



**Report of the Commissioner  
on Return to Work  
In consultation with the  
Return to Work Advisory Council  
March 2008**

**M. Patricia Smith, Commissioner**

Submitted pursuant to Section 35 of the Workers'  
Compensation Law, Chapter 6 of the Laws of 2007



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## Return to Work Advisory Council

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Special thanks are extended to our resource advisors from the New York State Legislature; the Business Council of New York State; New York State AFL-CIO; New York State Workers' Compensation Board; Workers' Compensation Task Force, New York State Insurance Department; Governor's Office of Regulatory Reform; VESID, New York State Education Department; New York State Insurance Fund; New York State Department of Labor; and the many stakeholders that we met with in the State, as well as national experts and other state governments.

## Executive Summary

The 2007 Workers' Compensation Reform legislation limited, for the first time, the length of time a claimant with a Permanent Partial Disability (PPD) classification could receive cash benefits, scaled to the degree of disability sustained by the injured worker. While the need to contain premium costs was a factor guiding the 2007 Reform legislation, so too was the need to protect injured workers, and to provide a safety net for those whose benefits were being capped. The statute established a new Section 35 of the Workers' Compensation Law, which provides for a safety net for PPD claimants, including a report by the New York State Commissioner of Labor making recommendations for facilitating return to work for those categorized as permanently partially disabled.

This report, submitted pursuant to Section 35 of the Workers' Compensation Law, provides analysis and recommendations on policies, procedures, and statutory and regulatory changes, which can improve return to work rates overall for workers' compensation claimants.

Research demonstrates the devastating psychological, medical, social and economic effects of unnecessarily prolonged work disability and loss of employability. Employees are an employer's most valuable asset and any injury or illness that interrupts work activities can hurt both the employee and the employer.

Return to work programs are a proven, cost-effective way to control for the effects of disability and absenteeism in the workplace, and serve the best interests of the employer and employee. The goal of any good return to work program is the safe and timely return of employees to transitional or regular employment.

The development and implementation of return to work procedures that support optimal health and function for injured workers would encourage the continued contribution of these injured workers to society, help control disability program costs and protect the competitive vitality of the State's economy. Return to work programs have been shown to reduce: the frequency and duration of lost time; workers' compensation costs; medical and indemnity costs; litigation; wage replacement costs; utilization of

short-term and long-term disability benefits; worker replacement costs; and productivity losses. In addition, return to work programs often lead to improved labor relations and employee and supervisor satisfaction.

The new statutory benefit duration caps provided an opportunity for a higher level review of the commitment of all workers' compensation stakeholders to a "return to work" culture. For many injured workers, the lack of coordinated and supportive processes, procedures and practices often detract from reaching the return to work goal. More than 50 recommendations are offered in this report, which seek to better inform and facilitate return to work.

Recommendations are organized by sections, which reflect the many different components of the workers' compensation system that injured workers and employers must navigate. "Council Recommendations" contained within this report reflect the consensus of the Return to Work Advisory Council (Council) and Commissioner unless otherwise noted. In addition, the Commissioner identifies several issues on which consensus could not be reached, outlines the varied opinions of the Council members, discusses relevant research, and recommends further deliberation on these issues.

Highlights of "Council Recommendations" include:

- **Return to Work Education**—The Workers Compensation Board ("Board) and the Department of Labor ("Labor Department") should develop and provide education tools and technical assistance on how to build a return to work culture within an organization, particularly to small- and medium-sized employers. These tools should include templates of sample policies and procedural frameworks for return to work programs, and illustrations of the financial benefits of effective return to work protocols. In addition, the Board and the Labor Department should develop and implement, with input from stakeholders, an education program for all participants in the workers' compensation system, including employers and employees, carriers, claimants' attorneys and claims examiners, on the value and components of an effective return to work program and their respective roles in assuring positive return to work outcomes.
- **Employer Return to Work Policies**—The Board should require a formal, consistent Return to Work policy of all New York employers who employ more

than 25 individuals, and carriers shall provide model policies for employers of fewer than 25. The policy should be written and tailored to the specific needs of the employer. The Board and Carriers should encourage employers to adopt a policy which incorporates the best practices on Return to Work recommended by the Council in the report.

- **Return to Work Communication**—The Board should redesign the forms it uses to encourage and improve early and frequent outreach from the employer to the injured worker, from the physician to the employer and from the physician to the injured worker. These forms should seek clearer information on job duties and physical demands of a given job; ascertain the extent to which physicians are communicating with the injured worker about return to work; and contain information that will allow review by Board staff to ensure that injured workers are not needlessly delayed treatment or services that could facilitate return to work.
- **Improvements in the Physician’s Role**—The Occupational Health Clinics, administered by the New York State Department of Health, should develop content and curriculum for a continuing medical education course on return to work. The Board should improve training of physicians around return to work principles. The Board should assure that physicians are compensated for the time it takes to evaluate true return to work opportunities within the injured worker’s functional capabilities.
- **Vocational Rehabilitation Evaluations**—The Board should assure that a neutral, non-medical vocational rehabilitation evaluation is provided to all claimants who have not returned to work at the time they have reached maximum medical improvement to determine whether their return to work would be facilitated by vocational education or training. The evaluation should be done under a standardized protocol established by the Board and should be binding on all parties. The vocational assessment shall be paid for by the carrier, self-insured employer or the State Insurance Fund. Submission of the current Rehabilitation Form (the “R Form”) should be required, not optional; and

penalties should be imposed for the late or non-filing of forms related to return to work and rehabilitation programs.

- **Vocational Rehabilitation Services**—The Board should assure that Vocational Rehabilitation services are provided more expeditiously to injured workers and are appropriately funded. The options available and the costs should be subject to regulation by the Board. If the evaluation recommends vocational education or retraining, the costs should be covered first by appropriate sources of state or federal funding. Carriers should not be permitted to seek a change in an injured worker's classification status while that individual is actively participating in retraining or vocational rehabilitation in accordance with the individualized re-employment plan developed as a result of the vocational rehabilitation evaluation.
- **Incentive Programs**—The State should develop incentive programs targeted to hiring workers who have permanent work restrictions. These programs should be established and analyzed for their impact on return to work rates and cost effectiveness. Parameters recommended, at a minimum, should include those which offer employers wage subsidies for employing and retraining injured workers, reimbursement for workplace accommodations to enable injured workers to adjust the job to their capacities, vocational assessments, retraining for those injured workers who cannot return to their at-injury employer and funds for purchase of items that are required of any new hire. Return to work programs subsidized by these programs should, at a minimum, be at 80% of the pre-hire wage. Incentive programs should require an employer match.
- **Medical Only Cases**—The Board should compensate attorneys for representation provided in certain medical-only cases, so as to facilitate the medical care necessary for an injured worker's return to the labor force.
- **Workers' Compensation Board Process Issues**—The Board should put in place improvements and proactive approaches to return to work. It should develop procedures for promptly contacting claimants no later than 120 days after injury or within two weeks of maximum medical improvement to determine the feasibility of return to work. Participants in the workers'

compensation system, including the administrative law judges, should be educated on the importance of return to work. The Board should establish a procedure to ensure that all claimants who are eligible for a reduced earning award receive such award.

- **Other Programs that Impact Return to Work**—Greater coordination between various state agencies is advocated to enhance return to work and/or retraining services for injured workers. Coordination should be improved between existing safety, health and workforce development programs operated by the Labor Department, and federal and state vocational rehabilitation funds. Existing state services should be inventoried and analyzed for their responsiveness to the needs of injured workers and employers. The New York State Vocational and Educational Services for Individuals with Disabilities (VESID) and State Insurance Fund performance-based return to work services and placement initiatives should be expanded.
- **Return to Work for Public Employees**—A “pay without prejudice” pilot program should be undertaken with state agencies and selected public authorities and local governments to speed up appropriate medical treatment to workers that sustain workplace injuries. The program should be analyzed to determine whether improvements in timeliness of medical authorization results in better return to work outcomes of public employees.
- **Data Collection**—The Board should improve data collection and analysis through the development of a matrix of permanent partially disabled (PPD) case characteristics, which would allow for better predictive modeling to ensure resources are employed early on in those cases where the need is greatest. There should be greater oversight by the Board, in cooperation with the Departments of Labor, Health and Insurance, over the performance of carriers, the State Insurance Fund, third-party administrators (TPAs), self-insured trusts and self-insured employers, in regard to the timely submission of workers’ compensation services data.

The Council could not reach consensus on the following issues:

- Determination of the resources, parameters, and budget for a statewide employer education program provided by the Board to promote and advance the implementation of return to work programs;
- A strategy for incentivizing employers to have return to work policies and ensuring accountability;
- Which entity would be responsible for payment of vocational rehabilitation and retraining if federal or state funding is not available;
- Identification of the specific return to incentives that should be initiated, such as wage subsidies for injured workers, premium reductions, job accommodation funds, and funds to help injured workers cover certain costs of items required of new hires, and their funding mechanisms; and
- How best to strengthen the safety net for those permanently partially disabled claimants subject to duration caps and unable to return to work.

Some of these recommendations can be implemented immediately; others will take regulatory and/or legislative action. The Commissioner will continue to confer with the Governor, the State Legislature and stakeholders to implement the legislation, regulations, policies, programs and procedures recommended in this report, and to resolve outstanding issues.

The many recommendations contained within this report reflect the beginning of the process to build and support a “return to work” culture. Many New York employers and unions have innovative strategies that support return to work practices, and the recommendations within this report build from their on-the-ground learning on effective ways to keep New Yorkers working.

## Preface

### Section 35 of the Workers' Compensation Law

#### Safety Net

##### 1. Return to work.

(a) The commissioner of labor will issue a report to the governor, the speaker of the assembly, the majority leader of the senate, and the chairs of the labor, ways and means and finance committees of the assembly and senate on or before December first, two thousand seven, making recommendations as to how to assure that workers categorized by the board as permanently partially disabled return to gainful employment to the greatest extent practicable. Such commissioner will consider administrative and legislative remedies, and shall include estimates of cost in the report. The report shall examine best practices and the laws of other jurisdictions, as well as any relevant programs authorized by New York law. The report shall additionally examine return to work practices as implemented by carriers, the state insurance fund, employers, and the board. It shall also examine the relationship of vocational rehabilitation to ultimate return to work.

(b) The commissioner of labor will be assisted by an advisory council constituted of six persons appointed by the governor as follows:

- (i) a representative of organized labor appointed upon recommendation of the New York State American Federation of Labor-Congress of Industrial Organizations;
- (ii) a representative of the business community appointed upon recommendation of the Business Council of New York State, Incorporated;
- (iii) one person upon recommendation of the majority leader of the senate;
- (iv) one person upon recommendation of the speaker of the assembly; and
- (v) two other persons in the governor's discretion.

2. Total industrial disability. No provision of this article shall in any way be read to derogate or impair current or future claimants' existing rights to apply at any time to obtain the status of total industrial disability under current case law.

3. Extreme hardship redetermination. In cases where the loss of wage-earning capacity is greater than eighty percent, a claimant may request, within the year prior to the scheduled exhaustion of indemnity benefits under paragraph w of subdivision three of section fifteen of this article, that the board reclassify the claimant to permanent total disability or total industrial disability due to factors reflecting extreme hardship.

4. Annual safety net reporting. The commissioner of labor, in conjunction with the board and the superintendent of insurance, shall track all claimants who have been awarded permanent partial disability status and report annually on December first, beginning in two thousand eight, to the governor, the speaker of the assembly, the majority leader of the senate, and the chairs of the labor, ways and means and finance committees of the assembly and senate:

(i) The number of said claimants who have:

- (1) returned to gainful employment;
- (2) been recategorized as being totally industrially disabled;
- (3) remain subject to duration limitations set forth in paragraph w of subdivision three of section fifteen of this article; and
- (4) not returned to work, and whose indemnity payments have expired.

(ii) The additional steps the commissioner contemplates are necessary to minimize the number of workers who have neither returned to work nor been recategorized from permanent partial disability.

## Legislative Charge

Chapter 6, Section 5 of the Laws of 2007, titled the 2007 New York Workers' Compensation Law Reform, amended the workers' compensation law by adding a new Section 35, which established safety net provisions and directed the Commissioner of Labor (Commissioner) to issue a report to the Governor and Legislature recommending how to "assure that workers categorized by the board as permanently partially disabled return to gainful employment to the greatest extent practicable." Pursuant to the law and consistent with the legislative intent, the Commissioner convened a Return to Work Advisory Council (Council), which undertook the tasks associated with research, data analysis, and best practice review, and consulted with national experts on return to work.

Starting in July 2007, the Commissioner and the Council met in a series of public meetings at which the Council heard from experts and stakeholders and discussed the issues within its legislative charge. (See Appendix for meeting agendas.) Research was conducted within the tight timeline for issuance of the report, and the Commissioner recognizes that further and ongoing research, data collection, and evaluation on return to work are necessary for implementation of the recommendations in this report.

The Council recommendations contained within this report reflect the consensus of the Council members. The Commissioner joined in the Council's consensus recommendations except where otherwise indicated. Where consensus could not be reached by the Council members, the various positions of the Council members are outlined and the reasons for the Commissioner's recommendations are explained.

## Report Research Methodology

The workers' compensation system provides cash benefits and medical care to employees who are injured on the job. As a source of support for disabled workers, workers' compensation is currently surpassed in size nationally only by Social Security Disability Insurance (SSDI).

Prolonged absence from work is detrimental to the worker's physical, mental and social well-being. The workers' compensation reform legislation enacted in March 2007 provided for further investigation into ways to facilitate return to work policies and practices across the New York workers' compensation system.

The Council, and the resource staff supporting the Council, used varied methods to inform the recommendations. These included:

- Focus groups with stakeholders to better understand some of the return to work dynamics within given workplaces.
- One-on-one interviews with employers, unions, carriers including the State Insurance Fund, and claimant representatives to evaluate current, past and anticipated practices.
- Survey instruments, reflecting the design input of Council members, across a sample of self-insured employers to ascertain practices in place that support return to work for their employees.
- Public comment solicited via the Department's web site and meetings with stakeholders.
- Reviews of other states' workers' compensation policies and practices, with a particular emphasis on those states that have strong return to work programs and/or vocational rehabilitation processes. These reviews were followed up by direct outreach to contacts within the state systems to seek further clarification or insight into program effectiveness. Council members consulted with counterparts in other states to obtain additional information to help identify strengths and weaknesses in each model.

