RETURN-TO-WORK PROGRAMS FOR TEXAS WORKERS' COMPENSATION CLAIMANTS:
Suggested Design Parameters

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EXECUTIVE SUMMARY

The new Texas Workers' Compensation Act of 1989 brought a number of significant changes to the state's workers' compensation system. Among these changes were: instituting an administrative system to reduce the likelihood of litigation; establishing higher minimum and maximum benefits; and introducing the concept of Maximum Medical Improvement (MMI); among others. Many of the Act's key provisions were implemented in January 1991. This report was produced for the T.W.C. Research Center by the Center for the Study of Human Resources (U.T. Center), a research organization of the L. B. J. School of Public Affairs of The University of Texas at Austin.

The Texas Environment

The way the workers' compensation and VR systems currently operate on behalf of injured workers in Texas significantly affects the environment for RTW programs. Among the more important issues concerning these systems as they affect the RTW environment are the following:

- Considering only direct, out-of-pocket financing, employers now bear most workers' compensation costs in Texas. If they so choose, private employers can now opt out of the system altogether. Thus, employers and employees do not have the same "stake" in the workers' compensation system and in implementing RTW efforts in Texas as they do in some other states.

- The Texas Rehabilitation Commission (TRC), which appears to be the usual referral target for injured workers covered by workers' compensation in Texas, is mandated to serve a number of other populations under the regular federal/state VR program as well. With growing numbers of individuals in need and increasing responsibilities under the Americans with Disabilities Act of 1990, TRC will have difficulty giving higher priority to serving injured workers over other needy target populations.

- The Texas Workers' Compensation Commission's (TWCC's) computerized process for referring workers to TRC tends to be a hit-or-miss proposition; injured workers often fail to receive needed VR services.

- Some injured workers referred by TWCC to TRC for services apparently are not interested in returning to work when referred. There is little real incentive in the Act for them to participate.

The VR/RTW Literature and State Canvass Results

There is a remarkably strong consensus among workers' compensation and VR policymakers and program staff, private rehabilitation professionals, employers, workers and researchers about some of the more essential elements of RTW and related policies. Such a consensus exists in few policy areas as it appears to surrounding RTW. Important related elements of this consensus include the following:

- *Disability (risk) prevention*, rather than disability management, is key. Workers' compensation, VR and RTW programs would all face an easier job if there were fewer work-related injuries and if both employers and workers took more to heart the message that all accidents are preventable.

- *Expanded education for both the medical and business communities* could yield substantial benefits for the workers' compensation system, employers, carriers and workers.

- *Early intervention,* once an injury has occurred, is absolutely vital to injured workers' success in returning productively to the workplace.

- *Fostering trust and mature, cooperative relationships* among the key players involved in the system, especially employers, workers and the public entities (i.e., TWCC and TRC) responsible for serving them, is essential as well.

In addition, as both the literature on VR and RTW programs and the U.T. Center's state VR and RTW canvass indicate, there is wide variation in the approaches and practices which are being implemented around the country, whether in the form of pilot/demonstration efforts or full-blown programs for injured workers covered under workers' compensation. In terms of RTW and related efforts, the range encompasses everything from the complete absence of VR and RTW references in state law (e.g., Delaware) and simple VR service referrals for groups needing such assistance (e.g., Texas) to aggressive disability prevention and early RTW programs, complete with financial incentives for both employers and injured workers (e.g., Washington and Oregon).

There is considerable documentation on the types of VR and RTW interventions which states offer for injured workers, with the possible exception of services provided directly by the employers-of-injury or arranged by their insurance carriers. Information about employer- and carrier-based RTW efforts remains largely anecdotal.

Recently, support has been growing for the use of incentives to promote hiring injured workers and a number of other related experimental initiatives to foster RTW and reduce workers' compensation premiums and disability costs for employers, workers and society. Both Oregon and Washington, the report's case study states, are using such approaches. They have done so deliberately and with the active support of partnerships forged with business, labor and government. Yet, the definitive word on whether such approaches are efficient and effective has not been written. Well designed evaluations of these relatively new approaches to promoting early RTW have not been conducted.

Moreover, economic theory and existing empirical evidence from studies of similar incentive-based efforts are not at all encouraging. Such credits and subsidies unfortunately have been found to further "stigmatize" the populations targeted for

assistance and overwhelmingly to be "windfalls" for participating employers. It is possible that such incentives may have very different effects when the targeted group is a known quantity—an injured worker seeking early RTW with or rehire by the employer-of-injury—rather than just another member of a targeted class of workers seeking a job.

Suggested RTW Parameters

The RTW parameters which are suggested for Texas policymakers to consider have been developed based on an extensive review of the VR and RTW literature, a 1993 canvass of VR and RTW programs in all states and the District of Columbia, and site visits conducted in Washington and Oregon in August 1993. They are also based in part on the earlier analysis of Texas RTW patterns and programs performed for the T.W.C. Research Center by King et al. (1993). These suggestions are further based on two important premises regarding the Texas workers' compensation and VR environment; namely, that both workers' compensation and VR services for covered injured workers will continue to be voluntary, and that funding for TRC's VR services, now financed almost exclusively through the federal/state VR program, will remain largely unchanged.

A number of suggested RTW design parameters are provided. Each should be viewed as a suggestion only.

*1. **Education and marketing efforts should be expanded, regarding workplace safety generally and disability prevention and early RTW in particular.*** Such education and marketing efforts should be targeted to the medical and business (employer) communities. In part, these would market model early RTW approaches used in TRC's ERTW Pilots and in other states around the country.

*2. **TRC's existing Early RTW Pilots should also be enhanced and expanded to other areas of the state,*** based on interest carefully cultivated by TWCC and TRC program staff among industry associations and employer and worker groups. The "right stuff" is already there programmatically. The costs of early RTW appear to be quite low, and the initial outcomes very good. TRC, the participating employers and related groups could serve as the nucleus for expanding them.

*3. **TRC's efforts to computerize skills transferability assessment should be continued and examined for possible enhancements and expansion potential.*** An existing joint project (with the Texas State Occupational Information Coordinating Committee) is providing frontline TRC counselors with improved access to information necessary for assessing injured workers' current skills and skills transferability, as well as their opportunities for reemployment. The should be continued in some form, whether with SOICC or other entities. More effective models may be possible in the future. TRC is currently exploring enhanced models.

4. Oregon's Preferred Worker Program and its companion, the Employer Assistance Incentive Program, should be piloted in Texas. These two programs involve worker wage and training subsidies as well as marketing efforts for employers to hire/rehire injured workers rather than let them sit idle while collecting their impairment income benefits. While the empirical evidence on hiring/employment subsidies, tax credits and similar efforts is not very encouraging, there is sufficient interest and experimentation in other states to warrant piloting such programs on a small scale.

Adequate funding for such incentive programs would need to be secured, since they are likely to be expensive. Oregon funds its programs out of its Re-employment Assistance Reserve, supported by employer and worker contributions. A small pilot or demonstration effort could be funded through other sources.

5. A public sector Early RTW initiative should be implemented as well. A few state agencies should be selected—based on a combination of accident/injury rates, resource availability and interest—to demonstrate the public sector cost savings potential as well as the possible benefits for injured state employees.

6. A two-tiered system for serving injured workers more effectively and efficiently should be developed and tested. Of the VR options available, most injured workers (in other states) have tended to do better—in terms of returning to work and recovering their preinjury earnings—with less intensive, workforce attachment than with more intensive education and retraining approaches. Such early RTW efforts also tend to be far less costly. At the same time, some injured workers clearly could benefit from receiving more traditional, more intensive VR services.

8. More concerted, ongoing evaluations should be instituted, to document the costs as well as the impacts of VR and early RTW on longer-term employment and earnings for injured workers and accompanying effects on employers-of-injury and carriers. Given the availability of archived Unemployment Insurance (UI) wage records in Texas, workers' labor market outcomes could be tracked inexpensively, both for participating injured workers, as well as for a similar group of nonparticipants.

9. Additional analysis should be conducted on those groups of injured workers whose RTW patterns have been less than successful. Special efforts should be made to better understand the characteristics of injured workers who are unsuccessful in returning to work and the factors affecting them, using the T.W.C. Research Center's existing data bases. The results of these analyses could facilitate better targeting of safety and disability prevention efforts, development of early RTW programs focused on those injuries, occupations and industries with the greatest potential benefit, and thus increased efficiency and effectiveness.

I. Introduction

A. Background

The new Texas Workers' Compensation Act of 1989 brought a number of significant changes to the state's workers' compensation system. Among these changes were: instituting an administrative system to reduce the likelihood of litigation; establishing higher minimum and maximum benefits; and introducing the concept of maximum medical improvement (MMI); among others. Key provisions of that Act were implemented in January 1991. Section 17.06(a)(1) of the Act also called for the Texas Workers' Compensation Research Center (T.W.C. Research Center) to conduct studies of the feasibility and effectiveness of vocational rehabilitation (VR) programs for injured workers covered by the Texas workers' compensation system.

The Center for the Study of Human Resources (U.T. Center), a research organization of the Lyndon Baines Johnson School of Public Affairs of The University of Texas at Austin, recently completed the first phase of a study of VR under contract to the T.W.C. Research Center. In that study by King, et al. (1993), return-to-work (RTW) patterns were analyzed for all injured worker claimants during the period 1988-1991, using matched administrative data collected from the Texas Department of Insurance (TDI), the Texas Workers' Compensation Commission (TWCC) and the Texas Employment Commission (TEC). U.T. Center researchers also examined RTW programs and program participants in Texas through the use of the following methods: mail/telephone surveys of covered employers, insurance carriers and private rehabilitation providers; RTW program case studies of selected employers and carriers; and focus groups with small numbers of RTW program participants.

This report is one of two produced for the T.W.C. Research Center in the second phase of its study of VR programs. It concludes with a set of suggested RTW program design parameters for consideration by Texas policymakers based on: an extensive review of the literature on RTW and VR programs for injured workers; a canvass of workers' compensation and RTW/VR programs in all states and the District of Columbia; case studies of the programs operating in Washington and Oregon; the results of the statistical analysis conducted in the preceding phase of the research; and discussions with knowledgeable individuals in the field, both in Texas and in other states. The second report in this phase will present the results of an analysis of RTW patterns and time intervals for indemnity claimants reaching MMI under the new law.

B. Report Organization

Section II briefly describes the Texas environment for workers' compensation and for VR and RTW programs for workers' compensation claimants. Section III presents the results of the state canvass of VR and RTW programs. Section IV consists of case studies of VR and RTW programs in Washington and Oregon, two of the country's recognized leaders in this policy area. Section V presents suggested RTW program design parameters for consideration by Texas policymakers. Appendix A summarizes the literature concerning VR and RTW programs for workers' compensation claimants.

II. Workers' Compensation, VR and RTW Programs in Texas

A. The Texas System

By 1989, Texas faced a workers' compensation crisis of monumental proportions.[1] Many of the largest insurance carriers in the state were threatening to curtail operations. Texas employers were paying some of the highest premiums in the nation, while injured workers received some of the lowest benefits. Attorney involvement in the system was commonplace. In December 1989, the Texas Legislature passed sweeping workers' compensation reform in order to create a more equitable and effective system. Many of the more important changes contained in the 1989 Act became effective in January 1991.

The new Texas Workers' Compensation Act did not substantially change the VR context for injured workers in the state, although, as mentioned earlier, it did direct the T.W.C. Research Center to conduct studies of its feasibility and effectiveness. Section 2.51(h) of the Act further directed the Legislative Oversight Committee to "draft legislation creating a vocational rehabilitation pilot program to provide vocational rehabilitation as a benefit under this Act ...", if the T.W.C. Research Center study found VR to be feasible and effective. Lacking access to data matching TWCC with Texas Rehabilitation Commission (TRC) records and comprehensive information on employer- and carrier-based RTW efforts, providing definitive answers to the feasibility and effectiveness questions was not possible. This study does offer a more limited set of suggested design parameters.

The following narrative summarizes key aspects of the current Texas VR system. This discussion parallels that for all other states (except New Jersey) and the District of Columbia provided in Section III.

VR—Employer/Employee Responsibilities. The new Texas Workers' Compensation Act, like its predecessor, does little to provide for or encourage VR participation. In Texas, participation in VR program services by injured workers covered under the workers' compensation system is largely voluntary. Neither the insurance carrier nor the injured worker's employer is mandated to pay for VR services. With the exception of individuals receiving Supplemental Income Benefits who may forfeit their benefits for nonparticipation, injured workers may not be penalized for refusing to

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[1] Various publications and hearings of the Texas Joint Select Committee on Workers' Compensation Insurance (1988) detail the context within which legislative reform took place, as well as the key issues driving these reforms. Major changes brought about through the Texas Workers' Compensation Act of 1989 are detailed in Flahive et al. (1993).

cooperate, i.e., for not registering or enrolling for VR services. Section 5.11 provides that TWCC must analyze each employer report of injury to determine if the injured worker "would be assisted by vocational rehabilitation". If they decide in the affirmative, TWCC notifies them in writing of the services available through TRC as well as private VR providers. TWCC also notifies TRC and the affected insurance carrier.

System Financing. VR services for injured workers covered under workers' compensation are often provided by TRC, a public facility that primarily serves severely disabled individuals. TRC services are funded primarily under the federal/state VR program (described briefly in the next subsection). Additionally, insurance carriers and self-insured employers support VR services for claimants. Carriers often pay for the services of private rehabilitation providers to facilitate an injured worker's return to work, thereby reducing their own costs.

Service Delivery. The workers' compensation program in Texas is administered by TWCC. However, injured workers are typically referred either to TRC or to private VR providers for VR services. Such services may be provided either by TRC, by private providers or by employers themselves. TRC is not mandated to serve workers' compensation claimants, but does so on a first-come/first-serve basis. TRC served a total of 22,616 workers' compensation claimants in federal FY 1993, including both newly accepted and already active cases, comprising about one quarter of all VR clients served by TRC.[2]

TRC receives referrals from many sources, including employers, insurance carriers, doctors and workers themselves, as well as from TWCC. By far the largest sources of referrals, according to TRC staff, are doctors and injured workers (i.e., self-referrals). After four weeks of lost time, an injured worker receives a letter from TWCC informing them of the availability of TRC services. When the worker calls TRC to set up an appointment, this contact is coded as a self-referral. Very few workers' compensation claimants who receive referral letters from TWCC actually show up as official TWCC referrals in TRC's records.[3]

At the VR assessment interview, counselors gather medical information and determine if services are necessary. To qualify for these services, the worker has to meet the standard federal eligibility criteria. First, the individual must have a physical and/or mental disability which results in a substantial impediment to employment. Second, the

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[2]These and subsequent figures on services to and outcomes from TRC's Workers' Compensation Program were obtained Delvin Sparks, the Program's manager. They are based on unpublished TRC program data.

