup>

Representatives from the medical community at the Hearing expressed dissatisfaction with the proposed rates, indicating that the rates were much lower than those which could be charged for similar services under

other reimbursement mechanisms. Opinions were expressed that such rates could trigger the exodus of medical personnel from the state, following in the wake of those who have already left in the last few years.

A decision is expected in time to be effective by July 1, 1988.

#### IV. DEPARTMENTAL OVERVIEW

The Department of Industrial Accidents is divided into two principal components, the Division of Administration and the Division of Dispute Resolution. The former is primarily responsible for the daily operations of the department and is comprised of five separate offices, as well as the four regional offices. These offices include the Office of Administration and Data Processing, the Office of Safety, the Office of Claims Administration, the Office of Education and Rehabilitation, and the Office of Insurance. The managers of these offices and the four regional office managers report to the Director of Administration. The Division of Dispute Resolution is the section of the department where conferences, hearings and appeals are adjudicated by Administrative Judges and Administrative Law Judges.

##### 1. Office of Administration and E.D.P.

Budget and Expansion: The fiscal year 1989 budget for the Department of Industrial Accidents includes \$350,000

for computer expansion. Expansion is necessary largely because the department underestimated the volume of records and number of terminals required for department operations in the RFP it issued in April, 1986. During the past year, the Department received approximately twice the number of claims it had anticipated, and its available computer terminals fell far short of staff needs. In its expansion request, the Department plans to increase its hardware configuration from 128 terminals and printers to 144 computers and terminals in the 1988 fiscal year. However, due to the additional users and the additional computer capacity required for the unanticipated volume of claims and resolution of the backlog and prolog initiatives, the Department has projected that it will run out of capacity in the 1989 fiscal year.

At this writing, technical discussions between the Department and Systems Automation are considering various options for resolving the impending capacity problem. The Department is closely monitoring system performance, the volume of transactions, and file sizes. On the basis of technical data that it thereby gathers, it intends to implement the most cost effective technical solution.

Section 65 Trust Fund: The section 65 trust fund provides payment to employees whose employers have

violated the law by not purchasing the required insurance coverage for its employees. As of mid-May of this year, a total of 143 claimants have been paid by the fund, with 61 current claimants currently receiving compensation. A total of 398 cases have been filed against the fund as of May 17, 1988, of which 126 are currently pending. An additional 62 cases are paid claims that are still open. Overall, the fund has paid in excess of \$1,171,000 this fiscal year. Additional information on the fund is attached as Appendix D.

Receipts:

During fiscal year 1988 (as of 5/13/88), the private employer trust fund held receipts of \$11,877,537, which was added to a balance of \$4,131,935. Expenditures for the fiscal year to date total \$5,025,045, leaving a balance of \$10,984,427. This figure does not include part of the third quarter and all of the fourth quarter COLA reimbursements, nor does it include some section 65 medical payments that are still outstanding.

Figures from the public employer trust fund show receipts of \$801,245, in addition to a balance of \$540,989 at the beginning of the fiscal year. Expenditures during the fiscal year to date equal \$1,164,071, leaving a balance of \$178,163.

The statute requires that proceeds from any fine or fee pursuant to the law are to be kept in the special

fund, which is to be used for the operating expenses of the department. During the past fiscal year, through May 27, 1988, the department received the following fines and fees:

Late first report fines	\$68,500.00
Late assessment fees	\$5,272.34
Filing fees	\$281,148.19
Appeals	\$8,982.11
	<hr/>
	\$363,902.64

As of the effective date of the latest changes, any fines or penalties paid by an uninsured employer are to be paid into the private employer trust fund.

## 2. Office of Safety

The Office of Safety was established under the 1985 reform to promote safe and healthful conditions in the workplace by awarding grants for training, education, and other preventive programs in occupational safety and health. Eligible grantees are: 1) management/employer organizations, 2) labor/employee organizations, and 3) other organizations offering health and safety education programs. Selection of grantees is made by a Review Committee consisting of a business representative, a labor representative, two health and safety professionals, and the director of the Office of Safety.

During the 1988 fiscal year, the Office of Safety awarded its first grants for occupational safety and health programs, all of which are to be completed at the end of the fiscal year. A total of fourteen awards,

ranging from \$20,919.25 to \$30,000, were made in the initial round of funding. The various programs had target populations of "employees", "employers", or "employees and employers/supervisors". Information on the fourteen programs is included in Appendix E.

The list of recommended grantees was not finally sent to the Commissioner for recommendation for funding until December, 1987 and awards were not approved by the Comptroller until February, 1988. Due to the late start, none of the programs was completed before the end of the fiscal year. Information on the completed programs will be included in the second part of the annual report.

### 3. Office of Education and Rehabilitation

The Office of Education and Rehabilitation has two primary responsibilities under Chapter 152. For those injured workers requiring vocational rehabilitation, the office prepares vocational rehabilitation plans and assists in placing the employee with a qualified vendor. Additionally, the office reviews all lump sum settlements with employees and submits a report on prospective settlements to the Reviewing Board.

In carrying out its rehabilitation functions, the office is responsible for contacting and meeting with all injured employees who it believes require

rehabilitation services in order to return to suitable employment. Although it is not mandatory for an employee to accept rehabilitation services, refusal to meet with the office results in the loss of compensation during the period of refusal. After contact is made, the office works with employees in drawing up a rehabilitation plan, and the insurer's agreement is sought in providing for the program. In cases where the insurer refuses to pay for the program, the Department of Industrial Accidents is to pay the program's costs. However, if the employee completes the program and returns to work, the insurer is obligated to reimburse the Department no less than twice the cost of the program.

During the 1987 reporting period, the office was principally concerned with developing and implementing its rehabilitation program. Over the past year, as the office has become better established, the main goal has become one of making the program viable.

The relative newness of vocational rehabilitation to workers' compensation has heavily influenced the start-up process. Not only has considerable effort been internally directed at perfecting a new approach to rehabilitating injured workers, but it has also been necessary to devote time to informing and educating outside parties about the new system through concerted

outreach activities. During the past fiscal year, vocational rehabilitation counselors made 18 presentations to employer groups, chambers of commerce, insurers, rehabilitation providers, attorney firms, and hospitals.