- Review of existing qualitative and quantitative research into return to work practices. Much of the research has been peer reviewed and published in medical or scientific journals, and a topical bibliography can be found at the end of this report.
- Presentations to the Council or subgroups from experts on various aspects of the workers' compensation system.
- Data analysis resulting from an aggregate cross-match of data provided by the New York State Workers' Compensation Board (the Board) to the New York State Department of Labor. The data allowed for Council members to better understand, for example, the distribution of claimants across age, industry sector, size of employer, type of injury, and rate of return to work. The statistical analysis prepared by the Department's Research & Statistics Division is provided as a supplement to this report.

This report and its recommendations are intended to reflect the observations of the Commissioner and Council, and are not presented as a statistically-based approach to designing a return to work program methodology.

## Why the Need for a Focus on Return to Work?

While the need to contain premium costs was a factor guiding the 2007 Reform legislation, so too was the need to protect injured workers and provide a safety net for those who could not return to work. Unlimited Permanent Partial Disability (PPD) indemnity benefits have long been considered an important cost driver in the workers' compensation system. The 2007 Workers' Compensation Reform legislation limited, for the first time, the length of time a claimant with a Permanent Partial Disability (PPD) classification could receive cash benefits, scaled to the degree of disability sustained by the injured worker. The statute also provided for a "safety net" for PPD claimants, including recommendations for facilitating return to work within this report.

The purpose of this report was to devote further study to the processes and procedures needed to ensure that injured workers do not exhaust their indemnity benefits without receiving the fullest opportunity to access all appropriate means to return to work.

Research demonstrates the devastating psychological, medical, social and economic effects of unnecessarily prolonged work disability and loss of employability. Employees are an employer's most valuable asset, and any injury or illness that interrupts work activities can hurt both the employee and the employer.

Return to work programs are a proven, cost-effective way to control for the effects of disability and absenteeism in the workplace and serve the best interests of the employer and employee. The goal of any good return to work program is the safe and timely return of employees to transitional or regular employment.

The development and implementation of return to work procedures that support optimal health and function for injured workers would encourage the continued contribution of these injured workers to society, help control disability program costs and protect the competitive vitality of the State's economy. Return to work programs have been shown to reduce: the frequency and duration of lost time; workers' compensation costs; medical and indemnity costs; litigation; wage replacement costs; utilization of short-term and long-term disability benefits; utilization of the Family and Medical Leave Act and other leave policies; worker replacement costs; and productivity losses. In

addition, return to work programs often lead to improved labor relations and employee and supervisor satisfaction.

This report serves as the starting point in developing a process by which New York State employers and their workers' compensation carriers and third party administrators (TPAs) will institute disability management practices and protocols much earlier in the claim process so that injured and ill workers can safely return to gainful and productive employment.

## Return to Work Protocols for All Claimants

The Council was charged with advising the Commissioner on ways to ensure that individuals classified as PPD return to gainful employment. In undertaking this mission, the Council analyzed, to the extent possible given the information it had available, the data on New York's workers' compensation claimant population. The analysis affirmed that injured workers classified as Permanent Partially Disabled with "Nonscheduled Losses" (PPD NSL) have far lower return to work rates than any other classification group. These lower return to work rates translate into increased costs for the overall system and less economic security for the injured worker. Analysis showed:

- Return to work rates for PPD NSL claimants were consistently and significantly lower than rates for those classified as Temporary Total Disability (TTD) or PPD with Scheduled Losses (PPD SCH) in all categories reviewed by the Council for this report for the selected time period. In most instances there is a 30% lower rate of return to work for PPD NSL claimants than for TTD or PPD SCH.
- While claimants classified as TTD and PPD SCH employed in the private sector during the accident quarter experienced a decrease in average weekly wages after returning to work (-7.8% and -9.7%), the PPD NSL claimants had much lower average weekly wages (-58.0%) when returning to work with any employer.
- Among PPD NSL claimants, the back was listed most frequently as the injured body part, and traumatic injuries to muscles, tendons, ligaments and joints were listed most frequently as the nature of injury/illness.
- The lowest return to work rates for NYS employers were in the construction industry. Construction also had the lowest rate for PPD NSL claimants returning to work with the same employer.

The ability to rein in costs *and* return injured workers to full productivity plays an important role in helping the business and State economy to flourish. The Council, in advising the Commissioner, expressed the view that creating a return to work culture across the stakeholders in the workers' compensation system will be the key to ensuring

that all claimants, including those facing duration caps on their benefits, remain an active part of New York's economy.

Many of the recommendations contained in this report reflect systemic change opportunities. To put in place the steps toward achieving that goal, and consistent with a significant body of research that notes re-employment interventions need to occur as early after injury as practicable to have the maximum benefit, this report sets forth recommendations in the broader context of the entire workers' compensation continuum, not at the point of PPD classification.

## Guiding Principles

This report, in accordance with the Council's recommendations, is framed with the following consensus principles:

1. Each recommendation—especially any recommended system mandate—should be evaluated for cost efficiency and its impact on the ability to sustain cost savings intended by the 2007 reform language. The goal should be to strive for the best achievement of objectives in the least costly manner. Some recommendations will require added costs up front, but these costs were determined to be worthwhile investments because they should result in cost savings in the long-term and the best return to work outcomes.
2. While research demonstrates the significant benefits a return to work model can have for both the injured worker and employer, it is unlikely small- and medium-sized employers would undertake the planning and execution steps needed without a meaningful incentive. The Department and the Board should provide advice, guides, and technical assistance for small- to mid-sized businesses on effective loss prevention and return to work programs. A lag in the experience modification rating process may impede overall efforts as employers may not see any results on return to work efforts for several years out. Experience modifications do not exist at all for employers with five employees or less. These factors make it all the more critical for an incentive to have substance if the goal of preventing workplace disability by helping injured workers stay employed is to be realized.
3. Incentives must have a direct, dynamic result for employers and injured or ill workers to use them. Incentives should be evaluated for their impact. The Department is in the process of issuing regulations for safety and loss prevention program incentives, including incentives for return to work programs. These will incentivize the development of formal, effective return to work programs.
4. One way to ensure long-term return to work success is to temper the arduous and adversarial legal process for resolving workers' compensation disputes and the incentives it provides to engage in protracted litigation. Many of the

recommendations contained within this report seek to improve processes, prevent controversy within the system, reinstate injured workers to gainful employment prior to the need for classification, and foster and strengthen a culture of return to work in New York State so that the original purpose and promise of workers' compensation are restored.

5. The breakdown in trust among the parties, frustration at delays in treatment, the processing of claims and the late payment of bills have impaired the ability of the system to achieve its intended mission. All recommendations in this report should be guided by the goal of identifying processes and practices that will refocus the system on employees and employers.
6. In workplaces with collective bargaining agreements, involving unions is key to successful design and implementation of return to work policies and procedures. Union representatives provide a vital communication link in facilitating and ensuring an injured worker's successful return to the workplace.

## Principles and Best Practices for Return to Work

Numerous studies have identified best practices for return to work programs that have positive outcomes for all stakeholders. For example, the Institute for Work & Health in Toronto published findings of an extensive systematic review of the global literature and research on return to work in March 2007. Throughout Council deliberations, the Institute's "Seven 'Principles' for Successful Return to Work" were recognized as key to the foundation of any successful return to work model. (See the Appendix for a list of the Seven Principles.)

A review of the quantitative and qualitative literature on workplace-based return to work interventions published since 1990 found that return to work interventions are effective in reducing the duration of work disability and in reducing associated wage replacement and health care costs. There is evidence that three components – early contact with the worker by the workplace; a work accommodation offer; and contact between health care providers and the workplace – significantly reduce work disability duration and associated costs. Further, there is moderate evidence that two other return to work components – ergonomic worksite visits and the involvement of an individual with responsibility for return to work coordination – also reduce work disability duration and associated costs.

Effectuating a meaningful return to work model built around qualitatively and quantitatively researched principles requires time, effort, and expertise. The Council deliberated at length as to whether all employers should be mandated to adopt a return to work program or policy.

Some Council members observed that it was in the best interest of the system to ensure that all employers have a return to work program. Every dollar spent by employers on accident prevention and return to work yields savings. They noted that injured workers who do not return to the at-injury employer drive up the costs for all employers, since this is reflected in the experience rating modifications of all employers within the employer's industry classification. The State Insurance Fund (SIF) estimates that employers who have return to work programs save 20-40% or more in workers' compensation costs.

It was further observed that allowing employers to voluntarily implement return to work programs has not been an effective means of increasing systemwide return to work rates for injured workers in New York, since many employers do not use this strategy. These Council members stated that the failure of the voluntary system is why the Council was formed and a more aggressive strategy was the only effective strategy.

Other Council members opposed mandates on employers regarding return to work activities. While acknowledging that returning an injured worker to the at-injury employer was the best outcome, there was concern expressed that small- and medium-sized employers, declining industries, and seasonal employers may no longer have a job available for the injured worker. Additionally, Council members expressed concern on how such a mandate would be enforced and monitored. It was also noted that requiring the establishment of a “program” when an employer may have only episodic workers’ compensation claims may impose a burden on those employers with infrequent use of the workers’ compensation system.

The Council reached consensus on a recommendation that would require employers with more than 25 employees to have written, formal, consistent return to work policies. The Council agreed that the policy should be tailored to the specific needs of the employer. Employers should be encouraged to adopt a policy which incorporates the best practices on return to work recommended by the Council in this report. The Council recommended that carriers provide model policies for employers, especially those with fewer than 25 employees. Employers may opt to adapt or adopt insurer-developed return to work programs.

The Council recommended that the Commissioner and the Board, in consultation with stakeholders, develop and issue guidelines and models on effective return to work practices and policies on an ongoing basis. Return to work policies and programs should be monitored by a state agency (either the Department or the Board) and information will be provided to stakeholders regarding effective policy and program models. Employers with the most effective return to work programs will be encouraged to seek the safety incentive discounts.

The Council made recommendations on best practices and model policies. In workplaces where workers are represented by a union, the development and

implementation of a return to work policy should include active participation from the employees' representatives to ensure full participation in and support for the program. Education on the company philosophy and program model should be included as part of management, supervisory, and front-line staff training. To assure that injured workers are aware of an employer's Return to Work policy, the Board should determine procedures by which injured workers will be informed of a return to work policy.

The Commissioner concurs with the Council recommendations that address best practices, the issuance of guidelines, the role of carriers in providing technical support to small employers, and the evaluation of effective return to work policy and program models. The Commissioner is concerned, however, that the recommendation for requiring return to work policies for employers with 25 or more employees would have limited effect on increasing return to work rates because it lacks monitoring and enforcement mechanisms. Therefore, the Commissioner proposes to convene stakeholders to consider these issues further.

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***Council recommendations:***

- 1. A formal, consistent Return to Work policy should be required of all New York employers that employ 25 or more individuals. Carriers should provide model policies for employers of fewer than 25. Carriers are encouraged to provide model policies for all employers, including those with more than 25 employees. Employers may opt to adapt or adopt carrier-developed return to work programs.*
- 2. In workplaces where workers are represented by a union, the development and implementation of a return to work program should include active participation from the employees' representatives.*
- 3. To be effective, the return to work policy should be written and tailored to the specific needs of the employer.*
- 4. The Labor Department and the Board should review return to work policies and programs to determine which are the most effective, and provide information on their findings to stakeholders. The Labor Department and the Board, in consultation with stakeholders, should develop and issue guidelines and models on effective return to work practices, policies and programs on an ongoing basis. Employers are encouraged to adopt a policy which incorporates the best practices on return to work recommended in this report and by the Department and Board in the future.*
- 5. Recommendations on return to work best practices for inclusion in any guidelines developed by the Department and Board should include, but not be limited to:*

- *An employer return to work policy statement/philosophy recognizing successful return to work requires collaboration among all the workplace parties;*
  - *Designation of an individual in charge of return to work progress for the employee and an individual in charge of a return to work program at the employer and the carrier;*
  - *An employer-specific return to work flow chart identifying roles and responsibilities that is provided to employees at time of injury;*
  - *Education on the employer's return to work philosophy and program model, which should be included as part of management, supervisory and front-line staff training; and*
  - *A policy that the return to work program be conducted in a non-discriminatory manner by the employer in regard to retraining, re-employment and job protection.*
6. *Employers with the most effective return to work programs should be encouraged to seek the safety incentive premium discounts pursuant to Labor Department regulations.*

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A key characteristic of a successful return to work program is that it offers early return to the workplace before full physical recovery by giving employees access to transitional duties consistent with the treating physician's recommendations and based on an evaluation of the injured worker's functional capacity. As participants in a return to work program, employees should become involved in the decision making process related to the design of the transitional employment.

The Council recognized the priority of placement protocols that the Board, New York State Vocational and Educational Services for Individuals with Disabilities (VESID), employers and other providers follow in restoring injured or ill employees to gainful employment.

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***Council recommendation:***

*State guidelines and protocols, along with workers' compensation stakeholders including carriers, employers, and injured workers, should follow this priority of placement protocol on returning an injured worker to work:*

- *Same job, same employer*
- *Modified job, same employer with a change in work process or work functions to fit employee's physical limitations (Accommodation)*
- *Similar job, same employer (Alternative work)*
- *Transitional job, same employer (Light duty)*
- *Different job, same employer (Alternative work)*
- *On-the-job-training, same employer (Alternative work)*
- *Similar job, different employer (Direct job placement - uses existing skills)*
- *Different job, different employer (Direct job placement)*
- *On the job training, different employer (Job placement)*
- *Short-term retraining and placement*
- *Retraining with job placement (Vocational or academic)*

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The Council cited a large body of research, which demonstrated that the early identification of injured workers whose disability will ultimately prevent their return to their existing occupation is essential to their successful return to work. While the best outcome is re-employment at the at-injury employer, some injured workers will not be able to return to the same employer or to the same job or a modified job. While vocational rehabilitation is at the end of the continuum, currently, injured workers are not undergoing a vocational assessment until far too late in the process.

