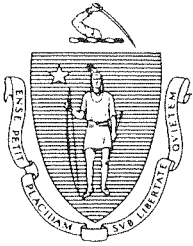




**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL**

**FISCAL YEAR 1992
ANNUAL REPORT**



MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL
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MATTHEW A. CHAFE
EXECUTIVE DIRECTOR

August 1, 1993

Dear Reader:

Fiscal year 1992 marked a watershed for the Massachusetts workers' compensation system. Legislative reform in December of 1991 brought about a reorganization of the Department of Industrial Accidents, changes in workers' compensation insurance, reductions in benefits and benefit periods, modifications to health care, and many other far reaching and comprehensive reforms.

This report provides an overview of the Commonwealth's workers' compensation system from July 1, 1991 through June 30, 1992. It was prepared using information collected during the 1992 fiscal year by the Advisory Council staff. Because several Members and I were not associated with the Advisory Council during 1991 and 1992, this report does not provide the breadth of discussion nor the background of developments found in previous annual reports. Nevertheless, I am confident this report provides an accurate and thorough briefing of the major components of the workers' compensation system in Massachusetts as of June 30, 1992.

The late date on which this report has been issued is unfortunate. Nevertheless, it was prepared with celerity and issued at the earliest possible date given significant staffing changes at the Advisory Council over the past year.

I hope you find the Fiscal Year 1992 report interesting and useful. Please contact the Advisory Council with your questions, concerns and comments.

Sincerely,

A handwritten signature in cursive script that reads "Matthew A. Chafe".

Matthew A. Chafe
Executive Director

FISCAL YEAR 1992
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1. Introduction

This is the sixth Annual Report of the Massachusetts Workers' Compensation Advisory Council. The report reviews the Commonwealth's Workers' Compensation system during fiscal year 1992 (July 1, 1991 through June 30, 1992).

The 1992 fiscal year was an eventful period for the workers' compensation system and the Department of Industrial Accidents. With the passage of Chapter 398 of the Acts of 1991 midway through the year, the system was extensively reformed and significant organizational changes occurred within the agency. The most substantial changes are discussed in the body of this report.

The appointment of James Campbell as Commissioner of the agency in October, 1991 followed a lengthy period of organizational uncertainty regarding agency leadership. The Council is hopeful that immediate improvements can be made in the Commonwealth's workers' compensation system and the Department of Industrial Accidents, and it looks forward to working with the agency towards this end.

In this report, the Advisory Council has reviewed key developments in both the Department of Industrial Accidents and the Massachusetts workers' compensation system. It includes a discussion of the Chapter 398 reforms, the DIA's activities and its individual offices, the claims adjudication process, and developments in workers' compensation insurance. An outline of Chapter 398 is provided at the end of the report, along with several appendices.

2. Advisory Council

The Massachusetts Workers' Compensation Advisory Council was established in 1985 to monitor the workers' compensation system and make recommendations for its improvement. As an extension of the cooperative precedent set by the mid-1980's workers' compensation reform effort, the Council is comprised of representatives of the major constituencies in the workers' compensation system including business, labor, medical, legal, insurance and governmental leaders.

Ten voting members serve on the Council: five represent employers and five represent employees. In addition, four nonvoting members are appointed to represent the claimant's bar, the medical community, vocational rehabilitation providers, and the insurance industry. The Secretary of Labor and the Secretary of Economic Affairs are ex-officio members.

The Advisory Council meets on a monthly basis to review various issues concerning the Department of Industrial Accidents and the workers' compensation system. The Council held twelve regular meetings during the fiscal year, as well as three meetings to review candidates for Administrative Judge and Administrative Law Judge positions at the DIA, as per the Council's statutory responsibilities under c. 23E, §9.

There were several changes in Council membership during the year. Joseph Faherty of the Massachusetts AFL-CIO, whose term expired on June 25, 1991 served as Chair through October of 1991. John Marr, of Travelers' Insurance, Edward Sullivan, Jr., of SEIU Local 254, and John Gould of the Associated Industries of Massachusetts, were appointed to the Council in October. No appointment was made to the Chair position following Joseph Faherty's departure, and Vice Chair Doug Mure served as Acting Chair for the remainder of the fiscal year. A list of Council members, along with their statutory affiliations and term expiration dates, is provided in Appendix A.

