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Short Subjects

TITLE: SUMMARY OF AND COMMENTS ON THE "HODDER REPORT"
RELATING TO WORKERS' COMPENSATION REFORMS

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The debate over Minnesota's workers' compensation system is likely to continue during the 1988 legislative session. Proposals for reform are likely to be placed before the legislature for its consideration. One set of proposals is contained in the so-called "Hodder Report," a 24-page document prepared by the employer members of the Minnesota Workers' Compensation Advisory Council and submitted to William A. Hodder, Vice-Chairman of the Minnesota Business Partnership. The following is a brief summary of and comments on the findings of that report.

OVERVIEW

Minnesota's workers' compensation benefits were essentially static for a considerable period of time, lasting until the early 1970's. According to the authors of the Hodder Report, reforms instituted during that period were probably overdue, but their sweep extended further than even the reforms legislative authors may have envisioned. Continued rising workers' compensation costs within Minnesota led to further reforms in the early 1980's. Specifically, in 1983, after several landmark studies and campaigns for reform, the Minnesota Legislature adopted a "two-tier" system of benefits which was designed to encourage return to work rather than to reward disability. In theory, the temporary wage replacement benefits under the new system were to last only until the injured worker attains "maximum medical improvement." At that time, one of two alternative permanent bodily function loss benefits is awarded. If the employer returns the injured worker to a suitable job, a lump sum "impairment award" benefit for any remaining permanent disability is awarded. If, however, the employer fails to offer the injured employee suitable work, a greater "economic recovery" benefit is paid to the injured worker for a finite period in a form equivalent to the earlier temporary wage replacement benefits. The duration of the economic recovery compensation is dependent on the extent of that permanent disability.

The authors of the Hodder Report state that it is premature to label the 1983 reforms as a success or failure. While overall workers' compensation costs in Minnesota have continued to increase since the reforms of 1983, the full impact of those reforms has not yet been felt to affect costs significantly. Hard data to quantify the effectiveness of the 1983 reforms are only just now becoming available. This is because the 1983 changes only apply to injuries sustained in 1984 and subsequent years, and the final costs for those injuries have not fully worked their way through the system. Accordingly, these costs are not yet a significant part of the cost data base.

Despite rising workers' compensation costs since 1983, the early evidence on the effect of the 1983 reforms appears to be favorable. The 1987 rate-making report issued by the Workers' Compensation Insurers Association of Minnesota indicated an overall "pure premium" rate reduction of 2.1 percent, the first such reduction since 1972. The overall increase in workers' compensation costs may have been due instead, at least in part, to the recent general crisis in property/casualty insurance as well as to the continued costs of injuries incurred prior to the 1983 reforms. The authors assert, however, that the insurance "crisis" can bear no responsibility for any relative cost differences between workers' compensation costs in Minnesota and its competing neighbor states and that the early evidence does not necessarily support the conclusion that progress is being made in the drive to achieve overall competitive cost levels with those other states. In their view, the message of the 2.1 percent rate decrease is mixed because the "pure premium" rate drop does not reflect the increasing costs that are rapidly shifting to special funds, assessments, and other "pots" of money that do not show up in the rates. Specifically, the authors note that without folding back into the rate the costs of assessments to fund the special compensation fund, the assigned risk pool overruns, the unfunded liability of the reinsurance association, and the guarantee fund liabilities, comparison with earlier rates in Minnesota and with other competing states is very difficult. Furthermore, a failure to add profit margins and insurance company operating expenses to the rates also makes comparisons with other states' rates inevitably inaccurate.

In sum, the report's authors believe that the premise underlying the 1983 reforms, which was to shift the system's emphasis from compensating for lost work and disability to encouraging return to work, was and remains valid. The incentives provided under the new system are an innovative response to the "crisis" created by reforms to Minnesota's workers' compensation system made in the 1970's. However, in their view, the new system is quite complex and is still relatively expensive as compared to other, competing states. They fear that as those states adopt additional reform measures to their workers' compensation systems, Minnesota's relative standing may continue to erode unless reforms of the type recommended in the Hodder Report are adopted by the Minnesota Legislature.