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***Council recommendation:***

*Criteria should be established in consultation with medical professionals to determine which injury characteristics are likely to lead to prolonged recovery and disability, and will impact the ability of the injured worker to return to the same job or occupation so that a vocational rehabilitation assessment may commence much sooner in the treatment and recovery process.*

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By their very nature, return to work processes require collaboration between the stakeholders (physician and injured worker, physician and employer, manager and supervisor, injured worker and supervisor, etc.) for the solution to be meaningful. Successful return to work procedures entail taking charge of the employment process from the onset of injury; informing treating physicians that the employer has a temporary transitional work program; making clear to the injured worker and treating physician that the employer can provide work within a wide range of functional abilities that will be consistent with guidelines set by the doctor; and asking physicians to determine functional capacities, restrictions and limitations, rather than nebulous return to work instructions.

Council members observed that there are New York employers with impressive and comprehensive return to work programs that reflect these employers' commitment to retaining valued employees regardless of the nature of the injury sustained. Moreover, return to work programs have been negotiated between many employers and unions in New York State and are operating successfully due to the coordination and support between labor and management. Workers' Compensation Law §25(2-c) provides for an alternative dispute resolution (ADR) system that employers and unions can negotiate to resolve workers' compensation claims within the construction industry. The parties may establish procedures and obligations for light duty, modified jobs, return to work programs, and vocational rehabilitation beyond what the law requires.

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***Council recommendation:***

*In unionized workplaces, collective bargaining solutions, or statutory ADR remedies for issues involving and related to return to work, retraining, re-employment and job protections should be honored as approved solutions for compliance with this program.*

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## Education

Return to work outcomes are influenced by the beliefs, roles and perceptions of many players. Some employers may view return to work as a “cost” item rather than a cost saver, and frontline supervisors may view such programs as an imposition that may adversely impact productivity. Many employers are not aware of the long-term financial benefits and cost savings of returning injured workers to work.

When it comes to improving return to work outcomes, informed employers can make all the difference. Studies have shown that employers can reduce disability costs significantly when they improve the way that their managers prevent and respond to workplace injuries and illnesses. Research has shown that long-term absences from the workplace can be averted through better-informed approaches, such as supervisory training. Optimally, employers should be trained on early detection and safety problem-solving, effective response to injury, and accommodation of injured workers.

Injured workers are often not fully informed of their rights and obligations and of opportunities available in the workers’ compensation system to facilitate recovery and return to work, including reduced earnings benefits upon return to work and workplace accommodations to facilitate such return. The employer’s return to work policy may be unclear, and lack of communication by the employer on re-employment may be interpreted negatively by the injured worker.

The 2007 workers’ compensation reform effort resulted in new rules, regulations and processes, requiring significant education of all the parties. Achieving meaningful return to work goals requires a major cultural change in how the parties deal with workplace injuries and illnesses.

The Commissioner was charged in the statute with making recommendations to assure the system returns claimants to gainful employment to the fullest extent practicable. Quality education and training for key players in the workplace is essential to ensuring that employers and key supervisory staff embrace return to work roles and responsibilities. Employers in the state must be engaged in this process if the goal of systemic change is to be reached.

While all Council members agreed on the value of education and educational programs, there was no consensus on whether employer education should be mandatory or voluntary, or on the appropriate funding mechanism for these educational programs. Some Council members wanted to require all employers to attend training and to pay for the educational programs through an assessment on employers with more than 25 employees, which would be rebated to employers who attended the training. Others wanted a voluntary program with funding coming from other sources, and stated that mandating education for all employers would be unwieldy.

The Commissioner believes that informing employers of the value of having a return to work policy and program will increase the number of employers establishing return to work programs, thereby reaping cost savings throughout the system. Employers have stated that they would benefit from guidance on how to implement proper return to work policies and procedures, while injured workers want assurances that their employer has such policies and programs in place. The Commissioner will seek consensus from stakeholders on the most effective way to establish a statewide education program on return to work and resolve issues regarding who would be able to provide the training, how it would be funded, how it could be delivered and who would be required to attend.

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***Council recommendations:***

*The Labor Department and the Board should expand education by the State on the value to employees (retained earning capacity, improved recovery) and employers (reduced costs) of effective return to work programs. The Labor Department and the Board should develop and implement, with input from stakeholders, an education program for employers on the value and components of a good return to work program. Additionally, the Department of Labor and the Board should develop appropriate processes that educate and inform claimants, employers, unions, attorneys, ALJs, carriers and examiners about the value of return to work and the respective roles in assuring positive return to work outcomes.*

*The education program should provide information on a number of issues, including, but not limited to: effective job modifications to eliminate ergonomic and other job hazards; guidance for technically matching job opportunities with functional capacity of injured workers; the value to employees (retained earning capacity, improved recovery) and employers (reduced costs) of effective return to work programs; best practices for expanded interaction between employer and claimant to facilitate return to work; and*

*advice, guides and technical assistance for small- to mid-sized business on effective loss prevention and return to work programs. Innovative education and training delivery methods, such as online training, should be investigated for effectiveness and increased market penetration.*

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## Communication

The longer an injured worker is away from the workplace, the likelihood of successful return to work diminishes. Communication between the injured worker and the employer is a crucial factor in how quickly an employee returns to work and is able to stay at work. Early intervention is, therefore, a key component of a return to work program.

### Communication loops include:

Employer ↔ Employee

Supervisor ↔ Employee

Physician ↔ Employee

Physician ↔ Employer

Insurer ↔ Employer

Employee ↔ Union

Employer ↔ Union

Employer ↔ All Employees

Proactive return to work programs that involve early return to safe and suitable employment within a worker's functional abilities and restore the worker's pre-injury earnings have lowered the duration of and costs associated with workplace disability. Ideally, the injured worker is returned to the at-injury job or offered a work accommodation. Research demonstrates that early and frequent outreach from the employer to the injured worker leads to better long-term results overall.

Several critical moments in the communication continuum have been noted. Injured workers' communication needs are highest at the time of injury, immediately after the injury, and when preparing to return to work. Critical individuals in the communication continuum are the injured worker's supervisor and a neutral case manager.

The type of communication influences the amount of cooperation, flexibility and credibility in the system. If not done right, early contact can be perceived by workers and employers as problematic and an unwelcome obligation. Proactive communication strategies and an understanding of an employee's needs shortly after returning to work are important for overall success. Employers have indicated that they need help and guidance as to the best way in which to communicate with injured workers.

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***Council Recommendation:***

*To promote expanded interaction between employers and claimants and facilitate return to work, the Labor Department and the Board should develop best Return to Work program practices, including a “Communication and Return to Work Toolkit” that will provide employers and supervisors with guidance on the most effective communication with injured workers and their representatives and how to manage return to work strategies.*

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## The Treatment and Recovery Process

Prolonged periods of time between injury and treatment impact the return to work process. Many of the key players in this process (such as patients, injured or ill workers, employers, physicians and claims administrators) are not sufficiently aware of the potential harmful effects of prolonged, medically excused time away from work. Data on New York's workers' compensation claimants shows that the vast majority return to work in the same industry in which the accident occurred. Delays in the treatment and recovery process have a real and, for PPD NSL claimants, significant negative impact on earnings capacity.

When issues related to appropriateness of treatment are raised in the hearing process and treatment is not authorized, the return to work process is held up because workers cannot recover adequately and the employer-employee relationship can be unnecessarily damaged. There is evidence that delays in New York's workers' compensation system have undermined the treatment and recovery process:

- In 2006, more than 21,000 hearings were held at the Board for authorization of treatment and tests.
- Prior to the 2007 reform legislation, it took, on average, more than four years for a PPD NSL claimant's disability to be "classified" by the Board.

Some studies show that the current practice of focusing disability management on those who have already been out of work a long time is rarely successful. The odds for return to full employment drop to 50% after six months of absence from work. Further studies indicate that an employee who is out of work due to an injury has a 25% chance of returning to work after a year, and employees off work for two years or more have little potential to return to work. A research study on the factors that predict prolonged disability reported that the window of opportunity for optimal intervention may be as short as six weeks.

In the medical community, return to work is not traditionally viewed as a conventional health outcome. Physicians are often not focused on return to work for their patients, and many health care providers do not consider return to work as a major element in a treatment and recovery plan. Yet returning injured workers to work has a

significant influence on an employer's direct and indirect costs, as well as significant psychosocial and economic benefits for the injured worker.

Physician education should improve return to work outcomes. The State funds a network of occupational health clinics out of workers' compensation assessments, which is administered by the State Health Department; the Clinic network is uniquely qualified to develop content and curriculum for a Continuing Medical Education (CME) course on Return to Work. The CME should be developed in coordination with the Medical Society of the State of New York (MSSNY), which is the recognized accreditor in New York State that can certify that a course meets national CME standards. Cost estimates from MSSNY indicate an investment of as little as \$63,500 will enable the State to educate a significant number of physicians through live presentations, CDs, resource materials and online courses. Ideally, the return to work course should be conducted in tandem with the physician education program developed by the Medical Treatment Guidelines Task Force.

Article 10-A of the Workers' Compensation Law authorizes insurance carriers and self-insured employers to contract with NYS Department of Health certified preferred provider organizations (PPOs) for the provision of diagnostic, treatment and rehabilitation services to claimants requiring medical treatment for occupational disease or injury. The Council agreed that the PPO regulations pursuant to this law should be amended to require that PPOs educate their participating physicians around safe and timely treatment and return to work.

Expert and stakeholder presentations to the Council noted that injured workers are more likely to return to work earlier with greater success if the treating physician provides work and injury-specific information and detailed guidelines on the injured worker's capabilities in relation to the pre-injury job or available jobs. Existing methods and tools for obtaining and analyzing such information, however, are not standardized. Treating physicians typically improvise and use some form of informed guesswork to come up with work capacity, medical restrictions and functional limitations. Similarly, employees and employers typically use informed guesswork to describe the functional demands of workplace tasks. Improving and standardizing these methods and tools could

allow for a more authoritative return to work decision, facilitate transitional work options, and ultimately return the injured worker to productivity more quickly.

As a broad policy objective, the Council supported improving the incentives for physicians engaged in treating workers' compensation claimants. Physician fee schedules and medical treatment guidelines are not within the scope of the Council's charge. However, the Council believed it is important to facilitate return to work by compensating the medical professionals integrally involved in evaluating the demands of the workplace with the functional capacity of the worker and through the use of evidence-based guidelines. Several states have adopted such guidelines and fee schedules authorizing payment to medical providers for such evaluations; these fee schedules have resulted in more favorable return to work outcomes for injured workers, more valuable information to employers about the capabilities of claimants, and less overall claim costs, as bringing claimants back to work in an early and safe manner prevents long-term disability and indemnity.

The Council made several recommendations that have been shared and coordinated with the Workers' Compensation Medical Guidelines Task Force prior to the issuance of this report.

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***Council recommendations:***

- 1. The Board should improve training of physicians around return to work principles and the importance of establishing a goal of treatment to encourage the fastest possible return to function and resumption of the fullest possible participation in life.*
- 2. Subpart 325-8 of Title 12 NYCRR (the "PPO regulations") should be amended to require that PPOs educate participating physicians around return to work principles and on the goal of treatment to encourage the fastest possible return to work. Any training and education developed as a part of recommendation #1 should be required of PPO physicians.*
- 3. The Occupational Health Clinics, administered by the NYS Department of Health and funded through current workers' compensation assessments, should develop content and curriculum for a Continuing Medical Education course on Return to Work. As part of the development, Occupational Health Clinics should secure input from various stakeholders.*

4. *Through a statement of guiding principles on the use of the medical treatment guidelines and through the education process used to introduce the treatment guidelines to the medical community, the Board should emphasize the importance of return to work.*
  5. *Through the treatment guidelines, the Board should promote improved interaction between employers and treating physicians to better assess occupational restrictions within the context of job demands, and require more detailed periodic assessments of claimants' occupational impairments and capabilities by treating physicians.*
  6. *The Board should reimburse physicians for the time spent evaluating claimants and for the time necessary to coordinate with the employer and carrier around the injured worker's job specifications and physical demands.*
  7. *The WC Board Forms Task Force should ensure that the Employer's Report of Work-Related Accident form (the "C-2 form") includes specific questions regarding the functional demands of the injured worker's job and/or an attached job description or functional demands analysis for that job. A copy of that form should be provided to the treating physician.*
  8. *The WC Board Forms Task Force should require that the physician's notes accompanying the Attending Doctor's Report (the "C-4 form") identify how return to work is being addressed with the injured worker.*
  9. *The Board should ensure that the health care provider has the necessary tools to assess an injured worker's temporary transitional work capability and, if permanent placement is required, ensure that the treating physician is requested to address and provide the injured worker's functional capacity for long-term employment. The Board should allow the use of a Functional Capacity Exam as a tool on a limited basis, and develop a process for resolving disputes between physicians regarding the functional capacity of claimants.*
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## Vocational Rehabilitation

The statute charged the Council with examining the relationship of vocational rehabilitation to ultimate return to work. This section addresses the overall goal of vocational rehabilitation and its place within the return to work continuum of services.

Vocational Rehabilitation (VR) is a process by which a worker who cannot return to his or her former job as a result of an injury or illness on the job is assisted with re-entering the workforce. VR services may include testing and evaluation, job placement, post-placement follow up, vocational counseling, on-the-job training and retraining.

For those most severely injured and least likely to return to their at-injury employer or at-injury occupation, vocational rehabilitation services can be the vehicle through which economic self-sufficiency is regained. However, the economic effects of vocational rehabilitation in workers' compensation have not been adequately examined. The lack of well-designed research in the field of vocational rehabilitation has presented an obstacle to the further development of such programs as states are reluctant to invest in VR without better evidence of its cost-effectiveness.

Some research has shown that the negative effects of workplace disability are reduced or mitigated for those who participate in vocational rehabilitation. Studies of the more severely disabled workers found them more likely to return to work and receive higher post-vocational rehabilitation earnings than less severely disabled workers in part because they were more likely to receive vocational rehabilitation.

Delivering high quality vocational rehabilitation services in the workers' compensation system is not a simple task. Council members expressed concern over cost, inappropriate utilization, and problems due to delayed referrals, under-qualified providers, inadequate evaluations, unrealistic demands for immediate job placement, voluntary payment for services, and injured workers who do not cooperate with vocational rehabilitation. These challenges result in increased litigation, higher costs, and lingering animosity on both sides.