Based upon the experience of the office to date, it would appear that the sanctions and incentives governing rehabilitation are working well. There has only been one case in which an insurer declined to fund a rehabilitation program, and even in that instance rehabilitation was eventually included as part of a lump sum settlement. It has also been rare for compensation payments to be stopped due to an employee's refusal to meet with the office. At the time of this writing, 2,278 people have been brought in for mandatory meetings during the 1988 fiscal year. The office estimates that payments have been stopped a maximum of 20 times. The suspension of payments in each case has led to a subsequent meeting.

During the past fiscal year, 27,569 people have been referred to the Vocational Rehabilitation unit. Contact was made with 15,088 of these to determine if a mandatory meeting was necessary. Of the number contacted, 2,278 were brought in for mandatory meetings with a rehabilitation counselor. Of the people brought in for mandatory meetings over the past year, 759 were referred for vocational rehabilitation services. Of

these, 297 have had plans developed and signed off by all parties--claimant, insurer, attorney, counselor, and provider. It is anticipated that plans will be developed and signed off for another 234 of those referred for rehabilitation services.

Of those who have had plans developed, 115 have returned to work, 12 have dropped out, and the remaining 170 are continuing in rehabilitation. A total of 107 returnees to work have been back on the job at least sixty days and have been closed out as rehabilitated.

While providing some indication of the office's ability to reach its prospective clientele, summary statistics also reveal an extremely heavy workload for a limited counseling staff. The situation is particularly acute in the regional offices. In Fall River, for instance, one counselor has handled 6,036 referrals through May. With an anticipated 10% of referrals eventually becoming cases, this would normally project to a caseload of over 600. The maximum caseload compatible with effective monitoring capabilities is estimated at 240. In Lawrence, the situation is not much better, with one counselor receiving 5,115 referrals, and in Springfield, one counselor has handled 3,500 referrals. Only in Worcester, where two counselors have handled 5,000 cases, is the situation stable.

Under procedures for lump sum settlements, the

office reviews all lump sum requests by employees within fourteen days of their receipt. Reports on the case are to be sent to the reviewing board within five days of completing review of the case. From the beginning of the fiscal year through May 30, 1988, disability analysts in the Boston office heard 1,868 lump sum cases, while disability analysts in the regional offices heard 1,700 lump sum cases.

In carrying out its education function, the office responds to requests for information. After an employer files a first report of injury with the department, the department is required to mail the employee an informational booklet that explains the employee's rights, obligations and responsibilities. Currently the booklet is only available in English, and the department is considering its publication in other languages.

#### 4. Office of Claims Administration

##### Claims Processing

The office reviews and processes most of the incoming material to the department. In addition, this office is responsible for data entry of cases and maintaining records in the file room.

In the last year and one-half the number of new law cases has increased to the point where over 70% of incoming cases have a post-November 1, 1986 injury date.

The average number of entered incoming cases increased 36% from calendar year 1986 to 1987. For the first third of calendar year 1988, the average number of incoming cases is down about 7% from the 1987 average, but is still 26% more than 1986. A summary of figures is listed in Appendix F.

The office reviews all the incoming material, much of which is rejected. Since January of 1987, the number of claims/complaints entered has been roughly 80% of those filed. In 1987, an average of 1,714 rejection letters were sent per week. Since that period included the period immediately following the new law, and confusion over the law and paperwork could be expected, it may not be an accurate picture. However, in reviewing the available figures for the last six months, which coincides with the beginning of the second year of the law, the number of rejections still appears to be high, averaging over 1,163 per week.

A breakdown of a few classifications is listed in Appendix F. The department is preparing to initiate the implementation of revised forms in order to comply with the recent changes in the law.

The department has to date received a total of 40,971 quarterly reports for the first three-quarters of this fiscal year. Since it is estimated that there are more than 130,000 businesses in the state, and that each business should file a report on a quarterly basis, it seems clear that this provision is being ignored.

### Regional Offices

One of the elements of the reform law was the mandate that the department establish four regional offices. At the present time, the Fall River office is in the process of relocating to a new building. In the other regional offices, efforts to expand in anticipation of additional staff have been completed. In order to improve and expedite case processing, a courier transports files and other materials to the regional offices, visiting each twice weekly. An electronic mail system implemented during the past year also facilitates communication between all the offices.

### Conciliation Unit

The conciliation unit of the Office of Claims Administration is responsible for attempting to resolve claims or complaints through informal means. Under the current law, the office may decide which cases to conciliate, and if a respondent to a claim or complaint fails to appear, or lacks authority to resolve the matter, the case is referred to the Division of Dispute Resolution. Cases not resolved in conciliation are forwarded to the Division of Dispute Resolution within fifteen business days of the Division of Administration's receipt of a case.

One of the reasons that the conciliation procedure

was established under the reform law was to provide an outlet for quickly resolving cases that might not require a judge's decision. The latest changes authorize the conciliator to recommend whether weekly compensation or benefits should or should not be paid, modified, or terminated, or whether insufficient information was available at the conciliation for any determination. If a respondent to a claim or complaint fails to appear or is not authorized to resolve the matter, the case is to be referred forthwith to the division of dispute resolution.

Potential sanctions have also been introduced if an insurer or a claimant's attorney fails to appear at a scheduled conciliation for reasons not beyond their control. In such cases, the referral fee for an insurer is increased to 130% of the state average weekly wage at the time and the claimant's attorney's fee may be reduced from two times the average weekly wage to one times the average weekly wage. The department has issued a memo which states that for the purpose of assessing these penalties, absent notice failure or a subsequent determination that the reasons for not showing were beyond the party's control, a party must report to the conciliation unit within thirty minutes of the scheduled time.

During the past fiscal year to date, the conciliation unit was able to resolve 31.4% of the

matters before it where all parties were in attendance. Removing the week of section 36 case schedulings--where the success rate was 59.2%--lowers the average success rate to 30.73%. The range for successful conciliations, excluding the section 36 week from the sample, is 25.9% to 35.8%. These two figures average out to approximately 30.9%.

Examination of the last 47 weeks, excluding the section 36 week, reveals an overall average success rate is 30.72% with the range remaining unchanged. See Appendix F. The success rate rarely varies and is remarkable for its consistency. However, very recent tentative statistics show that for cases after the effective date of the most recent amendments, the success rate has averaged approximately 38.9% over a three week span. Each of the weeks exceeded the previous maximum by more than 3%. While it is still far too early to derive any logical inference from these numbers, it is nonetheless an encouraging sign.