RECOMMENDATIONS

The Hodder Report sets forth 14 specific problems with Minnesota's workers' compensation system and further delineates goals with respect to those problems which are really in the form of recommendations for changes to the system. The following is a brief summary of those recommendations which for convenience are grouped into four general categories.

Compensation Benefits

1. The formula for temporary total disability (wage replacement) benefits is presently too high and should be reestablished at 80 percent of spendable earnings as the basic compensation benefit standard, subject to a lowered minimum benefit level, a maximum benefit level no higher than the statewide average weekly wage, and computation based on some notion of annualized income loss by the injured worker.

2. The termination date of temporary partial disability (wage replacement) benefits under present law is ambiguous and should be clarified to terminate upon

the attainment of maximum medical improvement by the injured individual because this was the intent of the 1983 reforms.

3. The present competitive position of Minnesota's permanent disability (bodily function loss) benefits should be further studied, both as to amount and structure, with a goal towards identifying and suggesting new alternatives to these benefits under the state's two-tier benefit system.

4. Compensation benefits from the workers' compensation system and a variety of other sources should be better coordinated so as to relieve the workers' compensation system of paying for all or part of the benefits when they should be more appropriately paid for by these other sources.

5. The payment of supplementary benefits should be repealed (on a prospective basis).

Special Assessments

1. The second injury fund for claims based on preexisting injuries should be repealed, thus eliminating the need for special assessments to pay for those benefits.

2. Rates charged to employers who are participating in the assigned risk plan should be increased as needed to adequately fund the benefits paid out of that pool without having to levy special assessments against all insurers to pay for the expected liabilities of the pool.

3. The massive unfunded liability of the reinsurance association to pay for huge claims anticipated decades hence, arising from long-term "catastrophic" cases, should be recognized and the advisability of continued operation on a deficit basis by that association should be further studied.

Rehabilitation Benefits

1. The mandatory statutory provision of qualified rehabilitation consultants should be dispensed with altogether, or at least their use should be limited and their services be made subject to mandatory fee schedules.

Dispute Resolution and Litigation

2. The so-called "triple-track" dispute resolution system should be eliminated and replaced by a more expedited single-track system. (Note: this recommendation was adopted by the 1987 legislature along with other changes designed to speed up litigation and eliminate the present backlog of cases.)

COMMENTS

First, one's response to the recommendations contained in the Hodder Report will likely depend on a consideration of one's view of the social philosophy under-lying Minnesota's workers' compensation system as compared with other competing state's systems, as well as an accurate comparison of workers' compensation component costs between the system in Minnesota and those of competing states. The authors state that because Minnesota workers' compensation system is so "different" from other competing states, it is difficult to compare

it with the systems in those states. If indeed a classic "apples vs. oranges" situation exists, as the authors seem to suggest, the proposed reforms set forth in the Hodder Report must be judged in light of this state cost comparison caveat.

Second, the authors also state that it is premature to label the 1983 reforms as a success or failure. There is a difference of opinion even among critics of the state's workers' compensation law as to the extent the current system needs major overhauling at this time or whether more time is needed to assess the full impact and effectiveness of the 1983 reforms and give it an adequate chance to work. Frequent major changes to the system may result in increased costs due to the confusion and litigation inevitably associated with such changes.

Third, most of the changes recommended in the report, and certainly the ones that would have the most impact on reducing the costs of the workers' compensation system, deal with a reduction in benefits. The authors support their recommendations on the basis that the 1983 reforms were a political compromise and should not be understood to have addressed all of the ills of the workers' compensation system. However, the concept of compromise generally means that none of the parties were satisfied with all aspects of the 1983 reforms. Indeed, some labor representatives have indicated that they are not happy with the 1983 reforms and would like to go back to the old system, at least with respect to compensation benefits. A political stalemate could ensue.

Finally, the Department of Labor and Industry, the Legislative Auditor, and House and Senate staff are studying the effectiveness of Minnesota's present workers' compensation system. Those studies are not due out until late December, or more probably in early January. With the short legislative session coming up, it may be difficult for legislators to fully digest and analyze the information that comes out of those studies in time to develop the political consensus necessary to achieve significant major reforms this year. Irrespective of these studies, however, many of the proposals contained in the Hodder Report, as well as proposals by other interested groups and organizations, will likely surface in bills presented to the legislature this next session.