Vocational counselors in most states first attempt to place the injured worker in positions with the at-injury employer and then at jobs for which the claimant has transferable skills. If the job search proves to be unsuccessful, an individualized training

plan may be developed. Candidates for retraining include those injured or ill workers for whom there are no suitable jobs available in the local job market in which they may become gainfully employed without such retraining. Often states set a ceiling for the maximum cost and duration of the retraining program and continue workers' compensation benefits as long as the claimant participates in the vocational program. Some states provide an opportunity for the at-injury employer to make a suitable offer of return to work prior to authorizing the eligibility for the claimant to receive vocational rehabilitation.

Several states provide dedicated funding sources for vocational rehabilitation as part of their workers' compensation services. Arizona has a special fund tax of up to 1.5% of premiums written; Connecticut funds vocational rehabilitation out of its unified 5% assessment; and Idaho as part of its 2.5% premium tax industrial administration fund. Maine has a dedicated Employment Rehabilitation Fund; Washington State a Medical Aid Fund; and Maryland requires vocational rehabilitation to be paid for by carriers and self-insurers through a supplemental benefit fund. A number of states provide for a maintenance allowance as part of vocational rehabilitation benefits. Maintenance allowances typically cover board, lodging, travel (if necessary), tuition, books and, in some states, a cash stipend.

While rehabilitation is not mandatory in Arizona, its Special Fund has discretionary power to provide vocational rehabilitation benefits if certain criteria are met, and it can provide assistance if requested by the carrier or the injured worker. In Maine, if the employer will not voluntarily pay for vocational rehabilitation, the claimant may ask the Workers' Compensation Board to recommend a vocational rehabilitation plan; if the employer refuses to pay for the plan, the Workers' Compensation Board will fund it.

A number of states provide for statutory entitlement to vocational rehabilitation services; other state statutes recognize the value of having access to available vocational rehabilitation services but do not hold carriers liable for the costs of providing the services. Several states expressly require coordination of assessment and vocational rehabilitation activities with the federal funding provided to states for vocational rehabilitation for individuals with disabilities. Some states maintain an approved list of vocational rehabilitation providers and counselors.

The Rehabilitation Division of Idaho's Industrial Commission has provided rehabilitation services to injured workers at no charge for 28 years. During Fiscal Year 2006, 3,589 workers were provided rehabilitation services. Of injured workers who returned to work through Idaho's Rehabilitation Division, 87% returned to at least 90% of their pre-injury wage. Through modified or accommodated work situations, 20% returned to their time-of-injury employer. Additionally, the Rehabilitation Division contacts injured workers, employers, medical providers and insurers, gathers detailed in-depth information, and develops a vocational plan within the average time of 9.27 days.

In Oregon, within 30 days after the attending physician has released a worker to return to work, the carrier or self-insured employer must determine whether the worker who is not returned to work with the at-injury employer is eligible for vocational assistance. Oregon carriers provide vocational assistance to injured workers if a permanent disability resulting from the injury prevents re-employment in any job that pays at least 80% of the job at-injury. Under current law, the typical eligible worker gets a training plan followed by direct employment (placement) services. Maximum service is 16 months of training or 21 months for "exceptional" cases, plus four months of direct employment services. The breakdown for 2002 cases included: \$4.0 million for time loss (worker subsistence) during training; \$1.8 million for purchases of goods and services, such as tuition; and \$3.0 million to authorized providers of vocational assistance for plan development, counseling and guidance, placement, etc. Employment rates have been consistently higher, by at least 20 percentage points, for workers who complete their plans.

New York can also learn from Washington State's many years of experience offering vocational rehabilitation assistance to injured workers. Washington recently passed legislation effective January 1, 2008 to improve the system of vocational rehabilitation in the state by giving workers more choices and control over their future while reducing time-loss and costs to employers. The new Vocational Improvement Project (VIP) enables injured workers to participate in training programs that cost up to \$12,000 and last for up to two years. Tuition funds will be available to workers, with some limits, for five years after their claim closes. Previously, there was a maximum of \$4,000 and one year to complete a program. All vocational plans must contain an accountability

agreement detailing expectations. After the worker has been determined eligible for vocational plan development, an employer has 15 days to offer a job and stop the vocational rehabilitation process.

In Rhode Island, three stakeholders may file a petition requesting approval of a rehabilitation program, or may mutually agree to a rehabilitation program: an injured employee with total disability or permanent partial disability who has received compensation for three or more months; his or her employer; or the carrier. Connecticut provides rehabilitation services and encourages application for such services early in the claim and prior to reaching maximum medical improvement; applications may be filed by claimants, or their physician, attorney or insurer. In California, the claims administrator has the responsibility to provide notice to the injured worker of his or her potential rights to vocational rehabilitation services after the employee accrues 90 days of TTD.

In New York, vocational rehabilitation services can be accessed through any number of venues, including private vocational rehabilitation counselors, the State Education Department's VESID programs, or through Board vocational rehabilitation staff referrals when an "R Form" is filed by a carrier and vocational rehabilitation services are deemed appropriate.

Presentations to the Council noted that referrals and initiation of vocational rehabilitation services to workers' compensation claimants in New York State were, on average, two years from date of injury. Without exception, VESID, Board, and private vocational rehabilitation counselors, along with claimants' attorneys, expressed the view that the time lag between injury and inception of vocational rehabilitation services is so long that return to work outcomes are fairly limited.

While there is not significant evidence in New York on the cost-effectiveness of vocational rehabilitation as the system currently exists, there is ample evidence that speaks to the need for identifying and initiating vocational rehabilitation early on in the recovery process. Time is clearly the enemy of effective return to work for those who require vocational rehabilitation. Some research has shown that early VR intervention – within six months after the injury – is a key determinant of improved vocational rehabilitation completion, return to work and earnings recovery.

While all Council members agreed on the value of rehabilitation in certain cases, no agreement could be reached on who should bear the costs for providing the assessment and the vocational rehabilitation services. In New York, carriers are not required to cover vocational rehabilitation costs and the law does not provide for any statutory entitlement to vocational rehabilitation services.

Some Council members advocated that all carriers be responsible for the costs of vocational assessment and rehabilitation. These members felt there was a duty on the part of the carrier and employer to make every effort to restore to the injured worker his ability to work to the fullest extent practicable. While acknowledging that the analysis of the claimant data pertaining to the benefit of vocational rehabilitation's cost and return to work effectiveness was unclear and needed additional context, these members cited that an essential reason for their support for a mandate that carriers pay for the cost of vocational rehabilitation was the imposition of duration caps on PPD claimants. These members expressed concern that while there are many system and process improvements being proposed and underway that could help ameliorate the need for vocational rehabilitation, some individuals will not be able to return to work without vocational rehabilitation; therefore, VR should be a core provision of any safety net.

Other Council members believed that better leveraging of existing funding streams, such as federal vocational rehabilitation funds accessed through VESID, should be utilized instead of a cost mandate on carriers and/or employers. These members also noted that the Council ought to conduct additional data analysis and research on the effectiveness of vocational rehabilitation services before imposing a cost mandate on carriers and employers. It was observed that system mandates in other states have not always proven effective in increasing return to work rates, and the Council and the system would need to better understand which injured workers could benefit from vocational rehabilitation before any mandate was imposed. These Council members felt it premature to support a requirement that carriers pay for vocational rehabilitation services until information such as that contained within the recommendation for development of a matrix of PPD characteristics was available.

The Council also did not reach agreement on a separate recommendation that would have amended the Workers' Compensation Law to stipulate that time spent by a claimant

in vocational rehabilitation services would not count toward that individual's benefit duration cap. It was noted by claimant representatives that some carriers seek to reclassify and lower the claimant's percentage of disability when the claimant enters a vocational rehabilitation program, thereby providing a major disincentive to claimants for participation in such programs. Some Council members felt this would serve as a strong incentive to injured workers to engage earnestly and early in vocational rehabilitation services. They felt this would also serve to lessen certain communication and trust barriers within the current process by making it clear to the individual, regardless of information being received otherwise, that the primary goal is return to work.

Access to vocational rehabilitation services was often delayed even when no duration caps were in place. Given the new duration caps, it was expected that some carriers will have an additional incentive to try to reclassify claimants.

Other Council members felt that this recommendation was premature, given that the duration caps had just recently been enacted, and recommendations to expand the duration caps or suspend them under certain circumstances were beyond the scope of this Council. These members felt that without empirical evidence on the value of vocational rehabilitation services in returning individuals to work, the recommendation for excluding time spent in vocational rehabilitation from the caps or for mandatory payment of vocational rehabilitation by carriers and self-insured employers could not be supported.

The Commissioner believes that vocational rehabilitation services offer claimants with the most severe injuries that prevent re-employment at a former position the best opportunity to be productive and self-supporting members of the workforce. Given the high costs of workers' compensation for such claimants, VR helps insurers and employers manage the cost of workplace injuries. Council members agreed that claimants should receive a vocational assessment—paid for by the insurer or the self-insured employer—in a timely manner.

The hourly rate for private Vocational Rehabilitation Counselors ranges from \$70 to \$90/hour. The hourly cost of vocational services, including assessments provided by Vocational Rehabilitation Counselors who are certified, have master's degrees and are employed by the State is approximately \$48.61/hour. Vocational Rehabilitation

Counselors in VESID are supported largely with federal funds; the cost of an assessment is considered an appropriate use of federal funds. VESID has indicated that currently, without any formalized coordination between carriers, the Board, claimants and employers, approximately 5,000 workers' compensation claimants are engaged in VESID services at any point in time.

The number of hours necessary to complete vocational assessments varies, although four hours is seen as reasonable. Non-medical evaluations were proposed for claimants who have not returned to work and have reached maximum medical improvement. Based on data provided to the Department by the Board, 3,119 individuals on average were classified as PPD NSL each year for the six years of data provided. If all 3,119 individuals had a four-hour, non-medical vocational rehabilitation assessment at an hourly rate of \$70, the annualized cost would be approximately \$873,320.

The Council could not agree on who should bear the cost of vocational retraining and whether the time spent in training by a PPD claimant should count against the duration caps. Additional discussion and information are required in order to develop parameters for the participation in and reimbursement for retraining programs that are acceptable to stakeholders. Council members suggested that guidelines should also be established for the vocational evaluation including: (a) circumstances under which vocational education is appropriate; (b) programs that are appropriate; and (c) appropriate cost, including a fee schedule. Federal funds through VESID should continue to be leveraged where appropriate to cover the cost of vocational rehabilitation assessments and services, thus lowering any overall cost to the system.

The Commissioner acknowledges the difficulty of maintaining cost-effective programs that serve the needs of both injured employees and employers. A higher level of coordination will be needed in New York's VR services delivery system in order to encourage early intervention, upgrade service delivery standards to improve the quality and appropriate use of VR, develop and enforce VR practice standards for all the parties, and establish more adequate data tracking for VR.

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**Council recommendations:**

1. *A mandatory, individualized, non-medical rehabilitation evaluation should be conducted on all claimants who have not returned to work and have reached maximum medical improvement. Carriers should cover the cost of the mandatory, individualized, non-medical rehabilitation evaluation. The evaluation should be done under a standardized protocol established by the Board and should be binding on all parties. The evaluation should be used only for return to work purposes and not to determine degree of disability. Factors that need to be addressed by the Board in establishing this process include:*
  - *Maintenance by the Board of an approved list of vocational rehabilitation evaluators;*
  - *The availability of state- and federal-funded rehabilitation programs; and*
  - *A fee schedule that would need to be established for this service.*
2. *The workers' compensation system and processes should allow for the initiation of a vocational rehabilitation assessment via the current Rehabilitation Form (the "R Form") by the claimant, the claimant's representative, the medical provider, the employer, the carrier, or the Board. Completion and submission of the "R Form" should be required, not optional.*
3. *Recommendations made in this report, relating to retraining and re-employment opportunities for injured or ill workers, which are implemented, should be made available to all disabled workers, not just to those whose workplace illnesses or injuries occurred after the new workers' compensation reform law was enacted.*
4. *Retraining of employees who cannot return to employment with their current employer either in a full or limited manner should be at the salary level that the worker is accustomed to. Vocational rehabilitation or retraining should be targeted, whenever possible, at a job that is at a salary level that is no less than 80% of the employee's previous salary and benefits. Workers under 25 years of age should have their future salary calculated by doing a wage earning capacity test. These employees should also continue to be eligible for a reduced earnings benefit from the Board for two-thirds of their lost earnings.*
5. *Carriers should not seek to change an injured worker's classification status while that individual is actively participating in retraining or vocational rehabilitation in accordance with the individualized re-employment plan.*
6. *Section 15 (9) of the Workers' Compensation Law should be amended to require that the \$30 statutory weekly stipend for maintenance be paid to workers' compensation claimants actively participating in vocational rehabilitation. The Board, in consultation with the Legislature and Executive, should research and identify appropriate revenues for long-term viability of the Vocational Rehabilitation Services Fund and for the sustainability and appropriateness of the dollar amount of the weekly stipend.*

7. *Rehabilitation expenses should be apportioned among carriers using the same proportion determined by the Board for apportionment of medical expenses.*

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## Incentives for Return to Work Programs

Transparency and incentives for return to work that are aligned and enabled by data collection and evaluation could lead to higher quality outcomes and lower system costs. It has been observed in presentations to the Council that for incentives to be meaningful, especially to small- and medium-sized employers, they will need to be tangible and as simple as possible.

Workers' Compensation Law §134 was amended as part of the reform legislation to provide new incentives for employers who voluntarily establish and implement safety and loss prevention programs, including safety incentives, drug and alcohol prevention, and return to work programs. The goal of these programs is to reduce occupational injuries and illnesses in the workplace and encourage more proactive return to work programs, thereby lowering workers' compensation costs for employers. Insured employers are eligible for a reduction in premium costs, and self-insured employers may receive a reduction in their security deposit, for implementing programs that meet certain standards.

The Labor Department has been charged with issuing the regulations that set the criteria for determining whether a safety incentive program, drug and alcohol prevention program, and return to work program are eligible for the incentive. These regulations are currently under review and will be published for public comment.

Some states have established special funds and statutory provisions to provide incentives to facilitate return to work. Most states offer some form of safety and health consulting to employers. Ohio and Massachusetts both have workers' compensation incentive models that align safety and health initiatives with return to work goals, including an Ohio-specific transitional work program grant model.

Research has shown that injured workers who return to their at-injury employer in a safe and timely manner sustain the best long-term employment and wage earning capacity. Moreover, returning to modified work prior to full recovery oftentimes is restorative to the injured worker. Some employers are unaware that simple job modifications are available to enable injured workers to return to work. Some employers are unsure of how to approach the worker about return to work, and the

employer/employee relationship suffers as the physical and mental well-being of the injured worker deteriorates the longer he or she is left to languish away from work.