### 5. Office of Insurance

The office of insurance within the Division of Administration is responsible for enforcing provisions in the workers' compensation law related to insurance and self-insurance.

Last year's annual report indicated that the office's limited human and technological resources

impaired its ability to perform its monitoring function. This was a point which had been made at least as far back as 1984, when a report on the Division of Industrial Accidents by the Office of Management and Information Systems suggested that "reorganization of the files and increased staffing [of the Insurance Register] could improve the ability of the Division to perform its responsibilities."<sup>7</sup> It was recommended that the Insurance Register "automate employer coverage information in order to facilitate record retention and the timely response to inquiries with respect to current and historical employer coverage."<sup>8</sup>

During the past fiscal year, the Office of Insurance was still largely understaffed and poorly automated. In the Insurance Register, three people were responsible for sorting and filing cards, cross-referencing expired and current policies, and performing research tasks. Their work for much of the year has been supplemented by two temporary workers, but there is nevertheless a need for additional permanent staff. While a computerized system is finally scheduled to come on-line in the new fiscal year, the office will still have a single EDP operator to input up to 1000 incoming cards a day. The office estimates that one person can input a maximum of 500 cards a day.

During the past year, the office has also worked with Office of Claims Administration in order to verify

that the employers of claimants filing against the uninsured employers fund actually were uninsured. The Council was informed last year that a number of claims filed against the section 65 fund were legitimately insured. The department subsequently introduced a policy of returning claims to the claimant when no insurer was listed, along with a request to have the office of insurance certify that its insurance registry had no policy listed for that employer. This certification is mailed with the claim back to the department in order for the claim to be processed against the section 65 trust fund.

The office is also given the responsibility for investigating claims against the section 65 fund and determining which employers are not insured. After the enactment of Chapter 691, the department has been given the power to issue a stop work order if an employer chooses not to comply with the insurance requirements of the law. One such order was issued this year. The employer chose not to appeal it and decided to close its business. Approximately ten employees were affected, four of whom were hired by the parent company, and the remaining six were referred to the Executive Office of Labor for assistance in finding new employment. Once the computerization process is complete, the office will be able to publish its annual report on the promptness of first payment of insurers.

## 6. Division of Dispute Resolution

Every case referred to the Division of Dispute Resolution is assigned to an administrative judge. Under the statutory timeframes, an administrative judge is to issue an order within 28 days of a case file's receipt. An order is either preceded by a conference or based upon information in the case file. For the greater part of the period under review, a hearing was held if a party expressed dissatisfaction with a conference order. During the first four months of 1988, the department received 34 requests for "stays", of which 31 were granted. A "stay" request takes place prior to a conference. An administrative judge may grant a continuance only for reasons beyond the control of a party or the party's attorney. Plans are being studied for providing the Council with quarterly reports in this area.

At the present time, due to the statutory requirements of the reform law, administrative judges basically work on a 10 week schedule. During the first four weeks of the cycle, conferences are held four days per week. One day is reserved for writing. The next four weeks are used to conduct the hearings, which are scheduled as a result of the conferences, and these average about four per day, on the same weekly schedule as the conferences. These two four week periods are

followed by a week to hold continuances and a week to write decisions. The scheduling ordinarily begins at 9:15 AM.

As a result of the recent changes in the appeals process, there will no longer be a hearing automatically scheduled for each conference. The ten week cycle will be maintained, but the two weeks for continuances and writing will be interposed between the four week cycle for conferences and the four week cycle for hearings in order for appeals to be processed. However, the department has stated that, in order to fully utilize all resources, matters will now be scheduled in the morning and the afternoon. Hearings are planned for the morning and conferences for the afternoon.

During the current fiscal year the department has mailed out 1,255 decisions, an average of 126 per month. This compares with an average of 144 per month for the eight month period from 11/1/86 to 6/30/87. The difference may be partially attributed to the comparative difficulty of the increasing number of cases subject to the 1985 reform's administrative and statutory changes. In addition, there were fewer judges during the initial part of the 1988 fiscal year while finalization of two recalled judges took place, and therefore more judges contributed to the 1987 total than contributed to the 1988 total.<sup>9</sup> Finally, any review of the decisions must consider the cycle that is outlined

above, since each judge's monthly total may be impacted by where she/he is in the ten week cycle. A list of the decisions mailed out is attached as Appendix G.

The number of decisions mailed out does not by itself capture the workload or effectiveness of Administrative Judges. At conferences, which are informal in nature, judges often attempt to resolve matters, eliminating the resort to litigation at a hearing. During the current fiscal year, Administrative Judges have resolved (the case is lump summed, adjusted, or withdrawn) 6,663 cases, just over 666 a month. See Appendix H.

## **2. Review Board**

As part of the 1985 reform bill, the legislature established a Review Board within the Division of Dispute Resolution. The Board is comprised of four Administrative Law Judges who are appointed for six year terms, with no more than two members from the same political party. The appointment and review process for the Administrative Law Judges is identical to that for the Administrative Judges.

The Review Board is responsible for issuing decisions on the appeal of any decision by an Administrative Judge. The Board does not make findings of fact and can reverse an Administrative Judge's decision only if it is found to be arbitrary,

capricious, contrary to law, unwarranted by the Board reviews the record--including the transcript--and briefs filed by parties, and may hear oral arguments. Its written decision is to be issued no more than thirty days from appeal, unless the Director of Dispute Resolution authorizes an extension. Since the Board's decisions interpret and create case law, they are to be indexed and published.

A second role accorded to the Review Board under chapter 152 is that of approving lump sum agreements. In cases where parties agree to a lump sum settlement, approval of the Review Board is required as a safe mechanism for an employee seeking to resolve a case. The Board will approve a lump settlement when, following receipt of a report from the Office of Education and Vocational Rehabilitation, it deems the settlement to be in the employee's best interest.

The Department has supplied the Council with 141 decisions issued on appeals to the Review Board in 1987 and 1988. In order to provide some insight into decision outcomes, the decisions have been classified according to whether a party "prevails", "partially prevails", "doesn't prevail", or if the case is "remanded to the Division of Dispute Resolution". These decisions are further distinguished according to whether the party was an employee, insurer, self-insurer, or other. Cases that have been removed from the total are

those that have been remanded to the Department by the courts, involve the approval of a section 15 case (controversy over which insurer is liable), or for which the appeal was withdrawn.