3. Workers' Compensation Reform

Reform of the workers' compensation system was an important priority during the past year. It was commonly perceived that sky rocketing workers' compensation costs would reach crisis proportions unless extensive changes were expeditiously implemented.

The Joint Commerce and Labor Committee began meeting with workers' compensation constituencies in the Spring of 1991 to gather information in preparation for a reform proposal. On November 5, the Committee released its bill. An alternative reform bill was subsequently submitted by the Governor on November 7. The Governor's bill was substituted on the Senate floor for the committee bill and released back to the House on November 25.

The House Ways and Means Committee attempted to adopt critical aspects of both bills and reported out House bill 6357 on December 9, 1991, which was later amended on the House floor as House 6377 on December 12. A conference committee was subsequently formed to negotiate a final bill, which was filed as House 6410 on December 18. The bill was passed and signed by the governor on December 23, 1991.

The reform law, Chapter 398 of the Acts of 1991, introduced institutional, procedural, and benefits changes to the workers' compensation system, and was implemented in coordination with Chapter 399, "An Act Establishing Certain Assessments."

To ensure the bill's immediate implementation, the Governor filed emergency declarations on December 24, 1991, thereby requiring immediate implementation.

Substantive sections of Chapter 398 apply to injuries after the bill's effective date. Sections involving claims and documentation, written offers, and arbitration took effect on February 1, 1992. Provisions involving impartial physicians and preferred provider arrangements took effect on July 1, 1992. An outline of the changes introduced by Chapter 398 is included on page 25.

4. DIA Fiscal Year 1993 Budget

DIA's operating budget is funded from a Special Fund, a Private Employers' Trust Fund, and Public Employer's Trust Fund pursuant to c. 152, §65. Funding is received through annual assessments charged to employers. While DIA receives no funding from the Commonwealth's General Fund, legislative appropriations are required annually. The Advisory Council is required under c.23, §17, to review the annual operating budget of the Department of Industrial Accidents. The Council is also authorized to submit to the Secretary of Labor its own recommendation for the agency's total operating budget upon an affirmative vote of seven Council members.

The Advisory Council received a copy of the DIA fiscal year 1993 budget on January 8, 1992, and conducted a review at its monthly meeting on February 12, 1992. No recommendations were passed by the Council.

The DIA budget submission called for special fund expenditures of \$15,189,149. The budget projected 332 personnel positions allocated to the Special Fund and 17 positions to the Trust Fund. The Council was informed in January, 1992 that the fiscal year 1993 budget was to include funding for additional judges and support staff authorized by c. 398.

The FY '93 budget was executed by the legislature on July 10, 1992, and enacted into law on July 20, 1992. The DIA's appropriation was \$15,729,744, 18.1% greater than fiscal year 1992. A total of \$540,000 was added after the budget was sent to the Senate. The Council was later informed at its June meeting that the additional \$540,000 was to be used to establish medical protocols mandated by c.398 to be in place by January 1, 1993.

5. Trust Funds

In addition to its administrative and adjudicatory responsibilities, the DIA has statutory and fiduciary responsibility to administer the Special Fund, the Private Employer Trust Fund and the Public Employer Trust Fund pursuant to c. 152, §65. In accordance with §65, the various funds are separately maintained by the Commonwealth's Treasurer.

The two trust funds are funded by assessments on both private and public employers. The assessment process spreads certain benefit costs among private employers who have complied with insurance mandates of the statute and public employers who have opted to accept the provisions of the law. These separate trust funds are used to provide reimbursements and payments for certain benefits set forth in c. 152, and are distinct from the Special Fund.