[3]TWCC and TRC staff have been developing a computerized system for tracking workers' compensation referrals for some time. It may be implemented sometime in 1995.

individual with a disability must be able to benefit in terms of an employment outcome as a result of VR services received. Third, the individual must require VR services to prepare for, to enter, to engage in or retain gainful employment. The injured worker is entitled to appeal TRC's decision regarding their eligibility.

In the past, counselors have strongly suggested the best vocational choice for clients in order to expedite the process. Under the 1991 amendments to the Rehabilitation Act of 1976, clients now are entitled to more than one choice in terms of rehabilitation options. These consumer-oriented amendments require that the options and their consequences be clearly communicated to clients. Once an option is mutually agreed upon, a VR plan is developed and signed by the injured worker (or other client). It should be noted that under the VR program, counselors have broad discretion in making decisions with their clients and, unlike all other education, employment and training programs, have their own service budgets. Presently, TRC counselors spend on average approximately $175,000-$200,000 annually on VR services.

Counselors generally try to identify transferable skills, so as to avoid retraining and to return the injured worker to work as soon as possible. A new comprehensive program, the Selection, Transferability, Evaluative, Placement System (STEPS), has been developed by the Texas State Occupational Information Coordinating Committee (SOICC) under contract to TRC, to assist frontline counselors in this process. STEPS conducts a labor market survey and profiles clients to assist their decisionmaking process. TEC job listings were being used to supplement information from STEPS. This effort became operational in October 1993. In late 1994, TRC staff were reviewing STEPS and modifying their approach to assisting VR counselors.

Outcomes. In FY 1993, some 9,469 workers' compensation claimants were referred to TRC for services, of whom 7,243 (76 percent) were accepted and enrolled for VR services. The remainder either failed to respond to the referral letter, were not interested in rehabilitation, did not appear to have a disability or otherwise failed to meet federal eligibility requirements. Note that, without an effective, computerized tracking system, TWCC only received official credit for 645 referrals or about 9 percent of the total number accepted and enrolled. During FY 1993, some 3,350 workers' compensation claimants were rehabilitated and their cases closed following two months of employment, at an average (encumbered) cost per closure of $2,016. The majority of workers' compensation claimants served by TRC return to work using their own transferable job skills or following receipt of short-term vocational training.

RTW Pilot Programs. TRC has had three pilot projects operating in Fort Worth, Irving and San Antonio as part of its Early Return-to-Work for Injured Workers' Project.

As described in Padgett, et al. (1993), these RTW pilots utilize methods and procedures more commonly used by the private sector rehabilitation experts. This Early RTW pilot effort is intended to get workers back in the same or similar job more expeditiously and at lower cost with the same or a different employer using workers own transferable skills. The U. S. Department of Labor (DOL) provides $250 a month for each Federal Employee Compensation Act (FECA) claimant served in the San Antonio project site. San Antonio had 25 DOL/FECA cases (as of September 1993), receiving federal funding between $55,000 and $65,000 annually as a result.

In the Early RTW pilot, the injured worker's employer provides the counselor with a detailed job description. The counselor takes this job description to the physician who then identifies the tasks the worker can perform given his or her injury. This communication between the physician and employer regarding RTW is viewed as novel, since historically their dialogue in Texas has centered largely around the payment of bills.

TRC employs six counselors in these projects as marketing specialists who handle the needs of injured workers referred directly from the employer-of-injury (Padgett et al. 1993). The counselors negotiate with the employer to rehire the worker, even if it involves light duty or a change in job. It takes approximately three to five months for the case to close at an average cost of less than $10 including only direct, encumbered costs.[4] Employers who refer directly to TRC in a timely manner realize significant cost savings. If they wait for TWCC or other sources for referrals, the regular VR process can take up to 18 months and cost more than $2,000 in encumbered costs. Some 85 percent of the injured workers in these pilot projects return to work with the same (preinjury) employer.

B. The Federal/State VR Program in Brief

Like many other states, Texas relies heavily on the federal/state VR program administered by TRC to provide rehabilitation services for workers' compensation claimants. The VR program serves eligible individuals with a wide variety of disabilities (excluding visual), ranging from mental illness and mental retardation to neurological disorders, speech and hearing limitations, and many others.[5] The purpose of VR is to help those with disabilities prepare for, find and retain competitive employment. To be eligible for services, individuals must be disabled, 16 years of age or older and legally able to work. Since the 1970s, service priority has been given to those individuals with the most severe disabilities who also have the potential for rehabilitation for work.

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[4]The $10 figure thus excludes any administrative or indirect costs.

[5]This brief description of the VR program relies on Legislative Budget Board (1994), Dean et al. (1993) and discussions with Delvin Sparks with TRC.

Services available under the federal/state VR program include counseling and assessment, diagnostic examinations, surgery and hospitalization, prosthetic devices, occupational skills training, supported work, vocational adjustment training, transportation and income support. Funding for the Texas VR program is approximately 80 percent federal and 20 percent matching state funds. Federal funds are allocated to states by the U.S. Department of Education through a complex funding formula. FY 1993 VR expenditures totaled $123 million, while VR services were provided to some 68,000 clients. The average cost per successful rehabilitant—including all clients, not just workers' compensation claimants—was about $7,400.

C. Observations on the Texas RTW Environment

The way the workers' compensation and VR systems currently operate on behalf of injured workers in Texas significantly affects the environment for RTW programs. Among the more important issues concerning these systems as they affect the RTW environment are the following:

- Considering only direct, out-of-pocket financing, employers now bear most workers' compensation costs in Texas.[6] If they so choose, private employers can now opt out of the system altogether.[7] Thus, employers and employees do not have the same "stake" in the workers' compensation system and in implementing RTW efforts in Texas as they do in some other states.

- TRC, which appears to be the usual referral target for injured workers covered by workers' compensation in Texas, is mandated to serve a number of other populations under the regular federal/state VR program as well. With growing numbers of individuals in need and increasing responsibilities under the Americans with Disabilities Act of 1990, TRC will have difficulty giving higher priority to serving injured workers over other needy target populations.

- TWCC's computerized process for referring workers to TRC tends to be a hit-or-miss proposition; injured workers often fail to receive needed VR services.

- Some injured workers referred by TWCC to TRC for services apparently are not interested in returning to work when referred. There is little real incentive in the Act for them to participate.

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[6]Considering total direct and indirect, economic and noneconomic costs, injured workers likely bear the majority of the costs of injury and disability.

[7]According to a recent study conducted for the TWC Research Center (Dyer et al. 1993), 80 percent of Texas wage and salary workers remain covered by workers' compensation under the new Act.

III. State VR and RTW Programs

All 50 states and the District of Columbia were canvassed in the summer of 1993 in order to learn more about and characterize their VR and RTW programs and to identify innovative and effective VR and RTW programs for insights and further study. The combination mail/telephone survey focused on the following areas: VR as defined in their workers' compensation law; the structure and financing of their VR delivery system; their early RTW efforts; and their major program outcomes. Forty-nine states and the District of Columbia cooperated fully with the survey; only New Jersey did not respond with detailed information about their programs.[1] The results of this state canvass are summarized in Table 3.1 immediately following this section.

VR service delivery systems and disability management efforts vary greatly from state to state. As a result, patterns common to all states proved difficult to identify. This section presents some of the more notable similarities and differences which emerged from the survey.

A. Vocational Rehabilitation Program Goals

In all but seven of the states responding (i.e., Colorado, Delaware, New Mexico, Pennsylvania, South Carolina, Tennessee and Wyoming), VR is explicitly addressed in the workers' compensation statute. The typical goal of VR is to return the injured worker to employment. The exact wording, however, varies from simply "employment outcome" to "suitable, gainful employment". "Suitable" employment, the stated goal of VR in twelve of the states responding, *implies* wage replacement. Thirteen states specifically define the goal of VR as restoring the injured worker to employment at or near their preinjury wage.

In many states, a hierarchy of VR goals is written into either workers' compensation law or agency administrative rules. This hierarchy ensures that the following RTW goal options are considered in descending order as follows: same, modified or different job with the same employer; followed by same or different job with a different employer. Training is generally considered to be a last-resort intervention because, according to state officials, it tends to be the costliest, least effective option. The emphasis is on returning the injured worker to work with their preinjury employer, even if in a different capacity.

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[1]Securing the cooperation of states' VR agencies with the survey proved far more difficult than expected due to the fact that many of them required U.T. Center researchers to secure the permission of the *private* Council of State Administrators of Vocational Rehabilitation (Washington, D.C.) first. Such permission was forthcoming in all cases, but it created an unnecessary barrier to timely completion of this survey of VR programs operating almost exclusively with *public* funds.

B. Employer/Employee Responsibilities

VR services tend to be financed by insurance carriers, self-insured employers or publicly funded rehabilitation programs. Eighteen of the states responding pay for VR services either through a special VR fund or through their WC fund or program budgets. VR funds and WC-based VR services tend to be supported either through an assessment on workers' compensation premiums or on the actual hours (or days) worked by covered workers. In two of these states, Maine and Massachusetts, the state will pay for VR services if the carrier/employer refuses. However, if such services are successful, the employer/carrier is required to reimburse the state in an amount up to two or three times the actual cost of the services provided.

The extent to which injured workers are required to seek or enroll in VR services is subject to much discussion. However, it is very difficult to characterize the status of VR definitively in terms of voluntary or mandatory VR. From the injured worker's perspective, fifteen states have largely mandatory VR. In these states, injured workers deemed to need it are required to cooperate with VR efforts (which includes placement assistance) or risk losing their lost-time (indemnity) benefits. Covered employers and/or their insurance carriers are typically required to pay for VR services if the injured worker needs such services to become employable.

In thirty-five states, VR is largely voluntary for injured workers. A few states in which VR is characterized as voluntary (e.g., Texas) may restrict receipt of some income benefits if the prescribed VR service intervention is not followed. Since the latter part of the 1980s, a number of states (i.e., California, Colorado, Florida, Georgia, Kansas, New Mexico and Minnesota) have switched from mandatory to voluntary VR in part in an effort to reduce escalating workers' compensation-related VR costs. Others, such as Washington, still require VR but have begun to screen out large numbers of injured workers in terms of eligibility. As indicated in Section IV, Washington no longer allows injured workers with "residual job skills" to participate. Under voluntary systems, the employer/carrier is not obligated to pay for services. However, short-term VR services are often voluntarily financed by the carrier/employer who stands to realize the potential cost savings of early returns to work. It is noteworthy that only two formerly voluntary states (i.e., Massachusetts and Oklahoma) have shifted to mandatory VR for injured workers.

C. Referral Time Frames

There is a growing consensus that early RTW intervention is crucial for injured workers. However, the average time from date of injury to referral for VR screening in the responding states ranges from 21 days (Florida) to the point of medical stability (e.g., District of Columbia and Montana). In eighteen states, injured workers are typically

District of Columbia and Montana). In eighteen states, injured workers are typically referred after they have between 60 and 120 consecutive lost-time days. Exceptions are made depending on the nature and extent of the disability. Twenty-one states do not have a specific referral trigger date. The argument typically made for not having such a date is that, since each case is different, arbitrary referral time frames run the risk of losing some injured workers who are ready for services much earlier in the process. However, a counter argument is that such trigger points catch injured workers that might otherwise go unnoticed. The optimal time for making a VR referral remains a source of some debate, but research seems to suggest that "as soon as possible" may be the answer.[2]

D. VR Service Delivery Systems

VR services are provided through one or more of the following mechanisms: private rehabilitation firms, public rehabilitation agency or the workers' compensation agency. The exact arrangement varies from state to state. With few exceptions (i.e., Connecticut, Delaware, Ohio and Wyoming), states use private VR providers in some capacity. These providers are hired by insurance carriers, self-insured employers or the state (WC VR unit or VR agency) to provide services which may include assessment, counseling, work hardening, training, labor market analysis and placement.[3] Private providers tend to be competitive and aggressive in marketing their services, focusing on early RTW and wage replacement. The degree to which regulation is imposed on these providers varies greatly from state to state. Twenty-one of the states using private providers have no certification requirements or very limited ones, allowing the market to act as the regulator.

Another source of assistance to injured workers is the publicly funded rehabilitation program which typically serves any person with a physical, mental or emotional disability in order that they may become self-supporting and as independent as possible. This program is funded through matching federal/state (80/20 percent) funds under the Rehabilitation Act of 1976, as amended in 1992. To qualify for these services, the injured worker has to meet federal eligibility criteria. State rehabilitation agencies must give priority to clients with severe mental or physical disabilities under this program. Such priorities tend to limit VR service availability for workers' compensation claimants.

The degree of involvement that workers' compensation agencies have in VR varies from offering a full range of in-house services (i.e., Florida) to acting strictly as a court to settle disputes (i.e., Virginia). The workers' compensation agency or division often has a small VR staff that administers or oversees the program. Their responsibility ranges from

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[2]For examples, see Gardner (1991) and Padgett et al. (1993).
[3]For more on these services in Texas, see King, et al. (1993).

ensuring that claimants receive needed services to approving and monitoring all VR plans to merely making referrals. As a result, their involvement in initiating effective VR and early RTW programs varies, but tends to be minimal. The impetus for VR/RTW efforts most often rests with the insurance carriers and self-insured employers. In recent years, as a means of controlling workers' compensation costs, both of these entities have become very active in the area of disability management.