Based on discussions with other states, the focus on helping the at-injury employer provide a modified job that is within the injured worker's functional abilities requires early contact and coordination by Board staff. Board staff can play a key role in fostering return to work, explaining how return to work is in the best interest of the employer and employee, and assisting with cost-effective ways to change job tasks to accommodate the worker's injuries.

Of the few states that have experimented with offering programs designed specifically to encourage return to work, the Oregon approach was described with enthusiasm in a 2006 RAND Corporation study undertaken for the California Commission on Health and Safety and Workers' Compensation. Oregon's Employer-at-Injury Program (EAIP) encourages employers to provide temporary, restricted work for workers who have medical releases, while the Preferred Worker Program targets workers who have permanent work restrictions as a result of a workplace injury or illness. Both programs provide wage subsidies for a certain length of time to the employer. Employers who hire Preferred Workers may receive a wage subsidy of 50% reimbursement for six months—with higher benefits for "exceptional" levels of disability. The EAIP provides a 50% wage reimbursement for gross wages paid by employers for transitional work, for a maximum of 66 work days within 24 consecutive months.

In addition, an eligible employer choosing to hire a Preferred Worker is exempt from workers' compensation premiums on the worker for a period of three years; if the worker moves to another job within the three-year period, the premium exemption may be transferred to the new employer. Both programs provide incentive funds for worksite modifications to alter worksites to accommodate the worker's restrictions, and for purchases of items that are required of any new hire, such as uniforms and licenses. The Oregon Workers' Compensation Division designates workers with permanent disabilities from on-the-job injuries who are unable to return to regular work because of such injuries as Preferred Workers, and Preferred Workers may choose whether to seek these program benefits.

Employment and wage replacement rates for claimants who participate in Oregon's Preferred Worker Program have been consistently higher than for injured workers who do not use the program. Oregon examined the use of the Preferred Worker Program in December 2002 and found that, of the Preferred Workers using its benefits, 80% were still employed 13 quarters following their injury, in comparison to only 51% of all Preferred Workers not using these benefits. Preferred Workers who used their benefits regained 110% of their pre-injury wage at 16 quarters post-injury, while Preferred Workers who had not used their benefits only regained 94% of pre-injury wage at the 16 quarters post-injury benchmark.

Workers placed into transitional work under the EAIP also have had higher rates of employment. Oregon surmises that the use of the EAIP lessens the need for post-recovery programs—vocational assistance and Preferred Worker—as well. Both programs reduced the need for other public assistance programs that injured workers must access in order to return to the workforce and/or supplement their family income.

Oregon estimated in 2000 that use of around \$7.3 million in wage subsidies under the EAIP resulted in \$10.8 million in savings on time loss for claims closed. This estimate of savings does not include savings for other claim costs, such as PPD and vocational assistance, or indirect costs such as lost productivity that were likely avoided by use of the EAIP.

The Council discussed the potential use of these programs in New York State. Some Council members said that employers already received significant decreases in costs due to duration caps. These Council members questioned why the state should subsidize employers for retraining and hiring injured workers given that state funds were limited; they contended that the employer should ultimately be responsible for injury costs. Other Council members thought that such incentives would be particularly important to small- and medium-sized employers.

The Council expressed support for the Oregon incentive model. Council members stated that incentive programs established in New York should target injuries that result in the highest costs to the system, and limit eligibility to those employers who comply with the workers' compensation law. Council members also suggested that priority

should be given to those employers who analyze the ergonomic aspects of jobs to prevent workplace accidents, provide retraining to injured workers if necessary, and offer job modifications. They expressed the view that because state funds are limited, employers should be required to demonstrate their commitment to the program by contributing their own funds.

Council members agreed that incentive programs should seek to apply the lessons of other states and be outcomes-based. The State should consider proven incentives for at-injury and new employers, such as wage subsidies and worksite modification funds, as well as incentives for injured workers, such as retraining and purchases of new tools, uniforms, etc.

The Council members could not agree on how such programs should be funded. The Commissioner believes that subsidies for injured employees who return to work could play a crucial role in addressing the needs of those individuals who will be subject to the PPD duration caps imposed by the 2007 legislation. Incentives for employers that hire injured workers long before either their classification or the expiration of their indemnity benefits would be a direct means of creating a safety net through return to work. Injured workers should be directed to use these programs as soon as possible, and should complete such programs prior to the end of their duration caps.

Prompt resolution of the funding issue is critical for the Council's recommendations on incentives to move forward. The Commissioner recommends that discussions regarding this issue take into account concerns raised by Council members about the propriety of using state funds to subsidize such programs, and the severe limitations imposed by the current budget climate. Furthermore, the Commissioner points out that the cost of the Oregon program is less than a penny per hour per worker and is considered a cost-effective investment given the cost savings that accrued when workers were returned to work. Moreover, the costs of any incentive program should be measured in relation to its ability to maintain long-term gainful employment for injured workers and its success in placing injured workers who may have been absent from the workforce for many years.

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**Council recommendations:**

1. *Regulations for the incentives for return to work programs, as well as safety incentive programs and drug and alcohol prevention programs, should be issued promptly by the Department of Labor. The Department should establish guidelines and resource materials, including examples of model programs, in order to assist employers who choose to apply for any of the incentive options. Such models should be readily available via the Department's web site.*
2. *The State should develop pilot incentive programs that facilitate return to work strategies and should evaluate their use, effectiveness on increasing return to work rates and relative cost-effectiveness. The Commissioner and other relevant state agencies should develop the parameters of such programs with input from the Council and stakeholders. Parameters recommended, at a minimum, should include those which offer employers wage subsidies for employing and rehiring injured workers, reimbursement for workplace accommodations to enable injured workers to adjust the job to their capabilities, vocational assessment and retraining for those injured workers who cannot return to their at-injury employer, and funds for purchases of items that are required of any new hire, such as uniforms, licenses, etc. The Commissioner and the State should examine and evaluate return to work incentive program models implemented in other states to determine their viability and replication in New York State.*
3. *Return to work offers subsidized by these programs should, at a minimum, be at 80% of the pre-injury wage. This goal is consistent with the work search requirements for unemployment insurance claimants. Because there are limited resources, criteria should be developed for the preference of awarding incentives. Such criteria should target resources to those employers who have hired the most severely injured workers, based on data reviewed each year by the Board. There should be a limit on the number of awards an employer can receive in any calendar year.*
4. *Incentive programs for employers should require an employer match, which should include the cost of retraining the injured worker. Eligibility for the employer incentives should be limited to employers who are fully compliant with their obligations under the workers' compensation law. The State should provide technical assistance to small employers to assist them with job modifications that help their injured workers maintain long-term employment and with hiring preferred injured workers.*
5. *The incentive programs should be evaluated annually for their use by employers and injured workers, impact on return to work rates, and relative cost-effectiveness.*

## Safety Net

When PPD benefit duration caps were negotiated, the need for a safety net was accepted and incorporated into the reform legislation. The new safety net provisions of Worker's Compensation Law §35(2) provided that future claimants' existing rights to apply at any time to obtain the status of total industrial disability under current case law should not be derogated or impaired. Workers' Compensation Law §35(3) allowed a claimant whose loss of wage-earning capacity is greater than 80% to request that the Board reclassify the claimant to permanent total disability (PTD) or total industrial disability (TID) due to factors reflecting extreme hardship. However, these provisions will likely apply only to the most severely disabled.

Most injured workers want to go back to work. Return to work programs and, if necessary, vocational rehabilitation programs greatly increase a worker's chances of returning to gainful employment. While this report recommends various incentives for employers to have the programs and procedures that facilitate return to work, employers are not mandated to have return to work programs. Council members expressed concern that the safety net needs to be strengthened for those claimants whose employers cannot or choose not to engage in return to work activities.

In response to this concern, a Council member proposed that employees with permanent disabilities who do not receive an offer to return to their existing job, or to a light-duty assignment, be entitled to a rebuttable presumption that they are totally industrially disabled. It was further recommended that, in the case of non-permanent injuries where no light duty is offered, the claimant remain on TTD. Council members debated these proposals at length.

Some Council members stated that recommending a presumption of total industrial disability would establish new criteria for the application of TID and diminish the impact of negotiated PPD caps, which they thought was key to assuring long-term cost savings under the 2007 reform legislation. While acknowledging that the 2007 legislation specifically incorporated existing case law on TID, some Council members contended that the presumption proposal went beyond current case law, and that they would not have agreed to this expansion during the workers' compensation reform negotiations.

Others also pointed out that the Department was charged to make recommendations on return to work, not to establish a new benefit or extension of duration caps.

Other Council members stressed that while return to work provisions for employers were voluntary, PPD duration caps were mandatory for injured workers. These Council members stated that those at the negotiating table were deeply concerned about the need for a safety net and charged the Council with making concrete proposals for strengthening it. In their opinion, employers must be incentivized—either negatively or positively—to return injured workers to gainful employment, and this proposal would compel employers to establish return to work programs.

Some Council members contended that some employers may be willing, but not able, to offer a return to work. Economic factors outside the control of claimants and employers may hinder re-employment, especially in economically depressed areas of the State. They also stated that injured workers who had the physical capacity to work at another job would be discouraged from working because they could receive full benefits for life under TID.

Several Council members pointed out that claimants are required by the workers' compensation law to be looking for work within their physical capabilities. If a claimant is offered suitable work or does not look for work, then the claimant would be considered to have voluntarily removed himself or herself from the labor force, and benefits would cease. Therefore, claimants have an incentive to take a job. The proposal for a presumption of TID was offered in order to provide a safety net for those claimants who want to go back to work, but whose employer will not rehire the claimant.

An amendment to the TID presumption proposal was suggested that would entitle an individual classified as PPD to a presumption that he or she is totally industrial disabled if the individual: does not receive an offer to return to his or her existing job or to a comparable job with a new employer; does not receive a light-duty assignment; and does not receive an offer for retraining or vocational rehabilitation to a position at the existing employer or a new employer. Some Council members said that the new proposal would address the concern that a presumption of total industrial disability should not be granted to a claimant who is physically able to work for a different employer or in a different occupation.

Some Council members disagreed with requiring employers who do not have the ability to offer either re-employment or alternative employment to offer vocational rehabilitation to avoid a potential reclassification of the claimant as permanently and totally disabled; this was viewed as a costly mandate on employers. They pointed out that some PPD claimants may be able to accept employment with a different employer without rehabilitation or training. These Council members also opposed granting a right of vocational rehabilitation to all PPD claimants who do not receive re-employment offers because they were not convinced that the current delivery system for vocational rehabilitation programs was cost-effective or met the needs of employers and employees.

Other Council members asserted that the payment of benefits for severe injuries, including vocational rehabilitation, should rest solely with the employer of injury. They noted that several employers affirmed that they maintain a proactive return to work program because they believe they have a responsibility to the injured worker who was hurt on their watch.

The Commissioner shares the Council's concern for ensuring a safety net, especially for PPD claimants who work in seasonal industries, for small employers, in industries with high unemployment, and at jobs with high physical demands, and who may not be able to find employment despite attempts to seek work. The data analyzed by the Department of Labor indicates that the State should be very concerned about the low return to work rates of PPD claimants. Among claimants employed in private industry during their accident quarter, the vast majority of TTD (90%) and PPD SCH (94%) returned to work with any NYS employer within the second through eighth quarter after injury. However, return to work rates were much lower for PPD NSL claimants: only 63% returned to work with any NYS employer.

The Labor Department analyzed data from the Board for PPD Nonscheduled Loss claimants with accident dates in calendar years 2000 and 2001 and compared return to work rates within the four quarters following classification by the percentage of disability. Of the 14,271 claimants who were classified as PPD Nonscheduled, 1,714 (or 857 per year) had never returned to work by 2007; more than 3,000 had taken themselves out of the labor market and were receiving Social Security Disability Insurance (SSDI) or Social Security retirement benefits.

A look at return to work rates for these PPD NSL claimants by degree of disability in the four quarters following PPD classification showed that return to work rates were low across each percentage of disability, although no claimants with a 90% or higher disability returned to work. While one would surmise that return to work rates would be lower for those with higher percentages of disability, the data did not bear that out. Return to work rates by percentage of disability were randomly distributed.

The cost implications of providing additional indemnity benefits are unknown and some Council members stated that a provision which established a presumption of TID threatened to erode the cost savings in the workers' compensation reform law. The TID proposal could increase system costs significantly, and the potential for additional benefits could also drive up the costs of settlements.

It is impossible to tell how many PPD claimants would be eligible for additional benefits under the TID presumption proposal. The number of PPD NSL claimants who will lack sustained employment and be out of work when their PPD payments cease cannot be ascertained. A limited review of data for PPD NSL claimants with accident dates in 2000 and 2001 showed that less than 25% of such claimants had returned to work and remained at work for eight quarters, whereas 9,853 PPD NSL claimants did not. PPD SCH claimants with accident dates from 2000 to 2005 had a much higher sustained return to work rate for eight quarters (79%), while 29,397 did not maintain employment.

There was also a concern that the prospect of additional TID benefits for life could have the unintended consequence of encouraging injured workers to stay out of the labor force, which would contradict the legislative intent of the reforms.

Finally, some anticipated that the TID presumption recommendation would have relatively little influence on employer behavior at the beginning of a claim when injured workers have the best chance of returning to work, since the employer would only be responsible for additional costs much later on. Because the possibility of an extension of benefits would be addressed at a later date, it was doubted that this would motivate employers to follow return to work best practices. It was suggested that it would be more effective to incentivize employers earlier on in the claim, and better in the long run for claimants to be returned to work prior to classification.

In sum, Council members could not reach consensus on the TID presumption issue and further discussion with stakeholders is necessary.

The Commissioner is very concerned about the declining employment and earnings patterns of PPD claimants. It is unclear why PPD NSL claimants show such a low attachment to the labor market and additional research is necessary to develop targeted efforts to enable PPD NSL claimants to remain employed. The Department is responsible for issuing, in conjunction with the Superintendent of Insurance and Chair of the Workers' Compensation Board, an annual safety net report on December 1 of each year, and will track the claimants who have been awarded PPD status to ascertain how many have returned to gainful employment, been recategorized as TID, remain subject to the duration limitations, and have not returned to work and whose indemnity payments have expired.