Funding for the operating expenses of DIA derives from employer assessments deposited into the Special Fund but is appropriated by the legislature. Additional revenues are generated through collection of fines, fees, and penalties set forth in the law.

a. Special Fund

Information on the Special Fund is shown in Table 1. As can be seen, the beginning balance on July 1, 1991 was more than \$650,000 greater than the ending balance on June 30, 1992. The total receipts of \$14,007,323 were slightly higher in FY'92 than the FY'91 receipts of \$12,573,994. Although the \$11,023,312 in assessments was more than \$2 million higher than the \$8,801,672 collected in FY'91, collections from both first report fines and interest were much lower than the previous year. In FY'91, late first report fines totaled \$890,330, compared to \$144,200 in FY'92. Income from interest in FY'92 came to \$323,960, while \$699,209 was collected in interest in FY'91. The total expenditures in FY'92 of \$14,665,963 were slightly greater than total FY'91 expenditures of \$14,590,062.

Table 1
Special Fund - FY'92

Beginning Balance (7/1/91)		\$3,279,692
Assessments	11,023,312	
Filing Fees	2,511,501	
1st Report Fines	144,200	
Interest	323,960	
Section 7 Fines	4,000	
Section 14	350	
Total Receipts		\$14,007,323
<u>Expenditures</u>		
Salary	8,616,722	
Fringe	2,331,860	
Nonpersonnel costs	3,104,131	
Indirect costs	613,250	
Total Expenditures		\$14,665,963
Ending Balance (6/30/92)		<u>\$2,621,052</u>

b. Public Trust Fund

The Public Trust Fund began FY'92 with a balance of \$1,495,574 and ended with a balance of \$3,056,655. Assessments totaled \$4,896,637 in FY'92, compared to \$4,322,654 in FY'91. The expenditures of \$3,430,980 in FY'92 were lower than the FY'91 total of \$3,589,016. COLA payments in FY'92 were \$3,413,611, while they were \$3,485,966 in FY'91, and \$37 payments were \$16,628 in FY'92 and \$91,866 in FY'91. Receipts and expenditures for the Public Trust Fund appear in Table 2.

Table 2
Public Trust Fund - FY'92

Beginning Balance (7/1/91)		\$1,495,574
Assessments	4,896,637	
Section 30H	1,875	
Interest	93,549	
Total Receipts		\$4,992,061
<u>Expenditures</u>		
Insurers		
COLAs	3,413,611	
Section 37	16,628	
OEVR Section 30H	741	
Total Expenditures		3,430,980
Ending Balance (6/30/92)		\$3,056,655

On March 27, 1992, a formal agreement was signed with the Commonwealth of Massachusetts Public Employee Retirement Administration (PERA) in which DIA accepted \$3,908,738.25 as satisfaction for all uncollected assessments charged against the Commonwealth under c. 152 §65 and for uncollected referral fees under § 10 and § 11A, from July 1, 1987 through June 30, 1992. In turn, PERA accepted the same amount as satisfaction for reimbursements for cost of living allowance benefits owed PERA from the Public Employer Trust Fund pursuant to §65(2)(a) and §34B. It was further agreed that the Commonwealth would remain subject to and responsible for fines issued under §6 and for referral fees issued under §10 and §11A beginning July 1, 1991. The agreement did not require that PERA pay uncollected referral fees or late first report of injury fines.

The Council voiced concern about the effect that uncollected fines and fees may have had on assessments charged to private employers. Since c. 152 requires that the proceeds from any fine or fee be deposited in the §65 Special Fund, it is conceivable that employers were effectively forced

to offset the uncollected fees by paying higher assessments. §65 requires that if the balance of the special fund at the end of the fiscal year exceeds 35% of the preceding fiscal year's disbursements, then the budget (for the purpose of calculating the fund assessment rate) must be reduced by the excess. Hence, the proceeds from any fine or fee imposed affects the amount of money in the Special Fund, and excess funds could affect the rate of employer assessments. The Council expressed its concern that §65 funds be administered separately and that obligations incurred by one fund not be paid out of any other fund.

The Council recognized the difficulty of resolving questions of payments owed by PERA to the trust fund and special fund, and that the failure to collect payments predates the current administration.

C. Private Trust Fund

The Private Trust Fund had \$27,162,453 in total receipts and \$27,843,817 in total expenditures in FY'92. It began the fiscal year on July 1, 1991 with a balance of \$4,333,975 and ended on June 30, 1992 with a balance of \$3,652,611.