In seven states (i.e., Florida, Massachusetts, Michigan, Minnesota, Mississippi, New York and West Virginia), VR services are provided on a fee-for-service basis directly by the workers' compensation agency or the public rehabilitation agency. They meet the needs of employers through both traditional and more innovative services. These agencies market themselves as objective third parties, and, according to the agencies surveyed, reportedly charge anywhere from five to seventy-five percent less than private sector providers for similar services. Due to their success, some plan to increase their fees in the near future to levels more comparable with those charged in the private sector. Involvement of public rehabilitation agencies in industrial disability management may increase with the growing awareness of the need to retain experienced, skilled workers in the workplace.

E. RTW Program Features

Two states, Oregon and Washington, have been nationally recognized for having very successful early RTW programs initiated by their respective workers' compensation agencies. Their programs are discussed at length in Section IV. Many of the states that are making concerted early RTW efforts have voluntary VR programs (i.e., Florida, Idaho, Indiana, Mississippi, Nevada, New York, North Dakota, Washington and Wisconsin). Such aggressive early intervention efforts include:

- In-house rehabilitation consultants trained in sales and negotiating techniques who actively market safety management and early RTW strategies to employers;
- Seminars and presentations to employers and insurance carriers about the benefits of early intervention, light duty and safety management; and
- Counselors who contact injured workers, employers and physicians immediately following the injury to negotiate early RTW in some capacity.

Nineteen states provide loss-of-earning-power reimbursements as a means of encouraging early RTW. The state fund or the insurance carrier pays a percentage of the difference between the preinjury and postinjury salary for a specified period of time, e.g., until medically stable or until the preinjury wage level is reached.

In four states (i.e., Oregon, Wisconsin, Arkansas and Rhode Island), the employer is mandated to rehire an injured worker if their old job still exists and they are capable of

performing it with certain accommodations. However, most states do not have this mandate and must therefore offer financial incentives to employers to induce them to hire injured workers. A growing number of states are reimbursing employers for a portion or all job site modification and on-the-job training costs (i.e.. Connecticut, Arizona, Oregon, Washington, New Hampshire). Four states (i.e., Oregon, California, North Dakota, Washington) have become more aggressive in terms of their incentives and now offer workers' compensation premium discounts to employers that hire/rehire injured workers.

Full implementation of the Americans with Disabilities Act of 1990 will make it more difficult for employers to refuse to hire/rehire injured workers. ADA prohibits employers from discriminating against qualified individuals with disabilities. At the request of the individual, an employer is required to make "reasonable accommodations" to alleviate or remove the barriers imposed by the disability. Additionally, employers are no longer permitted to inquire about an applicant's workers' compensation history at the pre-offer stage.

F. Program Outcomes

Objective, reliable data concerning the effectiveness of early RTW programs across the nation are scarce. One reason for the lack of performance information is that, where VR services are provided strictly through the private sector and funded by the employer or insurance carrier, outcome data are not collected by the state. In one state, insurance carriers that were realizing significant cost savings as a result of early RTW and safety programs stopped sending in outcome data, fearing that the legislature might be led to increase benefits. A second reason is that public rehabilitation agencies often fail to differentiate between workers' compensation claimants and other clients without work-related injuries in terms of outcome measures. Finally, workers' compensation agencies often do not have the resources necessary to analyze and make available the data they may have collected.

The available program outcome data suggest that, of those injured workers/claimants who complete VR plans, on average between 40 and 90 percent ultimately return to work at some point. Low success rates are often used as an argument to avoid retraining and focus on RTW. Given the stricter VR eligibility requirements adopted by many states, injured workers with formal VR plans constitute a small percentage of all workers' compensation claimants. Most return to their former positions with little or no assistance. Injured workers who require VR plan development are often long-term disability cases with greater barriers to reemployment. Long-term follow-up data on injured workers that return to the workplace are even more scarce than immediate return-

to-work data. Only a few states (i.e., Massachusetts, Georgia, Connecticut, Florida, Arizona) currently collect or are beginning to collect such information on a regular basis.[4]

G. State Concerns with RTW and VR

Despite the often considerable differences between the states and their approaches, their concerns about workers' compensation, vocational rehabilitation and RTW efforts are very similar. These concerns include the following:

- Referral times from date of injury to VR are too long;
- Injured workers often tend to 'fall through the cracks';
- The legal system typically delays the process, with VR plans often used as a means to increase settlements;
- The approval process for VR plans is lengthy due to documentation requirements;
- Retraining tends to be overused in VR programs for injured worker/claimants;
- Resources are often lacking to conduct effective early intervention and marketing campaigns;
- Too many medical decisionmakers drive the system, slowing the rehabilitation process;
- Despite the progress being made, educating the business and medical communities about the benefits of early RTW is difficult;
- Although there is a great deal of frustration on the part of rehabilitation professionals, they continue to try to dispel the myth that injured workers are "damaged goods;"
- Employers lack sufficient financial incentives to hire/rehire injured workers;
- A slow economy impedes RTW efforts; and
- Private VR providers are not as effectively regulated as they should be.

[4]Texas has at least done so on an ad hoc, but relatively comprehensive basis; see King, et al. (1993).

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs for Workers' Compensation Claimants, August, 1993

	Alabama	Alaska	Arizona	Arkansas	California
VR Status	Mandatory	Voluntary	Voluntary	Voluntary	Voluntary
Goal of VR	Gainful employment	Employment at 60% or more of pre-injury wage	Gainful employment	Law change in 1993 to "encourage RTW"	Gainful employment and restore maximum self-support
Financing of VR Services	• Carrier/employer	• Carrier/employer • Federal/state VR program	• Portion of WC premiums finances some VR services via Industrial Comm. Special Fund • Federal/state VR program • Carrier/employer	• Carrier/employer • Federal/state VR program • In limited cases, employers required to pay for up to 72 weeks of VR and related services.	• Carrier/employer must pay for VR if eligible employees request services • Federal/state VR program does not serve WC cases.
Providers of VR Services	• Certified private providers • WC agency does not monitor VR	• Certified private providers • Public rehab. agency • WC agency monitors VR evaluations, refers workers to rehab specialists, reviews plans, monitors plan progress. • Carrier/employer must pay for VR eligibility evaluations.	• Certified private providers & Rehab. Services Adm.(15% of caseload is WC—mostly unscheduled injuries). Try to get reimbursed by carrier/employer • Ind. Comm. determines eligibility for VR, approves plans for funding.	• Certified private providers - handle most VR cases. • WC agency is board of adjudication • Public rehab. agency handles few WC claimants (less than 5% of WC caseload).	• Private providers (not regulated) • WC Division approves plans, audits employers/carriers for timeliness, settles disputes • Fee schedule for providers
Referral to VR- # Lost-Time days	No time requirement	90 days	150 days	No time requirement	90 days
Special RTW Program Features	NA	• No employer incentives to hire injured workers • Recent law revision to specify that the VR plan which ensures employability in the shortest possible time be selected	• Rehab. Services conducts 60-day RTW follow-up to obtain worker feedback on services received • State pays 50% of salary difference for up to 3 mos. • OJT & job site modification financed by State Fund • No RTW program, per se	• 1993 law change requires re-hiring injured workers if suitable employment available; penalty is paying diff. between benefits received & wages lost during refusal period for up to 1 year	• Employers who hire an injured worker and keep him/her for 12 months receive a premium rebate based on firm's WC insurance rate and worker's reported wages. • Working with community college to develop short skills-specific programs
RTW Program Outcomes	Information not collected	• Eligibility evaluation requests increased 400% from FYs1989-92. 55% found eligible for VR services. • RTW info not collected.	• According to Ind. Comm. 53% of VR participants complete a plan, of whom 59% RTW. Earnings information not available.	Information not collected	• 78% of VR plan completers RTW. • 1989 - 73% RTW at 90% of pre-injury wage. Modified job and alternate work plans fared best, schooling plus OJT fared worst, in postinjury wages.

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Colorado	Connecticut	Delaware	District of Columbia	Florida
VR Status	Voluntary as of 1987	Voluntary	Voluntary	Mandatory	Voluntary as of 1989
Goal of VR	VR provision removed from WC statute in 1987	Re-employment at preinjury earnings	• No provision for VR in WC law.	RTW at preinjury wages	RTW at preinjury wages
Financing of VR Services	• Carrier/employer • Federal/state VR program	• Carrier/employer assessments • Portion of WC budget allocated for VR	• Carrier/employer	• Carrier/employer	• Carrier/employer assessments into state WC fund
Providers of VR Services	• Private providers (loosely regulated) • State VR agency	• Div. of Rehab within WC agency provides full range of VR services • No private providers	• Carrier/employer	• Certified private providers • No fee schedule for providers • WC agency approves and monitors VR plans & monitors vendors and insurance carriers. • No federal/state VR program involvement	• Certified private providers and WC Rehab unit (fee-for-service basis) • Fee schedule for providers • Private providers must attend WC seminars.
Referral to VR- # Lost-Time days	No time requirement	No time requirement	No time requirement	Upon medical release	21 days
Special RTW Program Features	• Largest insurance carrier (with 50% of the market) implemented an early RTW program as of 2/93	• WC agency has state-funded OJT program (20% of all training is OJT; expect 50% by 1995). • WC agency pays training fee to employer that initially matches 100% of salary.	NA	• Carrier/employer must pay 2/3 of salary differential until MMI or preinjury salary reached	• 1993—Mandatory early RTW program for employees of Dept. of Labor and Employment Security. May be adopted by all state agencies since Governor mandated WC costs to be reduced by 50%
RTW Program Outcomes	Information not collected.	• 90% of VR participants complete plan - 87% RTW at 75% of preinjury wages. • Planning for 3-6 mo. follow-up of all OJT participants.	Information not collected.	Information not collected	• Since 1987, Rehab Unit has served injured postal workers, saving feds. $177m, by charging $295/mo. (private provides charge $5,000-$7,000/mo.) • From1990-93,13% of those approved for training completed plan, of whom 81% RTW.

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Georgia	Hawaii	Idaho	Illinois	Indiana
VR Status	Voluntary as of 1992, except for catastrophic injuries	Voluntary	Voluntary	Voluntary	Voluntary
Goal of VR	Suitable/gainful employment	Suitable, gainful employment	Restore earning capacity	Return to employment	Restore to useful employment
Financing of VR Services	• Carrier/employer	• Carrier/employer	• Carrier/employer; portion of premiums assessed into state WC fund for VR services	• Carrier/employer • Federal/state VR program, if employer/carrier does not pay	• Carrier/employer premium tax for VR • Federal/state VR program
Providers of VR Services	• Certified private providers. • For post 7/92 injuries, WC Board only monitors VR for catastrophic injuries for which VR is mandatory. • WC Board monitors reasonableness of fees & quality of services provided.	• Certified private providers must register with Dept. of Labor and Ind. Relations every 3 years • Disability Comp. Div. approves and monitors plans. 30 day status reports required from providers.	• Private providers (not regulated) and Rehab. Div. of Industrial Commission (receives 35-40% of lost-time cases) • No fee schedule for providers	• Private providers (un-regulated, no fee schedule) & Dept. of Rehab Services (requests carrier reimb.) • DRS serves few claimants • Arbitrator may require employer/carrier VR • Inc. Comm. acts as court	• 85–90% of cases referred to Industrial Comm.'s VR unit which offers full range of services & negotiates reimbursement by carrier. Remainder referred to private providers (not regulated, no fee schedule in law) or state Rehab agency
Referral to VR- # Lost-Time days	No time requirement	120 days	No time requirement	120 days	21 days
Special RTW Program Features	• RTW plans must include 60-day follow-up. However, due to 1992 law change, difficult to enforce.	• No financial incentives provided to employers, but employers receptive to taking back injured workers	• Early RTW-worker receives 67% of wage differential until medically stable. • Rehab. Div. actively communicates with business & medical communities to encourage and facilitate RTW.	• Early RTW-carrier/employer pays salary differential.	• Carrier/employer required to pay 60% of salary differential until medically stable if worker enrolls in early RTW program. • VR Div. of Ind. Comm. has 40 counselors who are active in early intervention.
RTW Program Outcomes	• According to WC Board, 33% of FY92 cases assigned to VR do RTW, but since cases often run over 1 yr., this number is low.	• According to Disability Comp. Div., 80% of VR participants that complete a plan do RTW, 1/3 with same employer.	• According to Ind. Comm., of those that RTW (FY 92), 58% return to same employer. • Workers RTW at 97% of preinjury earnings	Information not collected	• According to Ind. Comm., injured workers RTW at 97% of preinjury salary.