In accordance with the statute, the Commissioner will, in conjunction with the Superintendent of Insurance and Chair of the Workers' Compensation Board, analyze these findings on an annual basis to determine whether to recommend any additional steps—including steps relating to the safety net—to minimize the number of injured workers who have neither returned to work nor been recategorized from PPD classification.

## Representation

Delays in the adjudication process can impede return to work. Based on data provided by the Board, slightly more than 50% of claimants requiring a pre-hearing conference are represented by attorneys. This percentage has been fairly consistent, with a low of 54.5% in 2000 to a high of 56.9% in 2006. Claimants' representatives asserted that one reason for the high number of hearings was that defense attorneys challenged claims for a variety of reasons, rather than try to settle outside the hearing process. The "rocket docket" process, a separate review directed by Governor Spitzer concerning the implementation of speedier adjudication procedures, is intended to facilitate more thorough and immediate information sharing among the parties in controverted cases, shortening the time a case moves to a hearing.

Claimant attorneys acknowledged to the Council that timely and safe return to work is in the best interest of their clients. Such attorneys should be viewed as part of an overall strategy for improving injured worker return to work outcomes.

Under New York State's workers' compensation system, claimants' attorneys receive payment for services rendered if the claimant receives money when there are lost time or wage replacement benefits. New York's workers' compensation statute (WCL §24) currently states that attorney fees become a lien on money moving to the claimant. Where only medical care is at issue, claimants can have attorneys represent them during this process, and, theoretically, an attorney fee can be awarded; however, because there is no money moving to the claimant, there is no money out of which to pay the attorney fee.

Approximately 2,500 medical-only cases, or 8.8% of the total medical-only cases arising out accidents in 2005, were controverted. A notice that a "Need for Medical Care has Terminated" or that "Authorization has been Refused (Form C-8.1A)" was filed in 2,058, or 7.3 %, of these medical-only cases. An "Objection to Bill for Treatment (Form C-8.1B)" was filed in 3,402, or 12.1%, of these cases. In 35.3% of medical-only cases, the claimant stated that he or she had attorney representation, a lower proportion than in indemnity cases.

When issues related to appropriateness of treatment are raised in the hearing process and necessary treatment is not authorized, the return to work process may be held up

because workers cannot recover adequately and the pending case further damages the relationships between the parties. The Council expressed concern over the problem of carriers not complying with orders to pay medical care, and the inability to penalize carriers for noncompliance.

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***Council recommendations:***

- 1. The Board should investigate ways, via practice or regulation, to ensure that injured workers receive faster medical care, thereby speeding up recovery and return to work, reducing frivolous objections to treatment, and cutting down on frictional costs in the system by eliminating the need for hearings.*
  - 2. The WCL §24 should be amended to provide that in established claims, claimant attorneys who represent their clients in medical-only cases, where payment has been withheld by a carrier but where the carrier has not offered any contrary medical evidence in a timely manner (30 days from request of physician), should be awarded a fee determined by the Board if their representation proves to be supported by the Board. The carrier, self-insured employer or the State Insurance Fund should be required to pay such fee.*
  - 3. The Board should study ways in which claimants' attorneys can play a supportive role in the return to work process and make recommendations to facilitate their role. The Board should examine attorney fee schedules and incentives to determine their effect, if any, on the re-employment or vocational rehabilitation of injured workers.*
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## Process Issues

The workers' compensation process has often failed to meet the full needs of claimants, their employers, benefit payers and society as a whole. In particular, the process has been inadequate and ill-suited to detect and effectively address the issues that are most important to the return to work outcome.

### Process Points:

Employer → WC Board

Injured Worker → WC Board

Physician → WC Board

Insurer → WC Board

WC Board → Various Stakeholders

WC Board → Other State Agencies

Internal ↔ WC Board

Standardization of key information and processes could facilitate more efficient participation of all stakeholders in return to work efforts. For instance, functional job descriptions should be sent to doctors at the onset of disability as a matter of routine. Standard and relevant questions about everyday activities should be developed and used more broadly within the claims process. Answers to these questions would give treating physicians objective information on which to base their opinions.

The Board should implement process changes that will improve transparency and consistency on issues such as “reduced earnings awards.” Workers’ Compensation Law §15(5) and §15(5-a) provide the authority for the payment of a “reduced earnings” benefit to an injured worker whose temporary partial disability results in decreased earnings capacity. The calculation for the “reduced earnings” benefit is two-thirds of the difference between the injured employee’s average weekly wages before the accident and his or her wage earning capacity after the accident in the same or other employment. This “reduced earnings” benefit is a strong incentive for the employer to re-employ the individual at the soonest point practicable and for the claimant to return to work. It was noted in presentations to the Council by different stakeholders that many injured workers are not even aware of the benefit, and few receive it. While the information is captured

currently on different Board forms, there is no systemic approach to ensuring that the reduced earnings benefit is properly promoted and received.

The Board is frequently viewed by stakeholders simply as the adjudication step in the workers' compensation process, but it also has an important role in policy and oversight of the system that is often not fully appreciated. Given that some of the Board's processes have been computerized only recently, Board staff was often constrained in its ability to be proactive in its focus on return to work. Recent efforts to streamline litigation before the Board has focused on securing information as quickly as possible in a workers' compensation case so that the employer, the claimant and the physician may make timely and informed decisions about treatment, recovery and the ability to return to work.

In the past, information about claimants' return to work may be indicated on various forms, but it was not systemically aggregated in a manner that would permit Board staff to identify trends and predictive factors that might help facilitate return to work outreach. Forms were not used by Board staff to better facilitate the treatment, recovery and return to work process; rather, these forms were merely steps in a process and something to "have in a file." The forms were designed to collect limited data but not to prompt meaningful information to reinforce roles and responsibilities. Several different presenters to the Council stated that certain forms important to ensuring that return to work principles are applied have been routinely ignored, and, since the Board did not aggressively pursue penalties for failure to file, many routinely chose to ignore the filing of certain forms.

The workers' compensation units in a number of states play a proactive and coordinating role in advancing return to work so that injured workers can return to their jobs as soon as medically possible. In Washington State, for instance, when an injured worker has received time-loss benefits for 14 days, his or her claim is assigned to an Early Return-to-Work team that works with the injured worker, employer and medical provider to explore return to work possibilities. New York should analyze early return to work procedures used in other states and the current deployment of staff at the Board and develop timely return to work support services to claimants and employers.

As noted elsewhere in the report, numerous workgroups are underway to implement changes enacted in the 2007 reforms. The Council recommendations for process improvements should enhance system and individual outcomes, improve attitudes among the various stakeholders, and refocus the system on employers and injured workers. Council members emphasized that process and system changes often do not show immediate results and need to be accompanied by strong educational components and internal cultural changes that support process improvements.

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***Council recommendations:***

1. *The Board should review various forms used by employers to ensure that the forms promote expanded interaction between the employer and claimant to facilitate return to work.*
  2. *The Board should establish a procedure to ensure that all claimants whose income is reduced due to injury and who are eligible for a reduced earning award receive such award.*
  3. *The Board should develop, implement and enforce penalties for the late or non-filing of forms related to return to work and rehabilitation programs.*
  4. *The Board should design and implement a training program for Board employees, including judges and claims examiners, to understand the new role of return to work in the workers' compensation process, system and workplace.*
  5. *The Board should establish procedures for promptly contacting claimants no later than 120 days after injury or within two weeks of maximum medical improvement. Board staff should make follow-up contact with the at-injury employer to determine the feasibility of return to work.*
  6. *The Board should redesign, reintroduce and enforce the use of the "R Form," and should allow this form to be initiated by claimants, their representatives, medical providers, employers, carriers, or the Board to identify whether disabled workers would benefit from vocational rehabilitation services. The "R Form" should be used to report on the progress toward return to work and the need for any external assistance with return to work. Completion and submission of the "R Form" should be required, not optional.*
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## Other Relevant NYS Programs that Impact Return to Work

Several New York State agencies operate programs that address the disability and re-employment needs of injured workers. These include the Board's Office for the Advocate of Injured Workers, where vocational rehabilitation counselors assist workers' compensation claimants; the State Education Department's VESID Division; the Labor Department's One-Stop Career Centers Disability Navigator programs, and workplace safety and health programs. The NYS Insurance Department issues licenses to agents, brokers and consultants, and conducts examinations of carriers to determine their treatment of policyholders and claimants, and their underwriting practices. Coordination among these agencies and the programs and services they offer could strengthen and improve return to work outcomes for injured workers.

Several different presentations to the Council made clear that the range of provided services that could assist employers and injured workers was not widely known or understood. Employers may be eligible for the federal Work Opportunity Tax Credit and state Workers with Disabilities Tax Credit for hiring certain workers with disabilities. VESID provides technical assistance to employers on tax credits for reasonable accommodations, such as Section 44 of the Internal Revenue Code, which offers the Disabled Access Tax Credit for small businesses, and Section 190, which allows all businesses a tax deduction of up to \$15,000 per year for the removal of architectural and transportation barriers for the benefit of individuals with disabilities.

Two different presenters noted that employers often were not seeking financial assistance to make workplace accommodations, but technical expertise to ascertain just what accommodations would be needed, although the employers may very well be eligible for some financial assistance, such as reimbursement for adaptive equipment and job accommodations. Funds may be available to employers for on-the-job training through VESID and the Department of Labor through the Workforce Investment Act.

VESID records indicate they are serving a significant number of workers' compensation claimants. However, a more systemic referral and coordination process among the state agencies could improve the time lag between injury and first vocational rehabilitation visit and likely improve long-term outcomes.

The State Insurance Fund (SIF) entered into an agreement with VESID to provide return to work services in early 2000. Under this performance-based pilot project, SIF referred claimants to VESID for services, which would be reimbursed on a performance basis under a fee for service model with benchmarks and payments for assessment, employment, and employment retention services. The SIF referred to VESID only those injured workers who were identified as not able to go back to work at their at-injury employer. SIF referrals required VESID to see claimants within 10 days of referral. The SIF's evaluation of VESID services provided to 50 claimants under this agreement found that 17 returned to work, saving the SIF \$240,000 and reducing VESID costs by 60%. There was a very high level of interest among private carriers to participate in a performance based model with VESID, but several administrative issues precluded expansion of the model from the SIF to private carriers. This model offers an opportunity for further collaboration with the SIF, VESID, the Workers' Compensation Board, private insurers and others.

It was noted by several presenters that generic "occupations in demand" information was often provided by the Department of Labor, when what was needed was information on actual job openings appropriate to the skills of the injured worker. The Labor Department could play an important role in providing this information to employers and injured workers. The Department of Labor's on-site safety and health consultation program for employers is another existing resource for employers.

The statewide network of one-stop centers under the Labor Department's oversight is a vital resource for an array of employment-related services: skill analysis, access to training funds, resume preparation and job search assistance. Many felt the use of the one-stop centers was a natural gateway for the coordination and delivery of re-employment services to injured workers and that this resource needs to be better leveraged across the State.

Access to information and services also must be consistent and, to the extent possible, free of excessive bureaucratic processes. Various stakeholders in the workers' compensation system believe that involving other state programs and agencies would do nothing more than add layers of process and paperwork to an already burdened system.

To facilitate coordination of information and benefits requires agency leadership. The Council's compressed timeline for this report limited the Commissioner's and the Council's ability to convene specific agencies around specific recommendations, but the Council remains confident that with the focused agency leadership, these recommendations can be effectuated with long-term positive outcomes for all stakeholders.

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***Council recommendations:***

1. *The Department of Labor and the Board should develop and disseminate, through multiple venues, a readily available inventory of state-level technical and financial resources that can assist injured workers with re-employment and employers with workplace accommodation, safety, ergonomics and re-employment strategies.*
  2. *Through data-sharing, referral and interagency communication strategies, the State should improve the coordination among the Board, VESID, One-Stops, Workforce Development Institute offices, and other publicly-supported entities to better serve workers' compensation claimants.*
  3. *The Department of Labor should employ targeted efforts in placing all workers' compensation claimants. The Department should refine and make available on a regional basis more information on real-time, appropriate hiring opportunities within given labor markets.*
  4. *The Department should evaluate the VESID-State Insurance Fund performance-based return to work services and placement initiative and determine the feasibility of its expansion. While modest in scope, the results of this initiative appeared promising. This model provides an opportunity to evaluate effectiveness of vocational rehabilitation services interventions, the time lag between injury and referral to services, and long-term outcomes for injured workers.*
  5. *The Insurance Department and Board should investigate the efficacy of implementing licensure and supervision of claims examiners and third-party administrators with the goal of increased transparency and accountability for all players in the workers' compensation system.*
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## Return to Work for New York Public Employees

Public sector employees work in some of the most dangerous jobs in the State. In the data that the Labor Department analyzed from the Board, government was the largest employer for all claimant types. Return to work presents unique challenges for public sector employers, employees and their representatives.

Governor Spitzer signed legislation in 2007 directing the Civil Service Department to prepare an annual report describing occupational injuries, illnesses and workers' compensation experience in state agencies. The data will assist in identifying trends, monitoring hazards, reducing injuries, pinpointing delays in return to work, and focusing on significant lost-time cases that require a proactive return to work effort.

Data analysis conducted for the Council's deliberations showed that government employees had higher return to work rates than private sector employees across all categories. Claimants employed by government during the quarter that included their accident showed that 97.6% returned to work with an employer in New York State and 93.2% returned to their same employer within eight quarters after the accident date. Government employees classified as TTD and in the PPD Scheduled groups also had higher return to work rates than in the private sector for the same classifications. Return to work rates were slightly lower for PPD NSL claimants who were employed by government during the accident quarter: 89.1% for those returning to work with any employer in NYS and 85% for those returning to the same employer.

State employees represent 5% of the current workers' compensation claims. All public employees (state, county, municipal, etc.) represent 17% of the claims load. NYS Civil Service Law provides public employees with work-related injuries a one-year job reinstatement right, or a two-year job reinstatement right in cases of workplace assault. Yet, the overwhelming majority of government sector workers are back to work by the second quarter after injury.

Nevertheless, New York State does not have a systematic approach to return to work issues across all agencies, although some state agencies take a proactive approach to return to work. As an employer, New York State should provide leadership on this issue

and serve as a role model for all employers. Re-employment, retraining and rehabilitation should be the goal of the State for its entire workforce.