During 1987 there was a much higher percentage of appeals from insurers/self-insurers in cases where only one party appealed (45% as opposed to 24%). There was also a much higher percentage of appeals by self-insurers during 1987, 18% as opposed to the 6% total so far in calendar year 1988. The vast majority of appeals in each year is by employees seeking to reverse an Administrative Judge ruling. During 1987, the percentage was 60%, and thus far in 1988, the percentage is 76%. However, the percentage of cases where the employee appears to have prevailed, either partially or totally, was just 13% (8 out of 60) in 1987 and 11.5% (3 out of 26) in 1988. Conversely, during 1987 insurers appeared to prevail in 28.5% of the cases (10 out of 35), while in 1988 they have yet to prevail (0 out of 7). It is also interesting to note that the percentage of cases which are multiple appeal cases (where more than one party has appealed) has dropped from 15% in 1987 to 3% in 1988. See Appendix I.

During 1988 there has to date been a higher percentage of cases which have been remanded from the Review Board to the Administrative Judges than in 1987. Last year, 8% of the single party appeals were remanded

in some manner. During the first few months of 1988, 21% of the single appeal cases have been remanded. This difference may be traced to a decision from the Massachusetts Court of Appeals, Diano's Case, A.C. No. 87-0610-CV, decided on January 12, 1988. The court held that the review board's interpretation of the single member's decision was not supported by the decision or the record. Since the basis of the decision was unclear, the court remanded the matter to the division of dispute resolution. This decision requires that the single member make the subsidiary findings necessary in order for a court to understand the basis of the decision.

At present, two other cases have been taken up by the Supreme Judicial Court which will be dealing directly with the standard of review for appeals to the review board. The issues concern whether cases with injury dates prior to November 1, 1986, but heard subsequent to that date by the review board, should be under the old law (section 10 which permitted the review board to hear evidence and revise the decision in whole or in part), or should come under section 11C, which states that the Review Board may not review determinations made by the Administrative Judge during the course of the hearing. Depending on the Court's decision in these cases, the standard for review may change.

## V. HEALTH CARE SERVICES BOARD

Many concerns about the adequacy of fees to health care providers and the quality of services to injured workers were raised prior to the 1986 reform law. In an attempt to remedy this situation and provide a quality control mechanism for medical services--both for provider and recipient--the Department of Industrial Accidents was mandated under the law to establish a Health Care Services Board. Members of the Board are appointed by the commissioner to serve two year terms. The Board is to assist the Commissioner and the Department's medical consultant in monitoring medical services and treatment. The Board held its initial meeting in June 1988. A list of members is attached as Appendix J.

## VI. JUDICIAL NOMINATING COMMITTEE

As part of the reform legislation, the General Court provided for the formation of a nominating panel to review and participate in the appointment process for administrative judges and administrative law judges. The Chair and the Vice-Chair of the Advisory Council were appointed by the Governor to serve on the panel.

The Committee was created as part of the reform efforts to enhance oversight and accountability in the appointment process. In addition to its appointment

responsibilities, the Committee is responsible for conducting a performance review at the conclusion of a judge's term.

During the latter part of the past fiscal year, the group met extensively to review and interview applicants to Judgeships created by the latest legislative amendments. The recommendations of the committee are currently awaiting final action by the Governor and the Governor's Council.

#### VII. ANTI-DISCRIMINATION PROTECTION

Broad anti-discrimination language was enacted in section 75B of the reform law in order to provide stronger reinstatement rights for workers. Under this section, employers are obligated to give hiring preference to former employees who have recovered from work injuries. Although a job doesn't have to be created for a recovered former employee and he or she doesn't have "bumping" rights, the recovered employee who applies for a vacancy in the original or other suitable job is to be offered the position.

Enforcement of the right must take place in Superior Court. The Advisory Council wrote to each of the Commonwealth's Superior Courts requesting pertinent information regarding actions filed pursuant to the section. To date, two of the courts have responded and actions have not been filed in either of them.

## VIII. CONCLUSION

### Statutory Amendments/Backlog

As the fiscal year draws to an end, the Advisory Council has a number of outstanding concerns regarding the workers' compensation system. Probably the greatest concern at this writing centers upon the status of some of the changes included in Chapter 691. As outlined early in this report, the reform bill included a staffing increase which sought to enhance the ability of the Department of Industrial Accidents to carry out its statutory mandate. To date, there has been no authorization to fill the newly-created slots.

It is clear that the Commonwealth is facing a budgetary problem at the current time and that it must take actions consistent with its budgetary demands. However, the 1985 reform bill sought to address just this contingency by developing a new funding mechanism for the Department of Industrial Accidents. In order to meet the needs of the department without placing direct burdens on the tax base, department revenue is generated through an assessment on private employers. In discussing this aspect of the reform following its passage, one noted commentator concluded that, while the budget was still the sole responsibility of the General Court, passage of proposed Department of Industrial Accidents budgets should not be a major problem, in lieu of the funding source established in the statute.<sup>10</sup>

The department's inability to fill its projected staffing requirements is having immediate repercussions on the scheduling and resolution of cases. Not only does the backlog remain a major problem, but the timeframes set forth by the reform bill can no longer be met. The Council has recently been informed that delays of approximately two weeks currently exist in three of the four regional offices, and delays of six to seven weeks exist in the Boston office. Any additional delay will only exacerbate an already intolerable situation.

While problems existing with budgetary matters is new, the problem of the backlog is not. It is the most serious problem facing this system. Thousands of claimants await a hearing or conference. The impact on them and their families cannot be measured. Employers also are effected since experience modifications may be impacted by the reserves set aside while the case is still pending.

The size of the backlog has been decreased from estimates of over 20,000 to the current figure of 13,215. However, since the end of January the size of the backlog has grown by 500 cases, an increase of 4%. During a similar timeframe--since January 11, 1988--149 "hardship affidavits" have been received by the Division of Dispute Resolution. The backlog includes 2,299 cases (772 for conferences and 1,527 for hearings) with a request date prior to November 1, 1986. There are

10,916 cases (10,295 cases for conferences and 621 for hearings) with a request date after November 1, 1986. This problem demands immediate intervention.