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Iowa	Kansas	Kentucky	Louisiana	Maine
VR Status	Voluntary	Voluntary as of 7/93	Mandatory	Mandatory	Mandatory
Goal of VR	Gainful employment	Restore to work at comparable wages	Restoration to suitable employment	As of 1991—RTW ASAP with minimum retraining	Suitable employment
Financing of VR Services	• Carrier/employer • Federal/state VR program	• Carrier/employer • Federal/state VR program, which serves very few WC claimants	• Carrier/employer assessments on WC premiums • Federal/state VR program if employer carrier not paying	• Carrier/employer • Private/nonprofit WC Corp. that insures 70% of workers	• Carrier/employer—if refuse to pay for VR, state covers costs. If VR is successful, state requires up to 180% reimbursement of expenses.
Providers of VR Services	• Private providers (not regulated) • Public VR agency	• Certified private providers and Dept. of Human Resources (DHR) • Division of WC within DHR reviews VR plans & makes recommendations	• Certified private providers • Office of Rehabilitation tries to get reimbursed by carrier • WC agency monitors VR plans. • Providers must submit 60-day VR progress reports to WC agency.	• Certified private providers • WC agency contracts out for all VR services	• Certified private providers • Fee schedule in the law • WC agency does not approve VR plans
Referral to VR-# Lost-Time days	No time requirement	90 days	45 days (15 days for catastrophic injuries)	30 days	No time requirement as of 10/92 (used to be 120 days)
Special RTW Program Features	• Carrier/employer pays salary differential until preinjury wage level is reached	NA	NA	• Prior to 1992, law stressed retraining. Most claimants used VR for settlement purposes. As of 1992, new VR program established in WC agency.	• Carrier pays for salary differential if worker RTW at lower salary.
RTW Program Outcomes	Information not collected	Of VR case closures in FY 92: • 19% RTW; 32% settled • 11% of VR not needed; 6% ability restored; 32% other; active VR cases declined 36% FYs1990–92	Information not collected	• Since RTW emphasis, of the 86 cases contracted out for VR services in 1993, 29% have RTW to date.	• FYs1989–90, 54% of workers that received VR services did RTW. Of these, 36% RTW at a lower wage

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Maryland	Massachusetts	Michigan	Minnesota	Mississippi
VR Status	Voluntary	Mandatory as of 1991	Mnadatory—"Voluntary with mandatory kicker"	Voluntary as of 1992	Voluntary
Goal of VR	Suitable, gainful employment	Return to suitable gainful employment	RTW at preinjury wages	Restore to preinjury economic level	Employability
Financing of VR Services	• Carrier/employer • Federal/state VR program serves very few WC claimants	• Carrier/employer • State VR Trust Fund from WC premium assessment. • If carrier refuses to pay for VR, services financed through Trust Fund. If successful, employer/carrier mandated to pay back 2 times the cost of services.	• Carrier/employer • Minimal use of federal/state VR program	• Carrier/employer	• Carrier/employer • Federal/state VR program
Providers of VR Services	• Private providers (not regulated) • WCC approves rehab plans and monitor progress; $500 fine for failure of providers to submit progress reports every 3 months. • Public rehab agency caseload is only 2-3% WC claimants.	• Certified private providers • Public rehab. agency (fee-for-service basis) • WC agency approves and monitors VR plans (10% of WC lost-time claimants receive VR services)	• Approved private providers • Michigan Rehab. Services (fee-for-service basis, competitive with private sector). Approx. 60% of MRS caseload is WC claimants. • WC Bureau provides info and assistance only.	• Certified private providers and VR Div. in Dept. of Labor & Industry (on fee-for-service basis); VRD charges 1/4 the fee of private providers • Plan to increase fees in 1994 • Fee schedule in law for private providers.	• Private providers (not regulated) • Dept. of Rehab. Services on fee-for-service basis or with federal/state VR funds; only catastrophic WC cases referred. • WC agency must approve VR plans
Referral to VR- # Lost-Time days	120 days	120 days	121 days	60 days	No time requirement
Special RTW Program Features	• Carrier must pay 100% of salary differential until worker resumes preinjury job. Most employers rehire at full salary.	• WC agency conducts 60-day RTW follow-ups • Employers mandated to give preferential hiring to injured workers • Carrier/employer pays for reasonable costs of job modification	• Insurance carrier must pay 80% of wage differential - no timeline • Public rehab. agency has effective disability management program	• If worker RTW early, carrier pays 2/3 of wage differential for maximum of 225 weeks or 405 days from date of injury • If original employer refuses to rehire worker and he/she finds job elsewhere, WC costs for original employer increases	• Reduced caseload of DRS counselors from 350 to 200 to allow more time for placement • DRS active in job modification, financed by carrier/employer.
RTW Program Outcomes	• According to WCC approximately 80% of VR participants that complete a plan do RTW.	• According to WC agency, in FY 93, 89% of VR participants that completed plan did RTW, 75% at preinjury wage; since 1991 law change, referrals to VR have increased 300%. Number of workers that RTW has increased five times.	• According to WC Bureau, in1992, 39% of VR participants RTW; 84% RTW to same employer, 2/3 to same job • Workers successfully rehabilitated (RTW) increased 20% from 1991-92. • MRS: overall RTW rate is 48%	• According to WC agency, 75% of VR participants that complete a plan RTW; of those, 45% return to preinjury employer	• According to DRS, 25% of workers eligible for VR enter and complete plans. Of those that complete VR plan, 100% RTW.

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey
VR Status	Mandatory	Mandatory	Voluntary	Voluntary	Mandatory	NA
Goal of VR	Suitable, gainful employment	Early RTW since 1991	Suitable employment	Suitable, gainful employment	Suitable employment	NA
Financing of VR Services	• Carrier/employer • Federal/state VR program	• Carrier/employer • Industrial Accident Rehabilitation Account (financed by assessment on WC premiums)	• Carrier/employer • State WC Fund • Federal/state VR program	• Self-insurance (35% of workers) • State Industrial Insurance System (65% of workers)	• Carrier/employer	NA
Providers of VR Services	• Certified private providers • Div. of VR within Dept. of Education • WC agency must approve VR plans	• Certified private providers • Dept. of Social & Rehab. Services • No fee schedule in law • Usually only serious cases are referred to SRS. Approved services funded through Industrial Accident Rehab Account.	• Private providers (certification required as of 1/94) • Public VR agency handles very few WC claimants • WC agency approves/monitors plans, State Fund covers cost of plan dev.	• Certified private providers. • State Industrial Insurance System offers full range of services. Law requires the State System to refer at least 51% of cases to Bureau of Rehab or private providers & reimburse them for cost of services.	• Private providers (not regulated) • No fee schedule in law • VR plan approval required by Industrial Commission - only one VR staff member	NA
Referral to VR- # Lost-Time days	120 days	Medically stable	No time requirement	90 days	No time requirement in law (internally screen at 6 months).	NA
Special RTW Program Features	NA	• Early RTW at same employer specified in the law as a priority as of 7/91	NA	• Law changed in 6/93 to mandate early intervention activities for all employers. • Carrier pays salary differential up to 2 yrs.	• Carrier must pay 2/3 salary differential up to 350 weeks • Since 1991, second injury fund pays 50% of job modif. expenses up to $5,000/yr./employer for those rehiring injured workers. By 8/93, 17 job modif. applications totalling $9,100.	NA
RTW Program Outcomes	Information not collected	Information not collected	• According to WC agency, 32% of VR cases rehabilitated successfully • In FY 92, 100% of VR participants that completed a plan RTW; 80% with same employer	• 54% of those workers insured through the State determined eligible for VR services do RTW at the time of case closure. • Outcome of early intervention not available.	• Currently setting up system to collect and analyze RTW data.	NA

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	New Mexico	New York	North Carolina	North Dakota	Ohio
VR Status	Voluntary as of 1990	Voluntary	Voluntary	Voluntary	Voluntary
Goal of VR	No provision for VR in WC law	RTW at preinjury wage	RTW	RTW at preinjury wage	RTW with preinjury employer
Financing of VR Services	• Carrier/employer • Federal/state VR program	• Carrier/employer • State WC Fund in part • Federal/state VR program	• Federal/state VR program • Carrier/employer	• WC's VR services paid for out of monopolistic State WC Fund	• Carrier/employer • Surplus WC Fund (majority of cases) • Federal/state VR program
Providers of VR Services	• Private providers (not regulated) and public rehab. agency (typically handles more serious cases) • WC agency does not monitor VR.	• Private providers (not regulated, 50% of cases) • VR Division has 2 programs: 1) fee-for-service (24% of WC cases); & 2) state/federal VR program if carrier/employer refuses to pay. • WC agency monitors VR cases.	• State Rehab. Div. provides services (98% of VR cases), requests reimbursement from carrier/employer. Contracts with loosely regulated private providers for some services. • Private providers allowed for past 5 years only	• WC Bureau contracts out for all VR services by competitive bid process, approves and monitors all plans; penalty for provider failure to report plan development. • No regulation of providers, but they must have certified staff	• Ind. Comm. refers VR cases to Rehab. Services Comm. RSC requests reimbursement from Ind. Comm. for approved plans. Since 1992, Ind. Comm. has an agreement to transfer funds to RSC to allow them to obtain increased matching federal funds.
Referral to VR- # Lost-Time days	No time requirement	40 days	No time requirement	30 days	No time requirement
Special RTW Program Features	NA	• Integrated employment effort–employment specialists educate employers and unions about early RTW	• State Rehab. Div. has 25 job development/placement counselors who market RTW; plans to expand to 40 counselors in near future). SRD offers some job site modification. • Carrier/employer pays salary differential.	• 1993 law change to provide certain employers 5% discount on WC premiums for rehiring injured workers • OJT and job information financed through State WC Fund	• Surplus Fund provides: • OJT • Employer reimbursement for loss of worker productivity • Job retention services • Worksite modification • Worker reimbursement for salary differential for up to 4 years.
RTW Program Outcomes	Prior to 1990 law change, carrier/employer had to pay up to $2,500 for VR evaluation and counseling.	• According to VR Div., 50% complete a plan; of these, 100% RTW at 90% of preinjury wages. • Private providers report 80-90% placement rate, high % job retention.	• According to SRD, 57% of VR plan completers RTW	• VR unit of WC Bureau reduced their budget from $3.5m in 1989-90 to $2m in 1991-92, through active early intervention and loss prevention strategies. • RTW data not available.	NA

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina
VR Status	Mandatory as of 9/93	Mandatory	Voluntary	Mandatory	Voluntary
Goal of VR	Gainful employment	Return to employment as close as possible to regular employment at preinjury wage	No provision for VR in the WC law	Restore to productivity, RTW	No provision for VR in WC law
Financing of VR Services	• Carrier/employer • Some by federal/state VR program	• Carrier/employer • State Re-Employment Assistance Reserve, 2nd injury fund, with employer and worker contributions • Federal/state VR program	• Carrier/employer • Federal/state VR program	• Carrier/employer • VR unit funded by WC premium assessment	• Carrier/employer • Federal/state VR program
Providers of VR Services	• Private providers (not regulated) • WC agency does not monitor VR • Div. of Rehab serves very few WC claimants via the federal/state VR program	• Certified private providers, fee schedule in law • State's VR agency serves some WC claimants	• Private providers (not regulated) • Public rehab. office receives monthly list of all industrial injuries; all claims which may produce 100 days or more of lost time are sent letters/brochures about VR services	• Certified private providers • WC approves VR plans • No fee schedule in law • Donley Rehab Center is VR unit funded within the WC agency. Full in-house services but contract out for placement. Request carrier/employer to pay for formal training.	• State rehab. agency • Private providers (not regulated)
Referral to VR- # Lost-Time days	No time requirement	90 days	No time requirement	90 days	No time requirement
Special RTW Program Features	NA	• Budget of $250,000 for employer/employee education • Financial incentive to employers such as Preferred Worker Program, Employer-At-Injury Program (since 1990) • At full medical release, employer must rehire worker if preinjury job exists	NA	• AS of 5/92, employers mandated to rehire worker if can perform prior job with certain accomodations. • Rehab. Ctr provides job site modification, requests carrier/employer to pay • Transitional employment: carrier/employer pays 2/3 of wage differential	NA
RTW Program Outcomes	Information not collected	• 40% of those that receive VR assistance RTW. • Of those that complete VR plan, 75% of preinjury wages.	Information not collected	• Of those workers that receive VR services through Rehab Center: • With training, 50% RTW • Without training, 23% RTW	Information not collected

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	South Dakota	Tennessee	Texas	Utah	Vermont
VR Status	Voluntary	Voluntary	Voluntary, but SIB recipients may lose benefits for non-cooperation	Voluntary	Mandatory
Goal of VR	Suitable, gainful employment	No provision for VR in WC law	Return to gainful employment	Gainful employment	RTW at comparable job and comparable salary
Financing of VR Services	• Carrier/employer • Federal/state VR program	• Carrier/employer • Federal/state VR program	• Carrier/employer • Federal/state VR program	• Carrier/employer • Federal/state VR program	• Carrier/employer • Federal/state VR program
Providers of VR Services	• Certified private providers • State rehab. agency (less than 5% of caseload WC) • Div. of Insurance refers to private providers.	• Private providers (not regulated) • State VR agency • As of 5/91, Div. of Rehab Services and Office of WC coordinate services for injured federal workers. US Dept. of Labor's WC Office assumes financial responsibility for services.	• Carrier/employer • Private providers (unregulated) • Texas Rehab Comm., state rehab. agency; 20-25% of TRC cases are WC claimants	• Approx. 55% of VR cases ref. to private providers (monitored, not regulated); 40% to public rehab. agency (request reimbursement from carrier). 5% is joint effort. • Referrals to public rehab increased 57% from 1990-92. • Ind. Comm. monitors VR.	• Private providers (minimal regulation) • No fee schedule in the law • WC agency approves VR plans. • Public rehab program serves few WC claimants.
Referral to VR- # Lost-Time days	No time requirement	60 days	4 weeks	90 days	90 days
Special RTW Program Features	• Carrier/employer pays salary differential until worker receives an impairment rating.	NA	Early RTW pilot projects for WC claimants operating in several sites with TRC participation	• Statewide coordinated referral process between employment agency and Div. of Rehab. • Industrial Comm. has re-employment program emphasizes early assessment/eval. to expedite RTW.	• All RTW efforts through private providers; difficult due to lack of a second-injury fund
RTW Program Outcomes	Information not collected	Information not collected	• Information not collected statewide • In Early RTW pilots, 85-90% RTW with preinjury employer, and avg. cost per RTW closure of $10 vs. $2,000 for other TRC/WC closures.	• According to Ind. Comm., 76% of eligible disabled workers RTW in 1991-92, 42% with same employer at higher avg. weekly wage (a 22% increase over 1990) • 84% of VR formal plan completers RTW at 93% of preinjury wage	• Approx. 25% of WC lost-time claimants enter a VR plan; RTW data now being collected

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

Table 3.1
State Vocational Rehabilitation and Return-to-Work Programs (cont.)