Some Council members and stakeholders raised concerns regarding the impact of delayed medical treatment on return to work rates for all claimants. Council members felt that anecdotal evidence indicated that some public employers were needlessly delaying treatment through case controversion. Prompt medical attention would enable injured employees to recover and return to work more quickly.

Council members noted that the State, as an employer, was in a unique position to pilot whether or not a “pay without prejudice” model — where the health or workers’ compensation insurer pays for the care, and the carriers resolve afterward the identity of the appropriate payor — might improve medical treatment authorization rates and ultimately improve return to work outcomes. It was suggested by Council members that medical payment for injured workers should be seamless in the public sector, and that the State as an employer should not interfere with access to medical treatment. The State also provides health insurance to most employees, and, as such, medical treatment ought not to be an issue for delay but rather an issue of determining liability for either the health or workers’ compensation carrier. Controversy over who is the correct payor – the health insurer or the workers’ compensation carrier – should not serve as an obstacle to medically necessary treatment.

The law currently provides a process by which health insurers may recover from the State Insurance Fund costs incurred for what ultimately are determined to be workers’ compensation claims. Staff at the Department of Civil Service and the State Insurance Fund noted that the use by health insurers of the Health Insurance Match Program authorized in Workers’ Compensation Law §13 has declined as the computerization of billing within the health care industry has increased. Health insurers have much greater ability now to ascertain information from the claimant relevant to liability so that the coordination of benefits occurs much earlier in the process.

The proposal to pilot a “pay without prejudice” approach was offered as a way to evaluate strategies from which the entire workers’ compensation system could benefit. Both Civil Service and SIF staff noted that to carry out the recommendation advanced by the Council would require some coordination across multiple fee schedules, as the state

currently offers 13 different health insurance options to its employees, none of which have the same fee schedule as that for workers' compensation claimants. It was also observed that the law as currently constructed only permits health insurers to recover from the workers' compensation carrier. It does not permit the workers' compensation carrier to recover from the health insurer, and legislation will be necessary for such a pilot to be implemented.

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***Council recommendation:***

*A "pay without prejudice" pilot program should be undertaken with all state agencies and selected public authorities and local governments, whereby the workers' compensation carrier would pay without prejudice for medical treatment to workers that sustain workplace injuries, without determining whether the injury is one that would qualify for workers' compensation. If it is determined to be a non-occupational injury, the carrier should receive prompt reimbursement from the health insurer. The Board should evaluate whether this improves timeliness in medical authorization.*

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## Data Collection & Evaluation

The Commissioner and Council were informed and guided throughout their deliberations by resource experts from the Board, the Insurance Department, the Labor Department and the Governor's Office of Regulatory Reform. Staff is to be commended for their diligence in providing data and analysis to the Council and for their efforts to make this data responsive to the Council's needs. Even with this dedication by staff to provide relevant information to the Council, it is clear that insufficient data currently exists on claimant outcomes. There is a dearth of evidence to support methods and tools commonly in use, or to form the basis for improving them.

Common sense evidence abounds that keeping people at work and productively contributing to society is good for them and for society. But policy could be much better informed with systemic data collection and evaluation tools that permit all parts of the workers' compensation system, including those focused on return to work and the safety net population, to make data-informed decisions.

Predictive modeling in the health care field can be developed and applied appropriately in the workers' compensation field. This takes on a particular sense of urgency because the reform legislation imposed duration caps on PPD claimants. Claimants subject to a benefit duration cap warrant specialized attention to ensure they are gainfully re-employed to the greatest extent possible, prior to exhausting their indemnity benefits. A matrix of factors would allow the system to better understand which claimants are most at risk and apply focused resources accordingly.

Work-related disabilities impact a company's overall medical costs. Employers with accurate disability claim tracking are better able to review disability trends among the employee population and design injury prevention and wellness programs that focus on the disabilities that contribute the lion's share of expenses. High cost and high frequency conditions like musculoskeletal injuries can be controlled and even avoided with comprehensive prevention programs in place. Making improvements in the overall return to work process will require sustained attention and effort and a willingness to explore new approaches.

The general lack of measurement that currently exists across many parts of the process means there is little practical data available to support making the case for implementing some of the recommendations suggested within this report. More meaningful and reliable data is essential to understanding how to improve employment opportunities for workers with medical restrictions and to identifying and comparing best practices among carriers and third party administrators regarding return to work and medical authorization issues. Additional data is needed in order to address obstacles to effective claims administration and medical treatment, which can decrease the chances of return to work. The Council's data concerns have been shared with the Workers' Compensation Data Task Force.

The recommendations in this section will have technology and staffing costs to collect, analyze and publish the data necessary to improve the system.

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***Council recommendations:***

- 1. The Board, with input from the Department and stakeholders, should develop a matrix of factors to identify potential PPD case characteristics so that, early on in the treatment and recovery process, particular attention can be given to the return to work of these injured workers.*
- 2. The Board, in cooperation with the Departments of Labor, Health and Insurance, should actively oversee the performance of carriers, including the State Insurance Fund and third-party administrators (TPAs), self-insured trusts, self-insured employers, and state agencies regarding the provision of workers' compensation services. The Board should require these groups to provide, and should itself provide, timely claim-specific data to the extent consistent with individual confidentiality concerns, and should ensure that these data are collected—under the supervision of a public agency—by a governmental agency, quasi-public agency or independent entity not controlled by any stakeholder.*

*The purposes of this data collection should be to:*

- identify how the system—carriers, SIF, TPAs, employers, self-insureds, self-insured trusts, providers and relevant agencies—performs regarding the needs of injured employees in returning to work;*
- identify the critical outcomes from the system related to return to work, including the timely provision of indemnity benefits and medical care, and how these outcomes will be measured;*
- identify avoidable sources of friction within the system that inhibit return to work, and monitor these sources to limit their scope or intensity;*

- *identify what lessons the system provides for improving the system's equity and efficiency in this area;*
  - *allow the Board, Legislature and other interested agencies or parties to evaluate both the reported return to work data and the claims circumstances or events which the data represent.*
  - *allow the Board to exercise strict oversight of the WC administrative performance of all regulated carriers and employers in regard to return to work;*
  - *assure maximum transparency of available claim and administrative information within the system;*
  - *provide both employers and the general public the transparent indicators of performance by carriers, TPAs, self-insured employers and self-insured trusts in returning employees to productive work, without impairing the appropriate confidentiality of both personal (i.e. claimants') and self-insureds' information;*
  - *allow the Board or other agency to offer valid performance comparisons among carriers, self-insured trusts and TPAs;*
  - *obtain sufficient information about the causes of injury, illness and disability to assist preventive efforts by employers, employees, responsible public agencies and carriers; and*
  - *allow the Board and other interested parties to validly compare the performance indicators revealed in these data with significant indicators in other comparable systems.*
3. *Where possible, the collection and provision of information should be done electronically, at minimal cost to employers, health care providers and workers.*
  4. *Consistent with the Board's mission, the Board should ensure that data availability and data needs are continually being assessed.*
  5. *The Board should require carriers to track and report on return to work data, such as number of restricted work days and/or reduced work schedules worked by injured workers.*
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## Next Steps

The time frame for submission of this Report constrained the ability of the Council to conduct a more thorough research and analysis on some of its recommendations. Furthermore, the recommendations speak to the need for ongoing input from stakeholders and reports from the Commissioner. Additionally, the new statutory mandate for the Department of Labor to annually report on safety net claimants starting December 1, 2008 permits an opportunity for stakeholders to inform and advise the Department regarding the data and recommendations within the annual safety net report.

Of particular concern is the employment and earnings experience of claimants several years after injury and following classification; this information will be invaluable to understanding the economic security impact the duration caps will have on injured workers.

A limited analysis of the aggregate population of all claimants with injuries in 2000 and 2001 showed a progressive decrease in the number of claimants with earnings in each subsequent quarter after injury (Data Supplement, Table 9, and Page S-36). In addition to the influence of general labor force patterns such as aging out of the labor force, leaving the state for other employment and retirement, it is unclear why PPD NSL claimants show such a low attachment to the labor market especially as compared to the other two classification groups of claimants. Additional research can better inform the Board and the Department on what targeted efforts may be developed to enable PPD NSL claimants to remain employed.

An analysis of wage records (Data Supplement, Table 2, page S-9) showed that PPD SCH Loss claimants in the private sector experienced a 9.7% decrease in average weekly wages after returning to work while PPD NSL claimants had much lower wages (58% less) when returning to work with any employer. This pattern was similar when returning to work with the same employer. A comparison of wage records for the employment population as a whole and within the same industry will be necessary to more fully understand the reasons why the post-accident earnings of PPD claimants drop so sharply. A more extensive study of income trends among PPD claimants would provide guidance on improving their earnings over time.

Finally, claimant records should be analyzed to determine to what extent PPD claimants must rely on other sources of income, including public assistance. The Department has already started comparing claimant data with unemployment insurance data and Social Security data and found that many PPD claimants access such benefits. The Department also is exploring matching claimant data with wage records from other states, which would enable a more complete review of wage and employment data by claimants.

This report reflects the commitment of the Commissioner to carry out the legislative charge within the designated timeframe. As such, it marks the beginning of the Department's work, not the end.

Many of these recommendations need to be discussed in further detail with members of the Legislature, Executive Branch agencies, and the State Education Department to ascertain how their intent can best be accomplished. Additionally, these recommendations need to be aligned with other workers' compensation reform workgroups.

The Commissioner will develop strategies to advance the many different recommendations contained within this report, with the goal of ensuring that workers' compensation policies and procedures facilitate increased return to work rates for injured workers.

## Topical Bibliography of Research Reviewed on Return to Work Issues

- Allingham and Hyatt, "Measuring the Impact of Vocational Rehabilitation on the Probability of Post-injury Return to Work", *Research in Workers' Compensation*, ed. Terry Thomason and Richard Chaykowski (Kingston: Queen's University, 1995), p.171.
- Berkowitz, Monroe, and Edward D. Berkowitz. "Rehabilitation in the Work Injury Program." Rehabilitation Counseling Bulletin 34 (1991): 182-196.
- Bernacki, E. and Tsai, Shan. *Ten Years' Experience Utilizing an Integrated Workers' Compensation Management System to Control Workers' Compensation Costs*; Journal of Occupational & Environmental Medicine, 45(5), May 2003: 508-516.
- Burton, John. "Disabled Workers' Compensation Programs: Providing Incentives for Rehabilitation and Reemployment." John Burton Workers' Compensation Monitor July 1995: 6-12.
- Burton, John F. "The Coverage of Work-Related Diseases in New York." Workers Compensation Policy Review (2007): 25-29.
- California. Division of Workers' Compensation. Industrial Medical Council. IMC Policy Statement on Return to Work. 2007.
- Cheadle, Ph.D., Allan, Gary Franklin, MD, Carl Wolfhagen, James Savarino, Ph.D., P Y. Liu, Ph.D., Charles Salley, and Marcia Weaver, Ph.D. "Factors Influencing the Duration of Work-Related Disability: a Population-Based Study of Washington State Workers' Compensation." American Journal of Public Health 84 (1994): 190-196.
- Christian, Jennifer. Preventing Needless Work Disability by Helping People Stay Employed. Ms. Webility Corporation, Wayland, MA. 2006.
- Colledge, Alan L., and Hugh I. Johnson. "The S.P.I.C.E. Model for Return to Work." Occupational Health & Safety, Feb. 2000: 64-69.
- Colledge, MD, Alan L., and Hugh I. Johnson, MPA. "S.P.I.C.E. - a Model for Reducing the Incidence and Costs of Occupationally Entitled Claims." Occupational Medicine 15 (2000): 695-722.
- Daniell, MD, William E., Deborah Fulton-Kehoe, MPH, Lisa A. Chiou, MD, and Gary M. Franklin, MD. "Work-Related Carpal Tunnel Syndrome in Washington State Workers' Compensation: Temporal Trends, Clinical Practices, and Disability." American Journal of Industrial Medicine 48 (2005): 259-269.

- Franché, Renee-Louise, Raymond Baril, William Shaw, Michael Nicholas, and Patrick Loisel. "Workplace-Based Return-to-Work Interventions: Optimizing the Role of Stakeholders in Implementation and Research." Journal of Occupational Rehabilitation 15 (2005): 525-542.
- Franché, R L., K Cullen, J Clarke, E Maceachen, J Frank, S Sinclair, and R Reardon. "Workplace-Based Return-to-Work Interventions: a Systematic Review of the Quantitative and Qualitative Literature." Institute for Work & Health (2004): 1-14.
- Franklin, MD, Gary M., Jaymie Mai, Thomas Wickizer, Ph.D., Judith A. Turner, Ph.D., Deborah Fulton-Kehoe, Ph.D., and Linda Grant. "Opioid Dosing Trends and Mortality in Washington State Workers' Compensation, 1996-2002." American Journal of Industrial Medicine 48 (2005): 91-99.
- Friedman, S. *Back-To-Work WC Programs Pay Big Dividends*. National Underwriter Property & Casualty/Risks & Benefits Management, May 9, 1995: 99(19): 3, 26.
- "From Research to Reality." Liberty Mutual Research Institute for Safety Jan. 2007: 1-22.
- Fulton-Kehoe, Ph.D., Deborah, Jeremy Gluck, Ph.D., Rae Wu, MD, Robert Mootz, Dc, Thomas M. Wickizer, Ph.D., and Gary M. Franklin, MD. "Measuring Work Disability: What Can Administrative Data Tell Us About Patient Outcomes?" Journal of Environmental Medicine 49 (2007): 651-658.
- Healthcare of New York Workers' Compensation Trust 2007 Statistics. SAFE, LLC. Syracuse NY.
- Howe, ML. *Keeping Injured Employees Working: Overcoming Common Problems*. AAOHN Journal, October 1996; 44(10): 500-504.
- Hunt, H. Allan, Rochelle V. Habeck, Brent Van Tol, and Susan M. Scully. "Disability Prevention Among Michigan Employers 1988-1993." Upjohn Institute Technical Report 004 (1993).
- Kazel, R. *Cardiac Recoveries are Quicker: Employers, Insurers, Patients See Benefits in Early Return to Work*. *Business Insurance*, March 8, 1999; 33(10): 1, 26.
- Krause, MD, Niklas, John W. Frank, MD, Lisa K. Dasinger, Ph.D., Terry J. Sullivan, and Sandra J. Sinclair. "Determinants of Duration of Disability and Return-to-Work After Work-Related Injury and Illness: Challenges for Future Research." American Journal of Industrial Medicine 40 (2001): 464-484.
- Krause, MD, Niklas, Lisa Dasinger, Ph.D., and Andrew Wiegand, MPP. California. California Commission on Health & Safety & Workers' Compensation. Industrial Medical Council. Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? 20 Aug. 2007. 24 Sept. 2007.