To assist department efforts to reduce the backlog, Administrative Judges earlier in the year volunteered to take on additional cases, and the department's leadership has worked diligently to resolve the problem. It is important that these efforts be supported with the additional staff envisaged in the reform bill. At the time of this writing, the 1989 fiscal year budget submitted by the administration has been cut nearly 11% by the House of Representatives. In light of the resource needs in virtually every area of the department, these cuts may have a serious impact on the ability of the department to meet its mandate. It does not appear at this point that any additional positions for fiscal year 1989 will be forthcoming. The Advisory Council is hopeful that a positive and constructive dialogue can offset this potential problem.

#### Data Collection

As pointed out in the 1987 Annual Report, effective monitoring of the workers' compensation system requires a reliable data base and effective computer system. It is interesting to note that during the early years of the Workers' Compensation Act, the department published annual reports that routinely exceeded 300 pages. These

documents included extensive data on a variety of subjects. With the benefits of computer technology, the maintenance of comprehensive data files and records is immeasurably enhanced, and these advantages should be exploited to the fullest.

At the present time, a review of department data collection efforts must be postponed because the new computer system will not be on line until the latter part of June. The establishment of an effective data collection and analysis system therefore remains an unfinished task. Perfecting this area of department operations in the near future is critical since adequate data will be required for the comprehensive review of the system in 1989.

#### Vocational Rehabilitation Licensure

In November of the past year, a bill was enacted that will require the licensure of rehabilitation counselors, specialists, advisors, and consultants. After March 1, 1989, no person can advertise the use of such a title unless a legal exemption applies, such as working for a public entity.

Among the requirements for licensure are the completion of a masters degree in a relevant field from an institution licensed by the Commonwealth, two years of supervision in a clinical setting, and successful completion of a written or oral examination administered

by the board of registration of allied mental health and human service professions. Temporary licenses may be issued for up to one year and individuals may be "grandparented" in certain instances.

Although the effective date of much of this bill lies in the future, it nevertheless raises immediate concerns regarding its potential ramifications. Since this piece of legislation will directly affect the ability of private rehabilitation providers to recruit and retain their counselors, even with grandparenting and temporary licensing, the provision of services may not be able to keep pace with demand.

#### Second Injury Fund

An outstanding issue taken up at several Advisory Council meetings has to do with claims from the second injury fund under the old law that have either been approved or were awaiting approval at the time that the new law took effect. When chapter 572 of the Acts of 1985 was enacted, it made certain changes "procedural", or applicable to any matter, and certain changes "substantive", meaning they would apply to matters occurring after the effective date of the particular section. Among the substantive changes were certain changes made to section 37 of M.G.L. c. 152, especially sections 48 and 49 of Chapter 572 of the Acts of 1985.

Many problems were experienced with the solvency of the second injury fund under the old law.<sup>11</sup> Frequently no funding was available when requests were made for reimbursement from the fund. It was not uncommon for parties to withhold requests for reimbursement after the midway point of the fiscal year because the fund was so often depleted.

A court action is presently seeking a judgement that certain fees be paid for services rendered in defense and administration of the old fund. There is also an action in the Superior Court seeking enforcement of a previously approved case that has not been paid. Since the purpose of the fund is to encourage employers to rehire injured employees, failure to resolve these issues will defeat the purpose of the fund.

#### Division of Dispute Resolution

One development with possible repercussions for the Review Board is the projected increase of Administrative Judges from 16 to 28, a 60% increase. The impact of this increase on the workload of the 4 member review board is uncertain, but it should be expected that the total number of appeals will increase over the course of the next year.

In light of this potential increase in workload, there have been discussions about providing the

Administrative Judges with certain approval powers on lump sums agreements in order to reduce demands on the Review Board.<sup>12</sup> These discussions are still taking place. Another issue that must be reviewed is the expiration of contracts for the two recalled Judges at the end of this fiscal year.

Of the 70 additional positions that were to be paid for through the reimbursement by the assessment process, 31 were projected for this division. Many of these positions were support staff that could be used to alleviate the delay in hearing cases.

Finally, there is currently a matter before the Review Board challenging the constitutionality of the process whereby the same Administrative Judge conducts both the conference and the hearing. The outcome of this case may well change the current format.

#### Division of Administration

A. The department has formulated a rules committee to review the current rules, with an intent to amend them to conform to the changes in the law. The committee met a number of times over the last few months to address this issue. The department will conduct a hearing prior to any promulgation of proposed new rules.

B. As noted in last year's report, the administration and defense of the trust fund has become

a major component of the department's work. While the Office of the General Counsel has been provided with some additional help, it appears that a large percentage of the time is spent on trust fund issues. As more claims come in, this burden will only increase.

C. The high number of rejected forms nearly a year after the effective date of the law raises questions as to the need for more education. The department has held numerous seminars throughout the state in order to inform groups about the new procedures. The six month period reviewed shows that first reports make up two-thirds of the rejected documents. Outreach is currently being undertaken to provide information regarding the new forms to be put into use this month. A continued high rate of rejections will pose a drain on valuable departmental resources.

D. During the past fiscal year a pilot project was implemented with respect to the fines for the late first reports of injury. It is hoped that the sophistication of the new computer system, along with an equitable appeal process, will improve the efficiency of collection.

E. With all the changes that have taken place in the law over the last few years, and with the possible addition of personnel, it is important that training be available both for current and new staff in order that they might keep up with the rapidly changing nature of workers' compensation decisions.

F. The new computer system will hopefully provide information for additional analysis. As an example, the recent changes no longer mandate that a conciliation be held. The department conducted a recent study of over 11,000 scheduled conciliations and found that 53.5% of the discontinuances and 36% of the claims are eventually referred to dispute resolution.

Long-term analysis of such figures will enable the department to determine how to schedule its conciliations. In a random sample of unsuccessful conciliations, the respondent to a claim either lacked information or was unable to put the claimant on compensation in 41% of the cases, while complaint respondents attended without any documentation in 29% of the cases. The new system will allow the department to perform more extensive research in order to ascertain if such numbers are consistent.

#### Medical Reimbursement Rates under Workers' Compensation

This issue presents a serious concern for all participants in the workers' compensation system. Many in the medical field are concerned with the high rate of malpractice premiums. The very nature of workers' compensation requires that some of the specialties which treat injured workers, such as neuro-surgeons and orthopedic surgeons, are also those who must pay high

premiums. As part of the amendments in 1985, the rates were increased to 150% of the medicaid rates in effect as of July 1, 1985. A further discussion of this topic is planned for the Council's June agenda.