	Virginia	Washington	West Virginia	Wisconsin	Wyoming
VR Status	Mandatory	Voluntary	Voluntary	Voluntary	Voluntary
Goal of VR	Employment consistent with preinjury employment	Gainful employment	Suitable, gainful employment	Restore to preinjury earning capacity and potential	No provision for VR in WC law
Financing of VR Services	• Carrier/employer • Federal/state VR program	• Employer • Self-insurance • State WC Fund also pays for VR services. • Note: workers pay % directly into Fund for WC/VR services	• Monopolistic State VR Fund insures majority of employers through WC premium assessment • Self-insurance	• Carrier/employer • Federal/state VR program	• Federal/state VR program only
Providers of VR Services	• Private providers (not regulated) • Public rehab. agency (small % of WC clients) • 1992 law change allows education to be a VR option. • WC agency is a court & does not monitor VR	• Certified private providers • Fee schedule in the law • WC approves and monitors VR plans for funding	• Private providers (regulated) and State Rehab. Board • WC agency approves VR plans • Rehab. Board charges WC agency fixed service rate 5% less than private providers • All medical treatment must be approved by a managed care organization	• Private providers (not regulated) • Div. of VR in DHS; WC Div. refers serious cases (25–50 per month) to DVR. • WC Div. disseminates info, refers cases, but does not approve VR plans or monitor cases.	• WC agency refers cases to state rehab. agency when appropriate (usually severe cases) • State rehab. agency provides full range of services through state/federal VR program
Referral to VR- # Lost-Time days	No time requirement	90 days (for self-insurers only)	100 days	13 weeks	No time requirement
Special RTW Program Features	NA	• Financial incentives to Fund-insured employers & workers include: job mod., loss-of-earning power reimb., skills enhancement, premium discounts • Since 1990, state agencies and higher ed must have RTW programs • Early intervention staff at WC agency	• State Fund pays 70% of salary differential for up to 2 yrs for early RTW • Workers can RTW for 90-day trial period; if they quit, benefits are reactivated immediately. • State Fund pays salary during OJT.	• Employers required to rehire workers if suitable openings exist; penalty is up to 1 year in back wages. • WC Div. promotes light-duty early RTW programs	• State Fund pays 2/3 of salary differential • Several years ago, a light-duty pilot project started in which State paid salary; unsuccessful & few employers took advantage of it
RTW Program Outcomes	Information not collected	• According to WC agency, 30% RTW at service completion, and 43% are found able to work.	• 50% of cases reviewed for VR are placed in retraining due to lack of transferable skills. • 40% RTW after VR plan completion. • 80% RTW after OJT.	• According to DVR, 50% of VR participants that complete a plan RTW • 20% of claimants referred to DVR are placed in training.	Information not collected

Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

IV. Return-to-Work in Washington and Oregon: A Tale of Two States

As indicated in section III which reported the results of a canvass of all states and the District of Columbia, a number of states are now actively engaged in some form of early RTW and/or VR efforts for their workers' compensation claimants. In addition to describing their own efforts, contacts in these states were asked to identify those states which were thought to be on the "cutting edge" of RTW and VR for claimants, providing both innovative and effective efforts on their behalf. A number of nationally recognized experts in the areas of workers' compensation, VR and RTW were also interviewed to solicit their nominations for the more innovative/effective states.[5]

Several states were typically mentioned by respondents and experts alike as being leaders in these areas, including Michigan, Minnesota, New York, Oregon and Washington. California and Florida were often mentioned as well, but generally as states which had ventured into new and innovative territory less than successfully. U.T. researchers ultimately selected the two most highly touted states, Washington and Oregon, for site visits in consultation with TWC Research Center staff and contacts in each of those states. Detailed case studies of both Washington and Oregon comprise this section. These case studies are based on intensive, on-site interviews with workers' compensation, VR, insurance carrier and employer representatives in August 1993, as well as on extensive written materials collected before, during and after the site visits.

A. Washington State—Where Business-As-Usual Is Not

Legislative Reform. Washington underwent numerous changes to its workers' compensation law in 1985 in a response to escalating costs. From 1985 to 1992, Washington experienced a $500 million turnaround of their workers' compensation system. In 1985, Washington's Workers' Compensation Insurance Fund, which operates as a monopoly, was losing $18 million a month, ending the year with a $144 million operating loss. By 1992, as a result of some of the changes described below, the State Fund generated a *surplus* of $340 million. Washington's Department of Labor and Industries (DLI), which houses the state's workers' compensation program, won an "Innovations in State and Local Government Award" sponsored by the Ford Foundation in collaboration with Harvard University's Kennedy School of Government.

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[5]In addition to TWC Research Center staff, U.T. researchers spoke at length with the following individuals: Bobby Geirish and Roy Evans, former and current members of the TWC Research Center Board, respectively; June Karp, director of Texas' Legislative Oversight Committee on Workers' Compensation; Ken Forbes, now with TWCC, but formerly with Oregon's workers' compensation program; Delvin Sparks of the Texas Rehabilitation Commission; Peter Barth, University of Connecticut; H. Alan Hunt, Upjohn Institute for Employment Research; John Lewis, a Florida-based WC consultant; Allan Tebb, California Workers' Compensation Institute; and Judy Greenwood, West Virginia WC Division.

In terms of VR and RTW programs, Washington's 1985 legislative reforms were intended to:

- Reduce unnecessary referrals to VR;
- Restrict eligibility for services to injured workers who lacked transferable skills and would benefit from those services; and
- End services and lost-time payments when injured workers became employable.

These reforms also included the following changes affecting VR services:

- In the past, all injured workers were required to be referred to rehabilitation counselors within a specified time period; the 1985 law put discretion for such referrals in the hands of the Supervisor of Industrial Insurance.
- Injured workers are eligible for VR services *only* if such services are "both necessary and likely to enable the workers to become employable at gainful employment".
- The goal of VR was changed from "suitable gainful employment" to simply "gainful employment", where "gainful" is defined as compensation at the state or federal minimum wage, whichever is higher.
- In 1990, the Legislature mandated that all state agencies and institutions of higher education must have a RTW program for state employees.
- Prior to FY 1986, medical claims were handled by DLI's medical unit and vocational issues by its vocational unit. Separate staff were responsible for claim opening and claim closure. This fragmentation of expertise resulted in numerous specialists and a piecemeal approach. The reforms succeeded in integrating the disparate functions into one job, the claims manager.
- Firms are now required to pay workers' compensation premiums based on *individual company experience* within their particular industry-risk classification. Prior to reform, workers' compensation premiums were based on *industry*-risk classification only. The new formula provides for greater company-level accountability.
- The law requires companies with eight or more employees to have a labor-management safety committee responsible for investigating every accident. Assistance in setting up these committees is available from DLI safety specialists.

Organizational Structure. Washington has a *Workers' Compensation Advisory Committee* which is composed of four representatives of labor and four representatives of management appointed by the DLI Director. Members serve two-year terms or at the will of the Director. The committee does not address benefit issues, but focuses on medical care, disability prevention, delivery systems and investment practices of the State Fund.

The *Joint Labor Management Task Force for the Prevention of Long-Term Disability* was formed by the Workers' Compensation Advisory Committee in 1991 to make recommendations for changes in Washington's workers' compensation system. The Task Force is composed of equal representation from both organized labor and business, and all of its findings are the product of a consensus decision making process. The Task Force has created a series of recommendations to shift the focus from processing the claims of injured workers to actively managing claims to prevent permanent or long- term disability. Long-term disability claims (greater than 120 days) represent less than five percent of total claims, but account for 84 percent of the costs to the workers' compensation system—$833 million for long-term claims incurred in FY 1993 alone. The Task Force addresses issues such as medical care, RTW programs, rehabilitation, and incentives/disincentives in the system.

The *Board of Industrial Insurance Appeals*, a constituency board, has oversight over DLI. The three-member board is appointed by the Governor from lists submitted by the Association of Washington Businesses and by the Washington State Labor Council for six year terms. The public member is the chair and must be approved by both of these groups. Only the chair must be an attorney. Overseeing workers' compensation is the Board's primary activity. Appeals are made to the Board. Employers in the State Fund cannot appeal beyond the Board, however workers have that option. Board members are obligated to review the cases on the facts and the law, while the administrative law judge serves as the first recourse in disputes. Fifteen hundred cases were heard at the Board level in 1992.

VR–Employer/Employee Responsibilities. VR is said to be voluntary in Washington, but it is actually semi-mandatory. If DLI determines that an injured worker needs VR to be "suitably employed", it can order the self-insured employer to pay for services. The DLI can also ask the employers that insure through the State Fund to pay for services. If these employers refuse, however, the State Fund covers the costs.

The 1985 reforms removed the word "suitable" as a goal for VR. Now the goal is "gainful employment", even if that means a minimum wage job. An injured worker is not eligible for VR if a job exists in the labor market, the worker is physically capable of doing it, and the worker has the skills commonly necessary to do the job. Injured workers that refuse to cooperate risk losing their benefits.

System Financing. Washington is essentially monopolistic in terms of workers' compensation insurance. Employers have the choice of either self-insuring or insuring through the State Fund. Premiums paid to the State Fund are based both on the firm's industry risk classification and on the firm's own experience rating, as determined by the cost of injuries incurred in the last three years.

The State Fund currently has approximately 140,000 individual employer accounts. Of these, there are 58,000 employer accounts that report less than 2,080 hours per year or less than one full-time employee. There are 365 self-insured employers, covering one-third of the workers in the state. Self-insurers must have at least two million dollars in reserve and provide the same level of benefits as the State Fund. Being self-insured allows an employer to exert some control over its own claims, consistent with state policies.

Washington is one of the only states in which employees directly pay a portion of workers' compensation/VR costs. Washington has both an Accident Fund and a Medical Aid Fund. Employers pay 100 percent of the Accident Fund, but the Medical Aid Fund is split 50/50 between the employer and the employee (although some employers cover the employee premium contribution). The Medical Aid Fund is administered by the DLI and is used to pay for reasonable medical and VR expenses for injured workers. The contribution is based on the firm's industry risk class and its experience rating. Consequently, the rate is determined by the firm's claims costs and the employee's hours of exposure. For example, a logger will contribute significantly more to the Medical Aid Fund than a clerical worker that sits at a desk all day. Employees can see on their paychecks exactly how much they have contributed to this Fund.

In 1983, Washington started a retrospective rating program (commonly referred to as "retro") for employers insuring through the State Fund. This "retro" program allows a firm or group of firms to "bet" the Fund a percentage of their annual premium that they will have less than a specified dollar amount in claims in the following 12-month period.[6] The firm or firms that win the "bet" receive a partial premium refund. A firm can enroll in the "retro" program at four different times in the 12-month period. The state offers five different "retro" plans depending on the firm's risk class. California, Ohio, Texas and a number of other states also have "retro" programs.

Providers of VR Services. Washington has both a public and private VR provider system. DLI's Industrial Insurance Compensation Division has a staff of 35-40 that provides early intervention services. DLI also contracts with approximately 50 private firms for VR services at an annual cost of approximately $33 million. Private VR firms are contracted for two-year terms in each service location. Claims managers have total discretion in choosing among contracted providers.

Private VR firms and counselors must be state-certified. The office of Private Sector Rehabilitation Services at DLI is responsible for regulating and monitoring the provision of vocational services. Counselors must register with DLI and submit proof of education and experience. VR firms that do business with the State Fund must go through a request-for-proposal (RFP) process to get on the state-maintained list of "preferred

[6]"Bet" is a term used informally by firms and state staff alike in describing the "retro" program.

providers" from which claims managers may then select. Private counselors' rates are set by contract at $55 per hour for professional services and $30 per hour for travel/wait time.

Service Delivery System. State-provided VR services are housed in the DLI. Prior to the legislative reform of 1985, all cases had to be referred for VR services within 90 days of the date of injury. Currently, only self-insured employers have to report case status after 90 days of continuous lost-time. The status report should detail whether the worker will return to work in a specified time frame or will require VR services to become employable. Employers insured through the State Fund do not have a specified time requirement to work within, since the claims manager has complete discretion.

In FY 1994, there were 14,000 referrals to VR for assessment and a total of 180,000 new workers' compensation claimants. Roughly 22 percent (40,000 claims) of all claims involve lost-time payments. Around 10,000 referrals were first-time VR referrals of injured workers, thirty-five percent of which were made within 90 days. Twenty-five percent of referrals were made between 90 and 180 days. Eighty percent of these referrals were within the first year after injury. According to DLI staff, early intervention with the employer-at-injury or their current employer should be completed within 45 days of referral.

Early intervention often begins with the claims manager (if caseloads allow), who may call the principal players to assess whether the employee-employer relationship is secure and if there are medical barriers to early RTW. If this initial intervention is unsuccessful, the claims manager sends the file to a VR counselor. The counselor contacts the primary participants by phone within five days of the referral. The counselor meets with the attending physician to discuss medical treatment, physical limitations, and a RTW timeline. A meeting is set up with the employer-at-injury or the current employer to facilitate the injured worker's successful return to work as soon as possible. Early intervention with the employer is imperative.

In addition to meeting with the physician and the employer, the counselor also interviews the worker to explain the process and RTW priorities and to obtain an accurate job history. The early RTW intervention priorities are:

1. Return to the previous job with the same employer.

2. Modification of the previous job with the same employer, including transitional return-to-work.

3. A new job with the same employer in keeping with any limitations or restrictions.

4. Modification of a new job with the same employer, including transitional return-to-work.

Early RTW intervention is *not* an ability-to-work assessment. An ability-to-work assessment is completed when there are *no* RTW options available for the injured worker with the prior employer. An injured worker is eligible for VR *only* if vocational services are "both necessary and likely to enable the worker to become employable at gainful employment." The evaluation of the injured worker's work history goes back ten years to identify all the jobs held and any transferable skills. If early return to work is not feasible, the counselor submits his/her professional opinion to the claims manager in an Ability-To-Work Summary Report. The report must include the worker's current medical status, employment history, education, as well as provide occupational possibilities and supporting labor market information. To speed up the process, in 1989 counselors were permitted to make RTW recommendations. A finding that the injured worker is employable and therefore not eligible for vocational benefits can be appealed to DLI's Vocational Dispute Resolution Office. The Director makes a decision within 30 calendar days. The director's decisions can be appealed to the Board of Industrial Insurance Appeals.

The claims manager makes a determination regarding the injured worker's eligibility for vocational services based on the Ability-To-Work Summary Report and the attending physician's report. If the claims manager does not concur with the counselor's recommendation, a rehabilitation consultant in the claims department may be asked to provide a third opinion. The claims manager can also request a second medical opinion. After all the information is gathered, the claims manager makes the final decision.

If the injured worker is determined to be able to return to work before he/she is "fixed and stable", lost-time payments cease. A worker in this situation who returns to work becomes eligible for "loss-of-earning-power" benefits until claim closure, if the earnings loss is large enough and related to the injury. Residual impairment is rated once the worker's condition becomes fixed and stable and a permanent, partial disability award is paid based on that impairment rating.