- Lipscomb, Ph.D., Hester J., Samuel D. Moon, MD, Li Leiming, MS, Lisa Pompeii, RN, and Margaret Q. Kennedy, RN. "Evaluation of the North Country on the Job Network: a Model of Facilitated Care for Injured Workers in Rural Upstate New York." Journal of Occupational Environmental Medicine 44 (2002): 246-257.
- Maceachen, Ph.D., Ellen, Judy Clarke, Renee-Louise Franche, Ph.D., and Emma Irvin. "Systematic Review of the Qualitative Literature on Return to Work After Injury." Scandinavian Journal of Work & Environmental Health 32 (2006): 257-269.
- Masengarb, L. *The Value of Early Intervention*. HRfocus, January 1996; 73(1):22-23.
- McGrail, Jr., MD, Michael P., William Lohman, MD, and Robert Gorman, MD. "Disability Prevention Principles in the Primary Care Office." American Family Physician 63 (2001): 679-684.
- Musich, Ph.D., Shirley, Deborah Napier, and D W. Edington, Ph.D. "The Association of Health Risks with Workers' Compensation Costs." Journal of Occupational Environmental Medicine 43 (2001): 534-541.
- Patterson E, Rousmaniere P. *Better Training Can Ease Worker's Comp. Woes*. National Underwriter Property & Casualty/Risks & Benefits, December 9, 1996; 50(100): 20, 34.
- Randolph, SA, Dalton PC. *Limited Duty Work: An Innovative Approach to Early Return to Work*. AAOH Journal, November 1989; 37(11): 446-453.
- Reville, Robert T., Leslie I. Boden, Jeffrey E. Biddle, and Christopher Mardesich. An Evaluation of New Mexico Workers' Compensation Permanent Partial Disability and Return to Work. Santa Monica: Rand, 2001. 59-78.
- Sengupta, Ishita, and Virginia Reno. United States. Social Security Bulletin. 2007.
- "Seven 'Principles' for Successful Return to Work." Institute for Work & Health (2007): 1-8. 20 Sept. 2007  
<[http://www.iwh.on.ca/products/images/RTW\\_7\\_principles.pdf](http://www.iwh.on.ca/products/images/RTW_7_principles.pdf)>.
- Stover, Ph.D., Bert, Thomas M. Wickizer, Ph.D., Fred Zimmerman, Ph.D., Deborah Fulton-Kehoe, Ph.D., and Gary Franklin, MD. "Prognostic Factors of Long-Term Disability in a Workers' Compensation System." Journal of Environmental Medicine 49 (2007): 31-40.
- Strunin, Lee, and Leslie I. Boden. "The Workers' Compensation System: Worker Friend or Foe?" American Journal of Industrial Medicine 45 (2004): 338-345.
- Strunin, Ph.D., Les, and Leslie I. Boden, Ph.D. "Paths of Reentry: Employment Experiences of Injured Workers." American Journal of Industrial Medicine 38 (2000): 373-384.

Turner, Judith A., Gary Franklin, MD, Deborah Fulton-Kehoe, MPH, Kathleen Egan, Thomas M. Wickizer, James F. Lymp, Lianne Sheppard, and Joel D. Kaufman. "Prediction of Chronic Disability in Work-Related Musculoskeletal Disorders: a Prospective, Population-Based Study." BioMed Central: BMC Musculoskeletal Disorders 5 (2004). <<http://www.biomedcentral.com/1471-2474/5/14/prepub>>.

Turner, Ph.D., Judith A., Gary Franklin, MD, Deborah Fulton-Kehoe, Lianne Sheppard, Ph.D., Thomas M. Wickizer, Ph.D., Rae Wu, MD, Jeremy V. Gluck, Ph.D., and Kathleen Egan. "Worker Recovery Expectations and Fear-Avoidance Predict Work Disability in a Population-Based Workers' Compensation Back Pain Sample." Spine 31 (2006): 682-688.

Turner, Ph.D., Judith A., Gary Franklin, MD, Deborah Fulton-Kehoe, Ph.D., Lianne Sheppard, Ph.D., Thomas M. Wickizer, Ph.D., Rae Wu, MD, Jeremy V. Gluck, Ph.D., Kathleen Egan, and Bert Stover, Ph.D. "Early Predictors of Chronic Work Disability Associated with Carpal Tunnel Syndrome: a Longitudinal Workers' Compensation Cohort Study." American Journal of Industrial Medicine 50 (2007): 489-500.

Welch, Edward M. Statutory Provisions That Encourage Return to Work. RAND Corporation. East Lansing, 2006.

Wickizer, Thomas M., Gary Franklin, Deborah Fulton-Kehoe, Judith A. Turner, Robert Mootz, and Terri Smith-Weller. "Patient Satisfaction, Treatment Experience, and Disability Outcomes in a Population-Based Cohort of Injured Workers in Washington State: Implications for Quality Improvement." HSR: Health Services Research 39 (2004): 727-747.

Wickizer, Thomas M., Gary M. Franklin, Robert D. Mootz, Deborah Fulton-Kehoe, Roy Plaeger-Brockway, Diana Drylie, Judith A. Taylor, and Terri Smith-Weller. "A Communitywide Intervention to Improve Outcomes and Reduce Disability Among Injured Workers in Washington State." The Millbank Quarterly 82 (2004): 547-567.

# Appendix

## Seven 'Principles' for Successful Return to Work

The **Seven 'Principles' for Successful Return to Work**<sup>1</sup> have been developed by the Institute for Work & Health from a systematic review of the global literature and research on return to work (RTW). The eight-page paper was distributed to Council members on September 14, 2007. The Seven Principles are:

1. The workplace has a strong commitment to health and safety, which is demonstrated by the behaviors of the workplace parties.
2. The employer makes an offer of modified work to injured/ill workers so they can return early and safely to work activities suitable to their abilities.
3. RTW planners ensure that the plan supports the returning worker without disadvantaging coworkers and supervisors.
4. Supervisors are trained in work disability prevention and included in RTW planning.
5. The employer makes an early and considerate contact with injured/ill workers.
6. Someone has the responsibility to coordinate RTW.
7. Employers and health care providers communicate with each other about the workplace demands as needed, and with the worker's consent.

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<sup>1</sup> Institute for Work & Health, Toronto, Canada, March 2007.

**Agenda**  
**Return to Work Advisory Council Meeting**

**July 31, 2207**  
**11:00 am – 2:30 pm**

\*\*\*\*\*Please Note Change in Meeting Room Location\*\*\*\*\*

**Meeting Room D, First Floor**  
**Building 12, State Campus, Albany, NY**

Introductions – **Patricia Smith/Mario Musolino**

Overview of the Advisory Council’s Responsibilities – **Patricia Smith**

Department’s Activities to Date on Workers Compensation and Return to Work -  
**Colleen Gardner**

- Summary of Meetings with Experts/Stakeholders – **Call on DOL Staff**

Return to Work - The New York State Experience – **Colleen Gardner**

- Role and Relationship of the Parties (Injured Workers, Employers, and Medical Providers) to Return to Work
- Other Influences on Return to Work (Workers Comp Board, Insurance Carriers, Claimant Attorneys, Labor-Management Relations, Labor Market Issues, etc.)
- Incentives and Obstacles to Return to Work in the Current System

Return to Work Advisory Council Report – **Colleen Gardner**

- Measures of Workforce Participation/Gainful Employment by Injured Workers
- Use of Workforce and Tax Data
- Data Sources and Collection

Establish a Time Line for Advisory Council Work – **Colleen Gardner**

Adjournment

# **Agenda**

## **Return to Work Advisory Council Meeting**

**August 28, 2007**  
**1:00 pm – 4:00 pm**

**Meeting Room D, First Floor**  
**Building 12, State Campus, Albany, NY**

Introductions – **Patricia Smith, Commissioner, NYS DOL**

Approval of the Minutes of 7/31/07

Overview of Return to Work Issues –**Emily Spieler,**  
**Dean and Hadley Professor of Law, Northeastern University School of Law**

- What are our goals?
- How should we define success?
- How should we measure success?
- Factors that influence outcomes.
- What have some states done?
- Relation of Return to Work to other programs (i.e., FMLA, ADA)

Role of Occupational Medicine in Return to Work

- NYS Network of Occupational Health Clinics – **Jonathan Benn, Administrator of Clinical Programs, GHI, on behalf of the NYS Dept. of Health Network of Occupational Clinics**

Update on Data Sources and Collection – **Norm Steele, NYS DOL**

Review Time Line for Advisory Council Work – **Colleen Gardner, NYS DOL**

Adjournment – **Next Meeting – September 20, 2007 in New York City**

**Agenda**  
**Return to Work Advisory Council Meeting**

**September 20, 2007**  
**11:00 am – 4:00 pm**

**State Insurance Fund, 15<sup>th</sup> Floor Conference Center, Training Room 4,  
199 Church Street, New York, NY**

**Introductions** – M. Patricia Smith, Commissioner, NYS DOL

**Approval of the Minutes of 8/28/07**

**Evidence about What Works in Return to Work Programs** – Les Boden,  
Professor, Associate Chair, and Chair of Doctoral Program, Dept. of Environmental Health, Boston  
University School of Public Health

- Measures of return to work
- The evidence for what works
- Examples of State WC RTW programs
- Program monitoring and post-injury data collection

**Lunch Break**

**Analysis of RTW Programs from Other States** – Colleen Gardner/Margaret  
Moree, NYS DOL

- Review of Selected State RTW Programs Based on Advisory Council and DOL  
Outreach/Research
- Responses from Stakeholders in Other States

**RTW Data Subcommittee Update** – Norm Steele, NYS DOL

**Role of the Physician in Return to Work** - Stephen Levin, MD,  
Physician, Mount Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine

**Review Time Line for Advisory Council Work** – Colleen Gardner, NYS DOL

**Adjournment – Next Meeting** – October 10, 2007 in Albany

## **Agenda**

### **Return to Work Advisory Council Meeting**

**October 10, 2007**

**12:00 Noon**

**Meeting Room D, First Floor  
Building 12, State Campus, Albany, NY**

**Introductions** – M. Patricia Smith, Commissioner, NYS DOL

**Approval of the Minutes of 9/20/07**

**RTW Data Subcommittee Report**

- Update on Research and Analysis

**The Role of Claimants' Attorneys in Return to Work**

- Panel of Attorneys from the Injured Workers' Bar Assn:
  - Erin McCabe, Esq.
  - Kevin Walsh, Esq.
  - John Sciortino, Esq.

**Employers' Perspectives on Return to Work**

- Randy Wolken, MACNY/NYS Business Council Representative
- Mark Stasko, Magna/New Process Gear
- Jeff Van Dyke, First Cardinal Claims Manager for TBC Workers Comp Trust
- Sue Howe, First Cardinal Claims Manager for TBC Workers Comp Trust

**Follow up on Role of Physician in Return to Work**

**Follow up on Analysis of State Return to Work Programs**

**Review Time Line for Advisory Council Work**

**Adjournment – Next Meeting** – To be determined (in Albany)

# **Agenda**

## **Return to Work Advisory Council Meeting**

**October 26, 2007**

**11:00 am**

**Meeting Room D, First Floor  
Building 12, State Campus, Albany, NY**

**Introductions** – M. Patricia Smith, Commissioner, NYS DOL

**Approval of the Minutes of 10/10/07**

**The Role of Vocational Rehabilitation in Return to Work**

- Richard Bowles, Vocational Rehabilitation Counselor, WCB
- Duane Watson, District Manager of the Syracuse District Office for VESID
- Josiah Pearson, Legislative Chair of the NY Chapter of the International Assn. of Rehabilitation Professionals (IARP)

**RTW Data Subcommittee Report**

- Update on Research and Analysis

**Break**

**Agreement on New York Principles for Return to Work**

**Discussion of Common Themes in Return to Work and their Applicability to New York State**

**Review Time Line for Advisory Council Work**

**Adjournment – Next Meeting** – November 14 in Albany

## **Agenda**

### **Return to Work Advisory Council Meeting**

**November 14, 2007**

**9:30 am – 2:30 pm**

**Meeting Room D, First Floor  
Building 12, State Campus, Albany, NY**

**Introductions** – M. Patricia Smith, Commissioner, NYS DOL

**Approval of the Minutes of 10/26/07**

#### **Issues Framing the Council's Work & Recommendations**

- Mandatory RTW program or Voluntary best practices?
- RTW recommendations limited to PPD Claimants only or to processes and practices which impact the broader workers' compensation claimant pool for which the benefits will accrue to all claimants, including PPD?
- Format for report content and issuance

#### **Facilitated Discussion on Council Member Recommendations**

- Council Member Recommendations requiring further discussion
- Brainstorming Session recommendations

**Review Time Line and Process for Council Review of Draft Report**

**Adjournment**

# **Agenda**

## **Return to Work Advisory Council Meeting**

**November 27, 2007**

**1:00 pm – 5:00 pm**

**99 Washington Avenue, 17<sup>th</sup> Floor**

**Albany, NY**

**&**

**25 Beaver Street**

**NY, NY**

### **Introductions**

### **Discussion of Draft Medical Guidelines Task Force Letter**

### **Discussion on Outstanding Recommendations**

- **Matrix #2 – see matrix for proposed modification**
- **Matrix #6 – see matrix for proposed modification**
- **Matrix #8 – see handout for proposed language**
- **Matrix #13 – see matrix for proposed modification; also see handout for comments offered by BCNYS, Deb Martin & AFL-CIO**
- **Matrix #15 – see matrix for proposed modification**
- **Matrix #20 – see handout for Council member feedback and additional information on other state programs**
- **Matrix #23, #41, #43 – see matrix #23 for proposed language**
- **Matrix #24 – see matrix for proposed modification**
- **Matrix #34 – see matrix for proposed modification**
- **Matrix #36**
- **Matrix #44**
- **Matrix #50 – see handout for proposed language**
- **Matrix #53 – see matrix for proposed modification**

### **Adjournment**