APPENDIX A

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

<u>Voting Members</u>	<u>Term Exp.Date</u>
Arthur Osborn, Chairman	6/25/91
Linda Ruthardt, Vice-Chair	6/25/91
James Farmer	6/25/90
Paul Meagher	6/25/90
Joseph Coffey	6/25/89
Rick Brown	6/25/89
Samuel Berman	6/25/88
F.Bruce Ferin	6/25/88
Douglas Mure	6/25/92
 <u>Non-Voting Members:</u>	
Evelyn Wedding (Rehabilitation)	6/25/90
Dr. Ruth Jordan (Medical)	6/25/89
Emily Novick, Esq. (Claimants' Bar)	6/25/88
John Antonakes (Insurance)	6/25/92
Secretary Paul Eustace Executive Office of Labor	Ex-Officio
Secretary Joseph Alviani Executive Office of Economic Affairs	Ex-Officio

APPENDIX B

ADVISORY COUNCIL MEETINGS FY1988: AGENDA TOPICS

July 15, 1987

Review Of Section 65 Trust Fund  
John Harbison - Michael Simmons  
Fy'89 Budget Update - Mary Piggott  
Dispute Resolutions Case Tracking - Martha Dunn Strohecker  
Update On Rules Hearing - Vice-Chair Ruthardt  
Old Second Injury Fund - Commissioner Pressman  
Uninsured Employers - Sanctions - Chairman Osborn

August 12, 1987

Proposed statutory changes  
Uninsured employers  
Discussion  
Guests: Commissioner Pressman, John Harbison, Walter Horn,  
Mary Piggott

September 16, 1987

Legislation  
Budget  
Judges Sub-Committee

October 14, 1987

Budget  
Reports

November 4, 1987

Health Care Services Board  
Commissioner Pressman and Dr. Walker  
Office of Safety  
William Russell

December 9, 1987

Vocational Rehabilitation  
Second Injury Fund

January 13, 1988

Second Injury Fund  
Discussion: Rate Filing Update - CM: Meagher  
Legislation Update - Commissioner Pressman

February 10, 1988

Insurance Rate Hearing  
Lump Sum Scheduling

March 9, 1988

Medical Reimbursement Rates Under Workers' Compensation

April 6, 1988

Department Update On Reform Implementation  
Reports: Discussion

May 11, 1988

Section 45/8 of the Law (Suspension of Compensation)  
Annual Reports/Reports/Positions  
Rate Setting Commission Hearing - Reimbursement Rates

June 15, 1988

Annual Report  
Medical Reimbursement Rates For Health Care Providers  
Under Workers' Compensation  
Interagency Task Force On Occupational Injury and  
Illness Surveillance and Intervention  
Departmental Update - Commissioner Pressman

BRIEF OUTLINE OF CHANGES TO  
WORKERS' COMPENSATION LAW  
BY CHAPTER 691 OF THE ACTS OF 1987

The new bill attempts to address problems created by the large backlog of claims and uninsured employers. The Legislature enacted administrative changes including the following:

1. Making conciliation more effective

The new law gives the conciliators the authority to transmit their recommendations in a report as the case is referred to dispute resolution. Recommendations shall refer to:

- A) Whether weekly compensation should or should not be paid.
- B) Whether weekly compensation should or should not be modified or terminated.
- C) A finding of insufficient information available at conciliation to make either of the above.

2. Sanctions against Uninsured Employers

In addition to the penalties outlined in the law, which included a fine of up to \$1,500 and possible imprisonment, the new bill gives the department some additional leverage against the rising number of uninsured employers. The new law provides the department with the authority to issue Stop Work orders when it finds that an employer hasn't complied with the law. Civil fines of \$100 per day can be set, payable into the private employer trust fund. The fine can increase to \$250 per day if the department finds non-compliance after a hearing on an appeal of the order. Any employee affected by the stop work order is to be paid for the first 10 days lost. There are also new requirements for producing evidence of insurance before getting certain licenses or permits. Also, a violation of the workers' compensation law has been added as one of the criteria by which a company can be debarred from bidding on public contracts. The intent is not to shut businesses down, but rather to create a greater incentive for compliance.

### 3. Pay Without Prejudice

The law allows for an increase of the pay without prejudice period for an additional 60 days by written agreement of the parties. The period may be extended further by agreement, as long as it is approved before the first day of the extension at a conciliation, conference or hearing.

### 4. Dispute Resolution

The amended law requires a party to appeal a conference order if dissatisfied. The current law states that both parties must indicate their satisfaction with the order. The appeal is to be made within 14 days of the order, and a hearing is to be held within 28 days of the appeal. This will end double dating of the conference and hearing. While this may extend the total period from referral to decision, the department has indicated that its goal is to keep the 49 day timetable as a benchmark.

### 5. Filing Period

In order to give the direct pay process a better opportunity to work effectively, the law sets a waiting period of 30 days from the onset of disability for the filing of a claim. Under the current law, the same time period can extend for 26/27 days.

### 6. Attorney Fees

There have been changes in the attorney fee schedules. If an insurer accepts liability up to 5 days prior to a hearing, after a filing of a written claim, or is ordered to pay a conference, the fee is 2x the state's average weekly wage. Currently, there is no attorney fee at conciliation and it is 3x the state's average weekly wage for a conference.

### 7. Personnel

Additional personnel will be hired. There will be sixty-six (66) new positions created this spring, 20 of which are temporary slots to address the backlog. Also, twelve of

the 66 positions are administrative judges who will hear cases. An additional twenty four positions have been requested for July 1, 1988.

8. Filing Fees

Filing fees have been increased and the judges have been given the authority to decrease fees in certain situations where a party doesn't appear at a scheduled conciliation.

9. Miscellaneous

The referral period from conciliation to dispute resolution has been increased by 5 business days. The waiting period has been clarified so that now the law specifically states 5 calendar days to be eligible for compensation. There have also been changes with respect to the redemption of medical benefits in lump sums and joining of employers in claims against the Trust Fund.