If the worker is not able to return to work, the claims manager may authorize further plan development. A RTW plan includes strategies for achieving the RTW goal selected, time and costs involved, and documentation to support the feasibility of the goal and the responsibilities of the parties. Once a plan is developed and approved, the employer and/or injured worker can submit their written concerns within 15 days to DLI's Vocational Dispute Resolution Office.

Injured workers that do not have "residual skills" (based on their preinjury work history) and are therefore found not to be "employable" are referred by the claims manager to a private rehabilitation firm. The claims manager is authorized to approve rehabilitation plans paid for through the State Fund. The statutory limit for retraining is $3,000 for 52 weeks with one possible 52-week/$3,000 extension. Some 8 percent of workers with

compensable claims in 1984 were found eligible for VR services covered by the State Fund. This percentage increased for workers injured in 1985 and 1986, but has dropped to around 6 percent, as a likely result of earlier referral for services and increased focus on RTW prior to assessing VR eligibility. The volume of assessment/intervention activity has varied more widely. Some 16 percent of workers injured in 1985 received one or more assessments/interventions, compared to only 13-14 percent for those injured in the 1986-1988 period. The percentage has steadily increased since 1988, with earlier referral and the advent of RTW, from 18 percent in 1989 to close to 28 percent in 1994.

High rates of utilization of intervention services stems in part from special conditions within the State Fund. The total number of State Fund claim managers is restricted by the State budget, and claim managers have strong incentives to delegate work to VR counselors as a way of managing their workloads. These incentives include electronic links between claim managers and VR firms which allow referrals to be made and recommendations returned electronically. Professional VR services are unlikely to be needed by a full 28 percent of injured workers. Self-insured employers operating under Washington law report on the ability to work of only about 15 percent of claims.

The total cost of VR services was $37.5 million in FY 1985, rising to $46.6 million in FY 1994; in real (inflation-adjusted) terms, however, total VR costs fell by just over 10 percent during this period. Increased use of RTW has been associated with increased VR costs. Costs of RTW interventions have increased, and the costs of rehabilitation plan development and implementation have not declined substantially. Whether this pattern of VR use is cost effective for the State Fund as a whole is currently being studied.

Self-insured employers manage their own claims or contract with a service firm. These employers are required to report accidents and case closures to the DLI, which has monitoring and auditing responsibilities. They are required to report on the employment or ability-to-work status of all claims with more than 90 days of lost-time; only 15 percent of claims need to be reviewed by DLI under its 90-day rule. Only one percent of self-insured compensable claims are sent on to rehabilitation plan development, compared to seven or eight percent of State Fund lost-time claims. Of the State Fund claims, only four to five percent eventually receive approved plans.

The claims manager is an important gatekeeper in the system. Given that the claims manager must make numerous decisions in a short time frame, often with limited information, the process is said to be "more of an art than a science." To prepare them for this task, claims managers must undergo lengthy training. The program is the second longest training program in the state (the first being state patrol officer training), lasting eight or nine months. Training is held in four-week increments, with classroom training and practical application alternating each month. DLI has been implementing a new

imaging system to support more timely and effective claims management at the manager level (as shown in the box on the following page).

In many aspects, the physician is the gatekeeper to the system since his/her permission is generally needed to return an injured worker to work. The claims manager can question a physician's decision and ask for additional information, clarification, and/or testing. However, the claims manager does not make employability decisions without physicians' recommendations. The DLI is trying to educate the medical community. Washington now requires physicians to submit a report about the worker's progress each time he or she comes in to determine what the worker is physically capable of doing.

DLI, in conjunction with the Washington State Medical Association's Industrial Insurance Advisory Committee, developed a process for establishing medical practice guidelines for diagnosing and treating injured workers. The need for this became apparent after Washington discovered that injured workers receiving surgery were less likely to recover if disability-related issues were prominent at the time of surgery. Because of the monopolistic nature of the State Fund, DLI could mandate these guidelines (other states have to rely on insurance companies to enforce usage of similar guidelines). These guidelines have proven to be very powerful. DLI is in the process of hiring a chiropractor as Associate Director, reported to be the first such official in the nation.

The Use of Imaging for Claims Management. The claims department is in the process of implementing a new imaging system that replaces microfilm. DLI currently receives 90 inches of mail a day regarding claims. In the past, it took at least two weeks to translate a document into microfilm; imaging has reduced this process to two days. The claims department is in the first phase of this two-year project, with an initial budget of $6.4 million. So far there are two scanner units running, with more on the way. Two hundred claims managers and support staff will eventually have access to the imaging-based claims records. Field offices are not yet budgeted for the system. Key benefits to imaging for RTW/workers' compensation case management are that it:

- Allows documents to be scanned, organized and stored on the computer;
- Indexes the information, records the received date, assigns claims numbers and is ready to read in just in two days;
- Provides the last 60 days' worth of correspondence;
- Allows side-by-side comparison of documents;
- Provides summary of benefits;
- Allows decisionmaking on the most current information;
- Faxes and prints directly from the screen;
- Allows back up and off-site storage; and,
- Provides a screen that informs the claims manager when the case needs to be re-examined. Every morning, the computer automatically lists the claims which need to be checked that day.

Imaging allows claims managers to effectively and efficiently manage their caseloads. The claims manager can compare recommendations from the counselor and the physician, and ensure that progress noted by the physician is communicated to all parties to facilitate the RTW process. This has proven to be very useful since the physician does not automatically inform the counselor or the injured worker of his/her prognosis.

Program Outcomes. Approximately 40,000 compensable lost-time claims are opened each year, some 28 percent of which are eventually referred for VR services. Washington's Employment Security wage match data for claims closed between 1989 and 1991 show that 74 percent of injured workers were working in Washington during the quarter their claim was closed—80 percent of those who did not require vocational services

and 47 percent of those who received vocational services. Some 91 percent of these workers were recorded as employed during the quarter of injury (when all should have been working). Only 80 percent of workers were recorded as working two quarters prior to injury. Thus, it is difficult to know what the 74 percent employment rate should be compared with. It is clear that employment is less common among injured workers before and after injury than in the quarter of injury.

The State Fund tracks outcomes for that portion of workers who receive VR intervention and other VR services. Services received by the State Fund were found to be successful for 73 percent of injured workers with services completed in FY 1994. Thirty percent of participants returned to work, while an additional 43 percent were found able to work. Rehabilitation plans were needed for only 31 percent of participants. The remaining 69 percent received RTW interventions only. Washington's wage match studies also suggest that 40-45 percent of workers found able to work were working during the quarter following injury, and over two-thirds return to work at some time during the four quarters beginning with the quarter of "employability".

DLI staff also found that injured workers who returned to work following an RTW intervention recovered more of their preinjury earnings than did VR plan completers, 80 percent compared to only 70 percent. They attributed the lower wage replacement figure for the latter to the fact that plan completers were more likely to change employers or enter new occupations.

RTW Programs. DLI is working on early intervention. They use loss-control specialists, auditors, and vocational counselors based in the field to contact employers and look for RTW opportunities. Rather than waiting for direction from DLI, the field staff are asked to look for needs and to use their discretion in responding to those needs.

According to DLI, the key to an effective early RTW program is the employer/employee relationship. The employer and the worker are the key players in the system and must therefore institutionalize a process to work together. They are the ones who "own" the system and so they are the ones to change the system. If they are absentee owners, the special interest groups will take the system over.

DLI field staff try to convince employers to "take back their system." They emphasize the need for the employer to get the injured worker back, even if they have to pay full wages while the person only does part of the job. The company has an investment in its employees and must reassure them that they are vital assets. The field staff stress that the lines of communication must be kept open for early RTW to be effective. Problems need to be kept at the level at which they originate rather than letting outside interests become involved. Supervisors or managers are encouraged to understand that it is

acceptable to call the worker at home and that the worker is most likely feeling isolated and waiting for that call.

One-tenth of DLI's VR staff are working on injury prevention, provider education, and monitoring. Employers are shown how to establish an early RTW program that will reduce medical costs, disability payments, awards and litigation. This involves getting labor and management in place so that when an injury occurs someone accompanies the injured worker to the physician's office with a job description. The physician should understand that the employer wants the worker back as soon as possible. In the past, the physicians dealt only with the injured worker, not the employer. Where caseloads allow, claims managers will assist in early intervention, but DLI tries to encourage workers and employers to do this on their own.

Ninety-five percent of Washington employers are small (fewer than 25 employees) and do not have the resources or the flexibility to implement early RTW programs. Staff at DLI have been educating employers on the benefits of working together with other small employers, because together, they can share and trade jobs at similar pay levels to accommodate injured workers. One Seattle-based employer's very successful RTW efforts are highlighted in the following box.

W.G. Clark Construction: An Early RTW Success Story. In 1986, W.G. Clark Construction Co. in Seattle had more than 250,000 worker hours and paid $500,000 for workers' compensation coverage. The company had an accident "experience rating factor" 1.3 times the state average. By 1992, Clark had cut their accident rating to less than half the national average and reduced their workers' compensation premium to $78,000. Clark has now gone more than six years and one million worker hours with only two lost-time claims (lost-time starts on day four). For the fourth consecutive year, Clark has been among the top three safest construction firms in the nation. These savings were a result of a claims management system, a safety management program, an incentive program for field managers and employees to reduce lost-time and an aggressive, early RTW program. Clark Construction has been so successful with its risk management program that it recently set up an in-house subsidiary, Approach Management Services, to consult with other firms in a variety of industries on how to reduce their workers' compensation costs by implementing early RTW and safety programs.

Washington provides several *financial incentives* to employers to hire injured workers:

- *Salary Differential.* The State Fund pays for loss of earning power until the worker is medically stable.

- *Job Modification.* The Fund will pay up to $5,000 for job modification assistance per worker per job modification. Claims managers can approve up to $1,500 for job modification without supervisor approval. If the worksite must be altered to accommodate the worker, the employer typically pays 50 percent of the costs involved, although that is negotiable.

- *Short-term Training.* The state provides "skill enhancement" or mini-training plans intended to help a worker brush up on skills previously learned. The goal is for the worker to go back to the preinjury employer in a position that requires these skills. The skill enhancement plan can last up to 90 days and cost up to $500. The plan must be signed by the employer, employee and attending physician.

- *Premium Reductions.* Finally, DLI has the discretion to reduce or eliminate premiums or assessments to encourage employment of injured workers who are not re-employed by the employer at-the-time-of-injury. An injured worker may be classified as a "preferred worker" if the injury precludes the worker from returning to work with the former employer and impairs the likelihood of re-employment with other employers. Employers insured with the State Fund who hire a "preferred worker" may be excused, for a period not to exceed 36 calendar months, from the payment of any accident fund premiums and medical aid premiums associated with that worker. The second injury fund covers the costs of any subsequent injuries during the 36 month period. Last year, 2,983 "preferred worker" certifications were issued and 1,149 "preferred workers" were hired.

The *Work Safe 90s Program* was begun in 1989 and implemented in 1991. The first group of 15 employers who enrolled in 1991 realized a 17 percent reduction in workers' compensation costs by the end of the third year. It took a year for the concept to take hold. Players were perceived as either employer or employee advocates. It was difficult to convince them that the issue was not black or white, that one could be an advocate of both at the same time. *Work Safe 90s* is a "carrot" program that offers businesses insuring through the State Fund a 15 percent up-front discount on their first-year premium, ten percent the second year, and five percent the third year, after which they can enter the "retro" program. As of August 1993, 15 accounts had been signed; 100 more were currently being assessed for eligibility. To be eligible, an employer must:

- Have a RTW program in place or be in process of planning one;

- Have a claims management program (which could be as little as one-tenth of the time of a personnel staff person);

- Be current on their premium payments to the State Fund; and,

- Agree to let DLI auditors audit their accounts. The first audit is done as a risk-free educational process to ensure that the rate classes are accurate and the firm is being charged the proper premium for the hours worked. Past discrepancies do not have to be back-paid. However, subsequent audits will demand payment if problems are discovered. Normally, an employer has a one in twenty-five chance of being audited each year. However, under this program, employers know they will be audited with certainty, and the second time will be for real.

Washington's Future Plans. Washington is clearly ahead of most states in pursuing workers' compensation reform and in implementing innovative and effective RTW programs. Several other developments are likely in the near future, including:

- *Worksafe Washington.* This is a program similar to Worksafe 90s for employers in the construction industry; and

- *Long-term Disability Pilot Projects.* One planned pilot project reduces the number of employers and workers served by claim managers and enhances RTW services. The second pilot reduces caseloads, enhances RTW services and also uses case managers to work with attending physicians to improve medical care, to increase physician willingness to rate impairments and to prevent unnecessary disputes.

B. Oregon—Win/Win Strategies at Work

Legislative Reform. In 1986, Oregon ranked sixth highest in the nation in average workers' compensation premium rates paid by employers and had one of the nation's highest occupational injury and illness claims frequencies. The system was characterized by:

- Unnecessary medical treatment and extensive VR;
- Proliferation of stress claims;
- Mandatory assessment for VR of all injured workers on lost-time for 60 days or more;
- Lack of control by insurance companies over rehabilitation expenses;
- Training used as a means to maximize an injured worker's potential;
- Lack of incentive to employers to hire or re-hire injured workers; and,
- Proliferation of litigation resulting in a claim's status often not being determined for 60 days. Due to a backlog, workers could be out of work six or seven months waiting for medical treatment.

In 1987, Governor Neil Goldschmidt appointed a seven-member committee, headed by the Oregon Secretary of State, to recommend changes to the workers' compensation statute. The committee membership included the chairs of the House and Senate Labor Committees, representatives from the largest business group, the AFL-CIO, and the trial lawyers association. Based on the committee's recommendations, legislation was enacted which made the following changes to the VR system:

- Eligibility requirements for VR services were restricted. Prior to 1987, the primary condition for VR assistance was if an injured worker needed assistance to return to his/her previous employment or any employment. Under the new law, workers who can return to their employer at injury or to any other job that pays at least 80 percent of their job at time of injury wage do not receive vocational assistance.
- Injured workers were permitted greater involvement in the selection of VR providers.
- Providers were required to certify with the Department of Insurance and Finance.
- A flat VR service fee structure was developed. In the past, providers billed on an hourly basis.
- Training programs were limited to 16 months, with one possible extension to 21 months under certain conditions. In the past, there had been no time limit on training.