Assessments accounted for \$26,012,517 in receipts during FY'92, compared to \$14,120,932 in FY'91. The Fund was accredited with \$658,729 in interest in FY'92, compared to \$16,386 in FY'91. Receipts from stop work orders were down, from \$40,100 in FY'91 to \$28,600 in FY'92. Collections and expenditures for the Private Trust Fund in FY'92 appear in Table 3.

Of the FY'92 expenditures, the payment of \$19,627,352 for COLAs showed by far the greatest growth in comparison with FY'91 expenditures, when COLA payments totaled \$6,290,443.

Table 3
Private Trust Fund - FY'92

Beginning Balance (7/1/91)		\$4,333,975
Assessments	26,012,517	
Interest	658,729	
§30H	9,702	
Reimb. (Uninsured)	452,905	
Stop Work Order	28,600	
Total Receipts		\$27,162,453
<u>Expenditures</u>		
Claimants Uninsured		
§34	2,959,303	
§35	527,439	
§31	113,973	
Lump Sum	1,255,442	
§36	253,110	
COLA Adjustment	3,758	
Rehab		
Travel	15,296	
Medical	14,513	
Legal	17,253	
Books & Supplies	915	
Medical	1,497,815	
Legal	546,142	
Welfare Liens	64,370	
Burial Benefits	4,000	
Insurers		
COLAs	19,627,352	
§37	575,652	
Tuition Legal	18,368	
Voc Rehab		
§30H	18,700	
Travel	5,903	
Books	347	
Tuition	44,023	
Defense of the Fund		
Salary	54,577	
Fringe	15,968	
Medicaid Charge	860	
IME's	103,384	
Temp Services	52,564	
Investigators	4,446	
Translators	940	
Sheriffs	476	
Steno Services	44	
Medical Bill Review	31,340	
Medical Bill Adjustment	15,544	
Total Expenditures		27,843,817
Ending Balance (6/30/92)		<u>\$ 3,652,611</u>

6. FY'93 Assessment

Since 1986, when employer funding of the DIA operating budget was introduced as a cornerstone of the Massachusetts workers' compensation system, the Advisory Council has consistently taken an active role in monitoring the employer assessment process. While agency funding requires legislative appropriation, the DIA's operating expenses are allocated from the workers' compensation Special Fund, which is managed by the State Treasurer. The primary source of revenue for the Special Fund derives from assessments levied upon private and public employers subject to c. 152. The Advisory Council reviewed the estimated assessment for fiscal year 1993 at its June 4, 1992 meeting.

The FY '93 assessment rate for the Private Employer Trust Fund was 0.03295 with an estimated budget of \$25.4 million. The Public Employer Trust Fund assessment rate was 0.00091 with an estimated budget of \$32,900.

Under the 1991 reform legislation, individual employers may opt out of the assessment mechanism. While public employers may become completely exempt, private employers may opt out from the private trust fund assessments except for costs relating to vocational rehabilitation and uninsured employers. Due to a large number of eligible employers electing to opt out, the FY' 93 budget was lower (both in dollars and in the assessment base) than in FY' 92.

7. FY '93 Public Fund Budget §11A Filing Fees

The cost of independent medical examinations under §11A of c. 398, estimated in June, 1992 at \$10 million are to be borne either by the insurer or by the claimant represented by counsel, when appealing a conference order. Revenue from incoming fees will be deposited into a special revenue account, which is to be self-sustaining and will not impact the general fund or the trust fund, and which will not be part of the budget.

8. DIA Personnel

The issue of vacant positions within DIA personnel once again surfaced with the passage of the early retirement bill.

The early retirement bill, designed as a cost-saving measure, provided incentives for eligible state employees to retire, while simultaneously placing restrictions on the hiring of new personnel by state agencies. It was the position of the Council that employers' assessments should not be based on a budget requesting funding for agency positions that would remain vacant throughout the fiscal year.