## APPENDIX D

Claims From Employees Of Uninsured Employers  
Under Section 65Expenses 7/1/87 thru 5/20/88

	<u>Amount</u>	<u>No.</u>
Approved Lump Sums	\$80,700.12	6
Number Death Cases		3
Amt. Paid-Attorney Fees	\$95,406.64	
Total Spent By Fund On Compensation	\$784,714.66	
Medical Payments	\$124,633.18	
AccuMed Cost	\$ 1,990.00	
Section 36 Payments	\$84,440.31	9
Total Claimants Paid By Fund		143
Total Claimants Presently Receiving Weekly Comp		61
Total	\$1,171,884.91	

Data on claims through 5/17/88

Claims Filed	398
Claims Denied(closed)	134
Cases Paid(closed)	76
Cases Paid(open)	62
Cases Pending	126

# APPENDIX E

## Proposals To Be Funded By DIA Office Of Safety

Safety Council of Western Massachusetts	\$21,402.00
Occupational Health Program	
Department of Family and Community Medicine	
University of Massachusetts Medical Center	
Massachusetts Safety Council, Inc.	\$29,835.00
New England Memorial Hospital	\$29,900.00
OT Department	
American Lung Association of Boston	\$23,160.32
Cape Cod Regional Vocational Tech High School	\$30,000.00
Associated Industries of Massachusetts	\$24,200.00
Massachusetts Coalition for Occupational Safety and Health - Mass COSH (Two Grants \$30,000 each)	\$30,000.00 \$60,000.00
InterCare Occupational Health, Inc.	
Leonard Morse Occupational Health Services, Inc.	\$24,000.11
American Red Cross of Massachusetts Bay	\$20,919.24
Printing Industries of New England	\$27,584.00
Cambridge Medical Care Foundation, Inc.	\$29,110.00
Cambridge Hospital	\$22,415.00

## APPENDIX F

### Claims Administration

Claims/Complaints entered calendar year 1986:

Total	21,817
Average per week	420

Claims/Complaints entered calendar year 1987:  
(those referred to conciliation after review)

Total	29,618
Average per week	570
Percentage increase over 1986	36%

Claims/Complaints entered 1988 (through 4/29/88):  
(those referred to conciliation after review)

Total	9,565
Average per week	531

### Rejections

Figures available for the 6 month period for the week ending 11/6/87 through week ending 4/29/88:

Average Total # of Rejections per week	1,163
Average # first reports	775
Average # Insurance payments Notifications	137
Average # of Claims	27

### Referrals to Conciliation, FY 1988, through the week of 4/29.

Total	Boston	Fall River	Lawrence	Springfield	Worcester
23420	10961	3736	3055	2310	3374

### Scheduled Cases for 7/1/87--6/3/88

	Boston	Fall River	Lawrence	Springfield	Worcester
Total Conference:	4,000	1,314	1,273	1,123	1,195
8,905					
Hearing:	4,266	1,341	1,289	1,138	1,216
9,250					
Total:	8,266	2,655	2,562	2,261	2,411
18,155					

# APPENDIX F (Cont'd)

## Percentage of Successful Conciliations

Both parties present and ready to go forward.

Week Ending	%	Week Ending	%
5/1/87	32.1	10/23/87	32.4
5/8/87	26.6	10/30/87	33.7
5/15/87	31.6	11/6/87	28.1
5/22/87	28.6	11/13/87	32.4
5/29/87	33.2	11/20/87	31.4
6/5/87	33.3	11/27/87	31.9
6/12/87	28.2	12/4/87	34.4
6/19/87	31.1	12/11/87	33.4
6/26/87	31.5	12/18/87	31.7
7/3/87	29.2	12/25/87	28.1
7/10/87	33.7	1/1/88	29.3
7/24/87	32.3	1/8/88	33.7
7/17/87	28.3	1/15/88	27.9
7/31/87	30.3	1/22/88	35.8
8/7/87	30.1	1/29/88	31.1
8/14/87	59.2*	2/5/88	31.9
8/21/87	29.9	2/26/88	32.1
8/28/87	27.2	3/4/88	25.9
9/4/87	30.3	3/11/88	31.2
9/11/87	29.4	3/18/88	33.2
9/18/87	34.1	3/25/87	28.6
9/25/87	29.7	4/1/88	27.5
10/2/87	29.4		
10/9/87	29.6		
10/16/87	27.8		

\*Special Section 36 Case Project

# APPENDIX G

## ADMINISTRATIVE JUDGE DECISIONS BY MONTH FY 88

SUMMARY OF NUMBER OF DECISIONS MAILED OUT											
NAME	7/87	8/87	9/87	10/87	11/87	12/87	1/88	2/88	3/88	4/88	5/88 6/88
Brooker	0*	0*	3	4	5	19	16	9	13	2	
Cleary	7	5	3	3	5	1	3	6	4	7	
DaDalt	5	2	4	5	6	6	5	2	6	6	
Demeter	10	5	6	1	3	3	7	8	3	8	
Fischel	10	8	10	9	8	6	6	9	12	5	
Gallo	0*	6	10	9	7	10	11	9	11	11	
Heffernan	6	3	3	4	6	9	6	6	7	6	
Jackson	4	3	9	5	5	3	4	3	2	3	
Jennings	5	14	8	12	15	7	14	7	14	12	
McGuinness	9	15	8	6	7	7	11	6	15	8	
McKinnon	8	15	5	10	6	11	8	4	13	4	
Pickett	5	3	7	3	7	7	7	9	5	7	
Rogers	7	9	13	5	12	7	12	16	5	11	
Romm	10	5	6	6	16	8	5	7	12	7	
Ryan	2	5	10	6	6	7	5	11	7	9	
St. Amand	7	10	10	10	10	10	6	9	12	8	
Scannell	12	8	6	3	13	0	7	2	6	10	
Vergados	2	3	2	6	3	2	3	2	2	3	
Totals	109	119	121	107	140	125	136	125	149	124	
Qtr. Tot.			349		372		386				
Qtr. Avg./Mon			116.3		124		129				