As a result of these changes, the number of new vocational assistance cases decreased by 84 percent from 1987 to 1991, while the total cost of closed cases decreased by 42 percent. However, workers' compensation costs remained a significant problem.

In 1990, a 14-member Labor-Management Advisory Committee was appointed by the Governor to develop proposals for further changing the workers' compensation system. Special interest groups that had profited under the old system, such as attorneys, doctors and private VR providers, were intentionally excluded from the development process. In May of 1990, Governor Neil Goldschmidt charged the Legislature with passing the resulting massive workers' compensation bill exactly as it was drafted by the Committee. These sweeping changes marked a significant departure from the way the system had been operating for the past 25 years. The bill was passed in a single day and mandated the following changes to workers' compensation:

Controlling Medical Costs

- Palliative care (care that makes one better but does not improve the medical condition) would no longer be covered after the worker is medically stationary.
- The definition of an attending physician was confined to medical doctors, oral surgeons and osteopaths. Chiropractors, who had previously been included, could only have attending physician status for a maximum of 30 days or 12 visits.
- The definition of a job-related injury was changed to cover only pre-existing and consequential conditions.
- The law defined injury starting and ending points, to address the issue of pre-existing conditions.
- Physicians were made accountable for keeping all participants (i.e., injured workers, employers, counselors) informed of the status of injured workers.
- Insurance companies were authorized to contract with managed-care organizations (MCOs), certified by the Department of Insurance and Finance, as a way to provide quality medical care while still controlling escalating medical costs. Insurance companies could now require injured workers to use MCOs.
- Hearings to resolve treatment disputes were eliminated in favor of utilization standards established by the Department of Insurance and Finance.

Injured Worker Benefits:

- Awards to injured workers who suffered "scheduled injuries" more than doubled from $145 for each degree of impairment to $305. Scheduled injuries are those injuries which involve the loss of an extremity.

Worker Reinstatement:

- Injured workers were given three years of reinstatement rights to return to their regular job if the job still existed, even if a replacement had been hired. Reinstatement rights did not apply to employers with 20 or fewer employees at the time of the claim or the worker's reinstatement demand.

Employer Incentives:

- Improved financial incentives were offered to employers who hired injured workers.

Settlements:

- Compromise and release (lump sum settlements) of future benefits on an accepted claim would be permitted. This did not apply to medical benefits.

Safety Committees.

- Employers with more than ten employees were mandated to establish labor-management safety committees to investigate each accident. Employers with fewer than ten employees were required to establish similar committees if they were in a hazardous occupation or had a high incidence of job-related injuries. Minutes of safety committee meetings were to be kept and audited by Oregon's Occupational Safety and Health Office.

These reforms improved the balance between employers who pay the premiums and injured workers who receive the benefits. By 1993, Oregon had become a national model for workers' compensation reform and improved workplace safety and health. Oregon has experienced:

- The largest percentage rate reductions in the nation—23 percent from 1990 to 1992, saving employers more than $200 million. A third reduction of 11.4 percent is scheduled for 1993.
- A drop in ranking from eighth highest nationally in 1990 to 22nd in 1992.
- A 110 percent increase in benefits paid to workers with scheduled injuries.
- A $65 million enhancement to Permanent Disability Benefits approved by the 1991 session of the Oregon Legislature.

The following discussion details how Oregon reformed its workers' compensation system and was able to realize these savings.

Organizational Structure. The Department of Insurance and Finance (hereafter referred to as the Department) oversees Oregon's workers' compensation laws and rules. The Workers' Compensation Division oversees the system, ensuring injured workers receive benefits to which they are entitled.

The five-member Workers' Compensation Board is an independent branch of the Department. Board members are appointed by the governor and approved by the state Senate and represent the interests of workers (two members), employers (two members) and the general public (one member). The board elects the chair. The board supervises the Hearings Division, which hears contested cases such as appeals of denied claims. The board also reviews appeals from decisions made by the Hearings Division.

In 1987, the Legislature created the Workers' Compensation Ombudsman as an advocate for the injured workers in the resolution of their disputed claims. The ombudsman accepts and investigates complaints and helps injured workers understand their rights. The ombudsman reports to the Director of the Department.

VR: Employer/Employee Responsibilities. Review of eligibility for VR is mandatory in the state of Oregon. Injured workers are required to be assessed for rehabilitation services or risk losing their benefits. Insurance firms have the authority to stop lost-time payments for noncompliance. The employer or insurance carrier is mandated to pay for VR services if it is determined such services are necessary.

System Financing. Employers have three options in terms of workers' compensation insurance coverage: self-insurance; the State Accident Insurance Fund (SAIF); or private insurance carriers. Twenty-six percent of Oregon employers are self-insured. SAIF is the designated insurer of state government. In 1976, legislation was passed allowing SAIF to compete with private insurance carriers on the open market. Currently, SAIF is the largest workers' compensation insurer in Oregon, with 37 percent of the market.

Oregon has a *Re-employment Assistance Reserve*, managed by the Department of Insurance and Finance, which was established in the early 1970s as a standard second-injury fund. This fund accumulated interest virtually untouched for two decades. The Reserve totaled $25 million in 1985, but by 1992, it had grown to approximately $85 million. During the 1980s, the Reserve was used primarily to finance wage subsidies and worksite modifications for injured workers. However, the funds were difficult to access given what administrators refer to as "red-tape rationing." In addition, injured workers were regarded as "damaged goods" and therefore not rehired. In FY 1993, expenditures from the Reserve totaled only $10.5 million, of which $6.1 million was for the Preferred Worker Program.

The Reserve is unique in that it is now funded through both employer and employee contributions. It was financed solely by worker contributions until 1988. Currently, regardless of how a firm is insured, workers pay 2.25 cents and employers pay 4.25 cents daily toward the Reserve. Workers are so used to seeing the deductions on their pay stubs, that they are often unaware that they are contributing to the Reserve.

Providers of VR Services. All direct VR services for workers' compensation claimants are provided by state certified private rehabilitation firms. In the future, Oregon plans to require continuing education credits for providers to maintain certification. The state is also considering requiring a test for all rehabilitation counselors, even those currently certified.

Service Delivery System. Workers' compensation is mandatory for Oregon employers. About 1.2 million workers are covered by workers' compensation in the state. There are some 30,000 compensable claims each year.

The law states that the employer/insurance carrier must notify the Department within five days of an injury or knowledge of an injury. The counselor then has 30 days to determine eligibility for VR. An injured worker is eligible for VR if he/she is not able to return to the labor market given his/her current skills and abilities, and is not able to earn 80 percent of preinjury wages. Following the 1990 legislative reforms, the number of workers found eligible for VR decreased considerably. Training is limited to 16 months, including remedial education, with a possible 22-month extension.

Insurance companies recently have been disputing payment for VR services for nine out of ten claimants determined eligible by counselors, creating a fertile area for disputes. All injured workers, regardless of how their employers are insured, are entitled to appeal a decision through the Department. In 1992, 1,720 VR-related disputes were brought to the Department. The average time to complete an appeal is 40 days, although the median is 20 days, indicating that most appeals are handled relatively quickly. Eighty-nine percent of the appeals are completed within 60 days of the request. If the case goes to a hearing, the time frame and the costs increase substantially.

Disputes regarding vocational services cannot be appealed to a higher level than the Director of the Department, who is to provide an objective, independent review. VR experts, trained in alternative dispute resolution, are present. The statute limits the standard of review to "substantial evidence" at the next level. Attorneys are *not* awarded fees. This process enables insurers and workers to talk through the issues largely without attorney involvement. Typically, approximately one-third of the cases are resolved through agreement, one-third are dismissed, and one-third are director's orders, of which 86 percent are in favor of the insurer. According to Department staff, appeals are often the result of personality conflicts, miscommunication or lack of knowledge.

Substantial numbers of claims are settled through Claims Disposition Agreements (CDAs) which must be approved by the Department. The injured worker can only settle issues related to VR services and lost-time benefits, *not* PPD or medical benefits in CDAs. In 1992, fully 40 percent of those eligible for VR services chose the CDA route. Insurance companies favor CDAs since training and lost-time benefits are expensive.

If an injured worker is given a full medical release, the employer is mandated by law to take him/her back if the preinjury job still exists, even if a replacement was hired. However, such reinstatement rights to do not apply to employers with 20 or fewer employees at the time of the claim or the worker's reinstatement demand.

If the worker is still recuperating but is eligible for early return to work, the counselor negotiates with the employer to arrange temporary light or modified duty. Workers not cooperating with light duty risk losing their benefits. The attending physician has to approve all work-related activities, thereby controlling the system to a large extent.

Self-insured employers have dealt with this potential problem by contracting with MCOs. Prior to the legislative reform, injured workers could go to the physician of their choice and could change physicians up to three times during the life of the claim. Now, injured workers must choose physicians from the approved MCO list. An exception is made if a worker has an established, close relationship with another physician prior to the injury. However, this physician must operate within the guidelines of the MCO if he/she is to continue to treat that worker. Self-insured firms inform new employees of this policy so that they have the option of signing up with an MCO-approved doctor for all their health care needs. Physicians that are affiliated with an MCO tend to be committed to early RTW programs and are familiar with the worksites. Consequently, they are knowledgeable about the types of jobs available and can identify alternate tasks for workers to do while recuperating.

The Department recently established a cooperation plan with the Division of Vocational Rehabilitation (DVR), which is located within the Department of Human Resources. This plan provided DVR with $300,000 (financed out of the Re-employment Assistance Reserve) for a pilot project to determine if those eligible for VR were receiving needed services or receiving duplicate services. DVR currently funds VR services through the regular federal/state rehabilitation program. As of 1993, only 900 workers' compensation cases had been funded through the pilot. It is too soon to assess the results from this pilot.

Program Outcomes. Workers' compensation premium rates decreased by over 30 percent from 1991 to 1993, saving employers over $200 million. Prior to the reforms, the majority of injured workers went through complete retraining programs at a cost of between $20,000 and $25,000 per program participant. In 1987, around 8,000 injured workers were eligible for VR assistance: of these, 1,500 were placed in training, while 6,500 were provided direct employment assistance. In 1992, only 1,350 injured workers were found eligible for VR assistance: approximately one-half of these entered training programs, while the other half either settled their claim or dropped out of the process.

RTW Programs. Early return to work is a primary goal of Oregon's workers' compensation law. The 1987 and 1990 reforms to the law succeeded in switching the emphasis from VR assistance to expanding employer incentives to encourage the hiring of injured workers. Oregon has several innovative and effective early RTW programs, including the Preferred Worker Program, Employer-at-Injury Program, and SAIF's Early RTW Program.

Preferred Worker Program. In 1990, as part of the workers' compensation reforms, legislation was passed establishing the Preferred Worker Program (PWP). In 1993, it was named "Innovative Rehabilitation Program of the Year" by the National Association for Rehabilitation Professionals in the Private Sector. This optional program, operated by the Department, provides injured workers with a package of financial incentives to offer employers to hire or re-hire them. For a detailed discussion, refer to the section of this case study entitled *Oregon's Preferred Worker Program.*

Employer-At-Injury Program. In March of 1993, the Department initiated an Employer-At-Injury-Program (EAIP) for employers who wanted to participate in an early RTW program. To qualify, the worker must have a compensable disabling injury, temporary medical restrictions on work, and the physician's approval to return to work. The employer must be the employer at the time of the original claim or the employer at the time of a claim opening. The employer must have suitable work for the injured worker while he/she recuperates and a formal early RTW policy.

While PWP is worker-activated, EAIP is employer-activated. Basically, EAIP is a response to perceived weaknesses in the PWP. In the latter, a worker is only eligible when the claim is closed, sometimes a lengthy process. EAIP provides the employer with financial incentives to offer an injured worker temporarily modified duties until their case closes and they become eligible for PWP. For example, an employer can use EAIP for a worker for up to six months. If at claim closure there is a permanent disability and the worker cannot return to his/her old job, he/she may be eligible for the PWP.

EAIP benefits may be used once per worker per opened claim. These benefits are meant for workers who are expected to recover and return to their regular jobs. EAIP financial benefits per worker available under EAIP are:

- A 50 percent wage subsidy (of wages in the early RTW program or wages at the time of injury, whichever is lower) for up to three months;
- Worksite modification up to $2,500;
- Tools and equipment up to $1,000;
- Tuition, books and class fees up to $750; and
- Clothing up to $400.

The insurance carrier covers these costs and is subsequently reimbursed by the state. There had been only 20 to 30 employer EAIP requests by August 1993.

State Accident Insurance Fund's Early Return-to-Work Program. As indicated above, SAIF is the largest insurer of workers' compensation in Oregon and is the insurer of state government. In 1985, SAIF implemented a risk management program to address the escalating workers' compensation costs. They have had significant success in a very short period of time. For a detailed discussion of SAIF's program, please refer to the section of this report entitled *Oregon's State Accident Insurance Fund Corporation.*

The Oregon Department of Insurance and Finance uses up to $250,000 annually from the Reemployment Assistance Reserve for worker and employer education. The Department uses conferences with employers and employees to spread the word. Oregon offers numerous examples of organizations, both public and private, that have successfully taken control of escalating workers' compensation costs, several of which are highlighted in the following box.

Oregon Success Stories:

- A plastics manufacturer reduced its workers' compensation losses by 41 percent in one year. Lost work-days fell from 400 to 5 after the company began offering temporary part-time and light-duty jobs. Management now treats their employees like valued assets.

- A construction firm reduced its workers' compensation claim costs from $170,000 to $12,000 in just three years. The firm implemented award-winning safety measures and now uses any job, even picking up trash, to get injured workers back to work.

- A food manufacturer reduced its workers' compensation costs by $237,000 over four years and reduced the number of work-related injuries by two-thirds. Its early RTW coordinator provides the physician with a videotape of the types of work available at the firm and asks him or her to indicate which would be acceptable tasks for the particular injured worker.

- A forest products firm reduced its workers' compensation costs from $1.5 million to $150,000 over three years. Their philosophy now is that getting 50 percent out of someone in an early RTW program is 50 percent more than they would be getting if the person were simply staying at home.