Furthermore, the Council felt that hiring restrictions at the DIA would not provide fiscal relief since operating expenses do not emanate from the General Fund. The Council was informed that 17 DIA employees, including five judges, had opted for early retirement. The severance portion of the plan was estimated to cost \$120,000 and was to be paid from the DIA's fiscal year 1993 budget. The Council estimated the cost of hiring employees to fill the 17 positions to total \$703,492 (with \$549,603 in salaries and \$153,889 in fringe benefits). Since these positions were funded directly through employer assessments, the Council urged that the DIA be exempt from the bill's hiring restrictions so that personnel vacancies would not contribute to agency delays in processing and resolving workers' compensation claims. While supporting the DIA's request for positions included in the DIA budget, the Council expressed concern about the disposition of monies assessed for personnel not actually retained by the agency. By the end of the fiscal year, restrictions had not yet been lifted on all positions left vacant by retirements.

9. DIA Administrative Hearings

The DIA scheduled a public hearing on July 22, 1991 relative to amendments to the Department's Adjudicatory Rules (452 CMR 1.00 et seq.). The amendments defined the terms "filed" and "necessary expenses" and further regulated the payment of referral fees.

At its July 10, 1991 meeting, the Advisory Council reviewed the proposed rules changes and voted for their withdrawal from further consideration. In written testimony to Commissioner Lane, the Council expressed its concerns with the following proposed changes:

--The DIA proposed that the definition of "filed" (in 452 CMR 1.02) mandate that appeals of a decision of an Administrative Judge be filed within 13 days of a hearing order. Since c.152 provides a 30 day period for the filing of appeals, the Council was unclear if this was a typographical error or if the DIA was in direct conflict with the statutory appeal period.

--With respect to the proposed definition of "necessary expenses" paid to claimant's attorneys in 452 CMR 1.02, the Council suggested that the term "only reasonable out-of-pocket expenses" replace "all out-of-pocket costs."

--The proposed elimination of 452 CMR 1.09 (2) regarding stays of proceedings, and its replacement with new language, raised a number of constitutional, statutory, and procedural issues. The Council expressed its belief that the proposed rule was inconsistent with c. 152 since the law does not authorize a loss of defenses or penalties for failure to pay a referral fee. Additionally, the proposed rule would potentially impact employers for conditions beyond their control.

10. Independent Medical Examiners

The inclusion of independent medical examiners within the statutory framework of the workers' compensation adjudicatory process represents one of the more significant reforms introduced by c. 398. While impartial physicians were formerly retained on occasion in accordance with agreements between insurers and claimants, independent examinations were not required by the DIA and often did not resolve the "duelling doctors" dilemma.

M.G.L. c. 152, § 11A now requires that when any claim involving a dispute over medical issues is the subject of an appeal of a conference order, the parties must agree on an impartial medical examiner from a roster of physicians compiled by the Senior Judge, or the administrative judge will appoint one. The impartial physician must examine the employee and make a report one week prior to the hearing. The report is to address the existence of a disability, whether the disability is total or partial and permanent or temporary, and if within a reasonable degree of medical certainty the disability was caused by an employment related injury.

In March, 1992, the Commissioner named six physicians to a medical consortium, to act as consultants and carry out other duties relating to the total range of care of injured employees. The medical consortium met on several occasions prior to the close of fiscal year 1992, and has assisted in the recruitment of independent medical examiners and the development of draft medical protocols.

Also in March, the Commissioner appointed thirteen persons to the Health Care Services Board (HCSB). The HCSB is responsible for developing written treatment protocols for the appropriate treatment of workers' compensation claimants. In addition, the HCSB has worked on developing criteria for selecting impartial physicians.

Implementing the medical examination process and developing a roster of independent physicians throughout the Commonwealth has been a critical task for the DIA. The Health Care Services Board was charged with developing criteria to assist the Senior Judge in developing a roster of qualified physicians to serve as independent medical examiners. The roster is to contain a list of certified specialists in various medical fields who are willing to make prompt reports and be deposed at hearings. Chapter 398 requires that such a network of independent physicians be established for implementation by July 1, 1992.

With the medical components of the new law so vital to its success, the medical consultant consortium and the Health Care Services Board established under §13 of c. 152 take on a special importance. Readers of the Advisory Council's study on medical access and its past annual reports are aware that the medical consulting and review functions under §13 had been largely inactive. However, there was substantial activity in these areas following passage of the new law.

11. Office of Claims Administration

The Office of Claims Administration processes all incoming and outgoing claims correspondence, maintains files and records, keeps fines and seeks to ensure timely entry of disputed matters into the dispute resolution process. Following passage of c. 398, the conciliation unit was transferred from the Office of Claims Administration to the Division of Dispute Resolution.