\* See Footnote 7

# APPENDIX H

## CASES RESOLVED ADMINISTRATIVE JUDGES FY'88

	<u>7/8 - 12/87</u>	<u>1/88</u>	<u>2/88</u>	<u>3/88</u>	<u>4/88</u>	<u>Total</u>
Brooker	183*	27	49	67	17	343
Cleary	123	44	30	56	31	284
DaDalt	190	21	47	37	53	348
Demeter	131	51	7	20	22	231
Fischel	184	32	39	28	37	320
Gallo	457*	82	24	87	70	720
effernan	148	55	28	55	24	310
Jackson	237	38	26	89	50	440
Jennings	129	35	14	53	23	254
McGuinness	207	16	62	67	49	401
McKinnon	195	20	58	49	42	364
Pickett	313	30	38	73	41	495
Rogers	197	28	17	37	40	319
Romm	208	49	27	44	86	414
Ryan	208	49	53	41	61	412
St.Amand	242	31	28	40	42	383
Scannell	203	23	41	36	35	338
Vergados	219	7	5	22	4	257
Total	3,774	638	593	901	727	6,663

See Footnote 7

APPENDIX I  
REVIEW BOARD DECISIONS

1987

Single Appeal

Appellant	Prevails	Partially Prevails	Doesn't Prevail	Remand to DDR
Employee	5*	2	35	3
Insurer	5	2	15	1
Self Insurer	3	3	9	0
Other	0	0	2	0

Multiple Appeal

Employee	0	1	13	1**
Insurer	2	1	8	1**
Self Insurer	0	1	2	1**
Other	0	0	0	0

\* In three cases the decision against the appellant was not affirmed but rather the appellant's appeal had some merit and the case was remanded.

\*\* Case involved insurer, and self insurer

1988

Single Appeal

Appellant	Prevails	Partially Prevails	Doesn't Prevail	Remand to DDR
Employee	1	2*	18	4
Insurer	0	0	3	3
Self Insurer	0	1*	1	0
Other	0	0	0	0

Multiple Appeal

Employee	0	0	1	0
Insurer	0	0	1	0
Self Insurer	0	0	0	0
Other	0	0	0	0

Indicates one case remanded

## APPENDIX J

### MEMBERS HEALTH CARE SERVICES BOARD

Edwin T. Wyman, Jr. M.D.  
Orthopedic Surgery

Francis L. Colpoys, M.D.  
Internal Medicine/Pulmonary Disease

Jay M. Portnow, M.D.  
Physical Medicine  
Rehabilitation

Galen A. Politis, D.C.  
Chiropractic

Dennis R. Pronowicz, R.P.T.  
Physiotherapist

Alonzo L. Plough, M.D.  
Representative of Public

Joseph W. Joyce  
Secretary-Treasurer  
Boston Central Labor Council  
Representative of Employees

Richard B. Lewis, M.D.  
General Surgery

Richard Weintraub, M.D.  
Psychiatry

John A. Davis, M.D.  
Occupational Health  
Industrial Medicine

Stanley M. Cohen, D.M.D.  
Dentist

Allan L. Des Rosiers  
Rep. of Hospital Admin.

Peter Nicholas  
Director of Safety  
Rep. of Employers

James C. Walker, M.D.  
Medical Consultant  
to the Commissioner

#### FOOTNOTES

1. "Backlog" cases are those cases with an injury date occurring prior to November 1, 1986. The Department will close the period for definitions of backlog when the computer system comes on line and the staff has been appointed to eliminate it.
2. The initial analysis of the section 65 fund, done in June of 1986, projected 10-20 wage loss claims per year at an estimate cost of \$125,000 to the fund. While that estimate turned out to be overly optimistic, the formulation of accurate projections was hindered by the absence of a prior data base. Under the previous law, any action against an uninsured employer involved a civil suit against the employer for damages. Accordingly, there existed no readily available statistics on which to base a projected of claims. Even if a record had been available for review, it would have indicated only the number of employees who had actually filed suit not the number who had been injured. The second year's estimate was raised upward to 100 paid claims at a cost of \$1,200,000. It is well worth noting that the report correctly states that theoretically there should be no claim paid under this provision.
3. Senate Bill 1716. In the initial bill, (section 1 of Chapter 261 of the Acts of 1970, workers' compensation was excluded from Section 2 of Chapter 175D of the Massachusetts General Laws. The proposed legislation for Section 2 reads as follows: This chapter shall apply to all kinds of direct insurance, except life, accident and health, title, surety, disability credit, mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks, insurance of warranties of any type of service contracts and ocean marine insurance.
4. Recently, other evidence of possible concern with respect to workers' compensation carriers has been reported. American Mutual Insurance Company, which had 4.38% of the worker's compensation market in Massachusetts in 1986 (according to Best's Executive Service Data), writing a little more than \$38 million in direct premium, is in financial trouble and seeking assistance. See Douglas Bailey's article on page 33 of the 5/28/88 edition of the Boston Globe for more information. The article states that 80% of America Mutual's business is in the commercial casualty line, which includes workers' compensation. On June 1, 1988, the same author reported in the Globe, on page 63, that the company had ceased writing new policies in Connecticut and other states while it tries to arrange a rescue plan.

5. Public Hearing Statement, by Susan Spencer, Policy Manager Bureau of Ambulatory Care, Massachusetts Rate Setting Commission, May 24, 1988, page 1
6. Id, at page 2
7. The department had been granted the authority to recall two judges, pursuant to section 7 of M.G.L. Chapter 23E. Finalization of the contracts for the recalled judges was not completed until September for Judge Brooker and August for Judge Gallo.
8. Locke, Laurence, Massachusetts Workers' Compensation Reform Act of 1985, West Publishing Company, 1986, Supplement to Locke, Massachusetts Workmen's Compensation 2d, (Practice Series Volume 29) states at pg.13, "The ultimate control over the budget thus remains within the political sector, although it is anticipated that the prepared budget will be adopted with few changes, since the funding source is primarily the employer community."
9. A recent article in the May 30, 1988 edition in the Boston Globe, page 15 Boston Hospitals' Labor Need Cited, by Sarah Snyder, shows a projected increase of 14% in the number of registered nurses needed in the Boston health care facilities. This projection comes at a time when universities are closing schools of nursing (eight have closed since 1983, with Boston University graduating its last class this month) and there is a simultaneous call to mandate a baccalaureate degree as an initial requirement for licensure.
10. As an example, at the end of Fiscal year 1985 there was a total of \$48.93 in the fund and at the close of the next fiscal year there was almost \$22,000 in the fund.
11. Section 48 of M.G.L. 152, effective 11/1/86, provides the reviewing board with the authority to approve lump sum agreements. Under the old law, commissioners were given the authority to approve lump sum agreements.