The claims processing unit manages the DIA's record room, reviews and processes incoming documents and claims, and sends out departmental forms. Processing involves the review and sorting of a wide variety of materials, and many incoming documents must be returned due to incorrect or insufficient information.

A total of 44,902 claims and discontinuances were filed in FY'92, a 6.8% decrease over FY'91. Of these, 37,307 were referred to conciliation, a 7% decrease over FY'91 referrals. As shown in Table 4 the number of First Reports of Injury filed in FY'92 dropped 8.8%, from 54,292 in FY'91 to 48,031. The number of Pay Forms filed declined 9.4%, from 45,592 in FY'91 to 42,924.

Table 4

	<u>FY'90</u>	<u>FY'91</u>	<u>FY'92</u>
Total 1st Reports.....	52,342	54,292	48,031
Total Pay Forms.....	58,180	45,592	42,924

12. Office of Education & Vocational
Rehabilitation

The Office of Education and Vocational Rehabilitation is responsible for accommodating public information requests, ensuring the availability of vocational rehabilitation for qualified claimants, and administering the Office of Safety program.

The Office of Safety was placed within OEVR following the passage of c.398. While not mandated by the reform, the change was facilitated by more flexible organizational arrangements permitted by the statute.

Because lump sum counseling was abolished under c. 398, lump sum counselors were incorporated into the vocational rehabilitation system as disability analysts, and are responsible for conducting preliminary case review and pre-screening of vocational rehabilitation clients. FY'92 statistics for the lump sum unit prior to c.398 showed 6,817 lump sum interviews, 6,518 referrals to ALJs for approval, and 299 withdrawals.

The vocational rehabilitation unit oversees the provision of rehabilitation services to workers' compensation claimants whose injuries prevent them from returning to their prior jobs due to their current medical conditions. The unit seeks to provide expedient attention and guidance to employees needing vocational rehabilitation before returning to work, and assists in the development of an appropriate rehabilitation plan.

The overriding philosophy of the office is to facilitate voluntary agreements between insurers and employers on services designed to return the worker to suitable employment. Under c. 398, workers qualifying for vocational rehabilitation benefits are eligible for 104 weeks of vocational rehabilitation training that may be paid out of the trust fund, compared to 52 weeks under the prior statutory provisions.

During FY'92, the vocational rehabilitation office contacted 19,856 people to determine the appropriateness of rehabilitation services. From

these contacts, 6,946 mandatory meetings were scheduled with individuals, 4,437 of whom were determined to be eligible for rehabilitation services. There were 1,926 Individual Work Rehabilitation Plans (IWRPs) signed, and 1,503 returns to work following rehabilitation. In addition, 246 cases were closed unsuccessfully and 1,654 cases remained unresolved.

13. Office of Safety

Following the passage of chapter 398, the responsibilities of the Office of Safety was placed with the Office of Education and Vocational Rehabilitation. The affairs of this office prior to consolidation are outlined below.

Since FY'88, the DIA's Office of Safety has provided annual funding for training and education programs aimed at promoting safety and health in the workplace. During FY'92, the DIA awarded grants to 15 organizations totalling approximately \$400,000 as part of its FY'93 safety grants. The highest award was \$34,084.02. A copy of the grant recipients, along with their training programs and funding awards, is included in Appendix D.

14. Office of Insurance

The Office of Insurance monitors insurance coverage of employers, licenses self-insurers, and imposes penalties against employers failing to provide workers' compensation insurance in violation of c.152. The office is comprised of an insurance unit (including investigative personnel) and a self-insurance unit.

The Office's ability to monitor insurance coverage was aided by passage of c. 132 of the Acts and Resolves of 1991 which amended c. 152, §63. The Workers' Compensation Rating and Inspection Bureau (WCRIB) is now the repository for insurance coverage information previously maintained by the DIA. The Office of Insurance is now on line with the WCRIB's insurance data base, and has access to complete workers' compensation insurance information. The Office previously monitored insurance coverage through use of index cards containing information on expiring and renewed policies. The WCRIB database is believed to be the