- In 1988, Fairview, a state facility for the mentally and physically handicapped, had 3,000 employees, 1,680 new claims, $30 million in lost-time claims and more than 500 cases in litigation. By 1990, Fairview had experienced a 58 percent reduction in workers' compensation premiums, a 25 percent reduction in new claims, a 71 percent reduction in lost-time claims, a 68 percent reduction in rate of injury, and a savings of $30 million per year.

The Department of Insurance and Finance also distributes a video highlighting six local companies with aggressive early RTW strategies. These firms realized that workers' compensation costs could mean the difference between profit and loss. In a depressed economy, such as Oregon's, reducing these costs became a matter of survival.

Oregon's Future Plans. Oregon has a reputation as the leader in innovative and effective RTW and VR strategies. Oregon's success is the result of innovative thinking, courage and a great deal of hard work. Those trying to improve the system are of the opinion that the easy cost reductions have already taken place. Further reductions will be much more difficult to realize. Several changes Oregon is considering include:

- *Automated Follow-up*: Up to this point, workers have not been tracked after returning to work. The Department plans to use Unemployment Insurance Wage Records data to follow-up injured workers returning to the work force.
- *Drug Screening*. A plan for drug screening is in the developmental stage.

In addition, two bills which were submitted to the 1994 state legislative session failed to pass. One did not make it out of committee. These bills would have allowed the Re-Employment Reserve to be used for modification of the workplace to *prevent* injuries and for providing services for non-disabling injuries. Both have been pulled out again as "legislative concepts" for the upcoming 1995 state legislative session. As yet, neither has received the approval of the joint Labor-Management Advisory Committee.

OREGON'S STATE ACCIDENT INSURANCE FUND CORPORATION

Oregon state government and its largest insurer, the State Accident Insurance Fund Corporation (SAIF), have each had tremendous success in reducing workers' compensation losses. The process they went through to achieve this is detailed below.

A Description of SAIF. SAIF was established in 1916 and is regulated by the Department of Insurance and Finance. Its five-member, Governor-appointed board is comprised of private citizens with business and labor backgrounds that represent the geographic diversity of the state. The Board appoints the Fund's Chief Executive Officer.

In 1979, SAIF became a public corporation in order to guard the integrity of the state as the accident insurance fund. SAIF is mandated by law to insure the state, and the state is mandated to insure through SAIF. However, SAIF is able to compete on the open market for business. SAIF is currently the largest workers' compensation insurer in Oregon, with 31,000 policyholders and $300 million in premiums in 1992. SAIF has 37 percent of the workers' compensation insurance market. Of SAIF's total subscribers, currently 20 percent are public entities and 80 percent are private businesses. SAIF insures

more small businesses than any other carrier in the state—nearly 16,000 of its 31,000 accounts have annual premiums under $2,500; more than 71 percent of its policyholders have fewer than five employees, while less than three percent have more than 100 employees.

As a result of its success in controlling costs, SAIF has been reducing its rates. This has forced private insurers to follow suit, causing a great deal of resentment. SAIF is also criticized for not having to pay taxes, thus allowing greater financial leverage. However, at the same time, SAIF is heavily scrutinized. SAIF is audited by different agencies several times a year.

The Problem. In 1987, Oregon was faced with a fiscal crisis. One-fourth of the workers' compensation claims were lost-time cases, representing 95 percent of the system's workers' compensation costs. State agencies were doing little or nothing to manage the system. Instead, managers would steer problem employees *into* the workers' compensation system. Injured workers liked or at least tolerated the system because it rewarded them for doing little or nothing. Management blamed the problem on the "poor quality workforce." SAIF was criticized for accepting every claim that came through the door and for using government as a "cash cow." Claims managers at SAIF that got on the "bad side" of their supervisors were reportedly assigned to government accounts.

Political pressure had been put on SAIF in the past not to increase premiums. However, the situation got to the point that SAIF refused to pay the claims without a premium hike. This led to a statewide initiative to address escalating costs and increasing numbers of disability claims. The Governor felt that government workers' compensation costs had to be controlled before the private sector could be effectively criticized. To that effect, the Governor issued an executive order requiring all state agencies to turn their attention to safety. Agency directors were told to reduce lost-time costs by one-third by the end of the first biennium and by one-half by the end of the second biennium.

State Government's Early RTW Program. Managers in state government were now held accountable for their agency's workers' compensation costs. Agencies were advised to start looking at one of every four lost-time claims submitted. The solution was early RTW and safety management. The Division of Risk Management in the Department of Administrative Services (referred to as the Division) was directed to address these issues. The Division focused on five strategies to reduce risk and to control costs:

1) Management Accountability
2) Safe Working Environments
3) Safe Working Practices, Policies and Procedures
4) Training (on job safety, claims management and safety management)
5) Disability Prevention

Oregon developed a premium allocation system that charged each agency a separate rate based on prior losses. This move toward fiscal liability made managers notice. However, getting management commitment to concepts such as early return-to-work (within two weeks) and safety was not easy. Since safety is a cost, it was hard to convince agencies not to view it as an expense. An added problem was that safety specialists did not know how to talk to management. Management did not view safety as an ethic, but referred to this externally imposed requirement as "guerrilla safety."

RTW was passed in the context of a safety management push—reduce workers' compensation costs through injury prevention. The Division provided agencies with step-by-step instructions, and by the end of the third year, the goal of a 50 percent reduction in lost-time claims was achieved. In FY 1987, the rate of lost-time claims per 100 FTEs was 3.15. By FY 1993, it dropped to 1.12, exceeding their goal of 1.14. Now the goal is to hold lost-time claim rates at or below the lowest of the prior three fiscal years.

Success in reducing costs was the result of three things that happened simultaneously. First, government changed the way managers dealt with workers' compensation. It no longer paid to put personnel problems into the workers' compensation system. Workers stopped filing lost-time claims because they knew management would consult with the physician. Second, SAIF had a turnaround in the way they did business and started to manage claims. Far fewer claimants were found eligible for VR and many more entered early RTW programs. Third, the 1990 legislative reforms took effect.

State Accident Insurance Fund's RTW Program. In 1988, the SAIF board hired a new CEO who created an organizational atmosphere that allowed for and demanded change. SAIF's new organizational climate was one of flexibility and creativity. In 1989, SAIF developed a risk management approach, of which early RTW was an integral component. By the end of 1989, SAIF reduced claims costs by $20 million. SAIF's early RTW program was in place *before* the 1990 legislative reforms.

Carefully chosen risk management consultants at SAIF were given four goals to accomplish: 1) reduce the frequency of injuries; 2) reduce the severity of injuries; 3) retain old customers and secure new customers; and 4) maintain customer satisfaction. All four goals were measured and tracked. To meet their goals, consultants went to the worksite to:

1) Meet with policyholders to interest them in early RTW and assist them in setting up their own systems;

2) Intervene in injured workers' cases and ensure examination of lost-time claims;

3) Assist employers in accessing funds from the Re-employment Assistance Reserve for wage subsidies and job modification; and

4) Help employers set up risk management systems that include early RTW, training, claims management and injury prevention programs.

Although early RTW is not a new idea, especially for the self-insured firms, it is a tough sell. The key to getting the employers' attention is illustrating the cost savings potential. They have to be convinced that costs associated with lost-time, medical and PTD benefits can be controlled. When management's attitude in one area is changed, they begin to pay more attention to other areas such as safety. Safety is prevention which cuts the flow of new claims, while early RTW and disability/risk management are remedial efforts which only address the situation *after* an injury has occurred. Since the majority of ADA claims filed with the Equal Employment Opportunity Commission to date stem from work-related injuries and conditions—fully 20 percent are for back injuries, employers have an added incentive to pay attention to RTW.

At 90 days of lost-time, SAIF counselors determine if an injured worker will be able to return to work or needs VR assistance. Training is the last option considered since it is the most expensive and considered to be the least effective. SAIF conducted a 90-day follow-up and found that only 35 percent of claimants completing formal training were working. Prior to 1988, all injured workers with compensable injuries were entitled to VR. The eligibility criteria are now much more stringent. SAIF has been 95 percent successful in denying requests for eligibility when challenged.

SAIF vocational evaluators assess transferable skills through a software package referred to as the Occupational Analysis System (or OASYS). OASYS determines if a worker's skills can transfer to another job, and if the person can return to work at 80 percent of his/her preinjury salary level. If the labor market search is positive, the worker is not eligible for VR services. OASYS has proven to be very cost effective. Whereas a private consultant can take up to 60 days and charge up to $700, OASYS does the job in only nine days at a cost of $250. However, despite the cost, SAIF continues to contract with private consultants since they are perceived to be "objective" third parties.

If the worker is eligible for VR, the VR evaluator and coordinator issue a report, outlining the plan, the worker's expectations, the counselor's prognosis of the success for the plan, a transferable-skills assessment, barriers to re-employment and labor market service data. All parties then must agree to the terms of the plan and to the choice of a counselor. The counselor then refers the injured worker to a VR provider.

In the case of an employer who refuses to rehire an injured worker, the VR coordinator and a SAIF early RTW specialist may visit the uncooperative employer to inform management of the likely financial impact of their decision. They inform the firm that SAIF has allocated up to $30,000 from the Reserve for VR services (including training and lost-time benefits) for this worker over the next 12-month period. This allocation, in the form of a "surcharge", affects the firm's "experience rating" and ultimately leads to

premium increases. The visit often convinces the employer of the value of re-hiring the injured worker. This negotiation can take place anytime before training actually begins.

Providers of VR Services. SAIF has 15 vocational coordinators on staff and contracts with 49 private firms throughout Oregon for providing VR services. Private rehabilitation consultants charge between $55 and $75 an hour. They offer counseling, placement and job development assistance. SAIF also contracts with counselors certified by the state, using a two-tiered system that distinguishes between "preferred counselors" (the highest level of certification) and "certified counselors" based on case outcomes. Preferred counselors have an increased caseload but are rewarded with higher hourly rates ($70/hour versus $55/hour), discretionary bonuses and reduced paperwork requirements. Contracts are negotiated once a year, and the preferred counselors have to re-earn their status annually. In 1992, SAIF had 52 "preferred counselors." A mentor assists counselors in achieving this "preferred" status. Since 40 percent of the counselor's time is spent writing reports that document services provided, SAIF has developed report formats to ease the paperwork burden.

RTW and Related Program Outcomes. In 1989, SAIF was losing $50 million a year. By end of 1990, they had a $250 million surplus, some portion of which can be attibuted to the expanded use of early RTW efforts. By 1990, more than two-thirds of all claims were accepted or denied within the allotted 14-day period to avoid unnecessary payment of benefits. More than 30 percent of new lost-time claims were denied, mostly without appeal or costly litigation. From 1988 to 1989, the number of Permanent Total Disability awards was cut in half, saving policy holders millions of dollars. SAIF notes proudly that they became profitable *before* the legislative reforms of 1990. However, legislative change ultimately helped to drive their rates down even further.

As a result of a number of reforms, not just the implementation of early RTW programs, SAIF is now writing more risk for lower premiums and is paying dividends as well.[7] By December 1992, SAIF had achieved 14 consecutive quarters of profitable financial performance, declared more than $60 million in dividends, added more than $60 million in new business, and renewed 98 percent of their existing business. In 1992, SAIF provided risk-free exposure to all of state government to reward them for significant savings. Within 60 days of operating the risk management service, SAIF was recovering its costs. SAIF now has a 13:1 return on its investment. In direct services, SAIF expected a $12.5 million savings in FY 1993. This is characterized by SAIF as a "win-win" situation for all stakeholders. SAIF now must choose between continuing to distribute dividends and providing reduced premiums; it can no longer do both.

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[7]Early RTW programs have been implemented as a "free" service to employers, paid for through their premiums.

OREGON'S PREFERRED WORKER PROGRAM

Program Goal. The goal of Oregon's Preferred Worker Program (PWP) is to encourage re-employment or hiring of injured workers for work appropriate to their physical and mental abilities. PWP is intended to "level the playing field" for the injured worker who is re-entering the workforce.

Program Description. PWP is operated through the Department of Insurance and Finance (hereafter referred to as the Department). The PWP provides the injured worker with a financial incentive package to offer an employer to help bring about the hire or re-hire of the injured worker. When employers are faced with bringing back to work or hiring a worker who has had a workers' compensation claim, often they are afraid of the potential for additional exposure and the burden of increased workers' compensation costs. The PWP essentially provides a "warranted worker". An additional employer benefit from PWP is that these workers have experienced the workers' compensation system and generally have no desire to do so again.

The PWP was initially established in 1987. However, the 1990 reforms enhanced the program significantly by providing premium exemptions. In 1993, revisions were made to reduce the program's paperwork requirements and to increase the job-site modification allowance from $15,000 to $25,000 for the life of the claim. These changes greatly increased employer interest in the program. The number of "preferred worker" contracts increased by over 59 percent from 1987 to 1992. The PWP won the 1993 Innovative Program Award from the National Association of Professionals in the Rehabilitation Field.

Eligibility Criteria

- The worker must be partially disabled for life (permanent disability) and therefore unable to return to his/her former job, and must have not turned down a suitable job offer with the employer at injury.

- The worker's claim must be closed. As of March 1993, this law was changed so that a worker whose claim is still open is eligible, but only if they have a job to return to when they get PWP assistance. This change was made to allow workers to seek assistance in returning to work much earlier.

Participants

- Since the changes to the program in 1990 that simplified participation, 867 employers put 1,109 workers back on the job during FY 1990, a 23 percent increase over 1989.

- In FYs 1991 and 1992, 7,772 PWP cards were issued; and 2,259 workers (30 percent) had been hired under the program as of July 1993.

Benefits to the employer

- PWP exempts employers from paying workers' compensation premiums for three years on those previously injured workers that they hire;
- Through PWP, Oregon offers employers wage subsidies of 50 percent for up to six months. If the worker is "exceptionally disabled" (i.e., complete loss of use or loss of two or more limbs) the wage subsidy is up to 75 percent for one year;
- Oregon pays up to $25,000 for work-site modification per worker; and
- The state of Oregon pays for any job-related injury (but not the same injury) that occurs to the re-employed worker during the first three years. Note that only three percent of those re-employed under this program have suffered subsequent injuries. As of March 1993, the state will also pay the insurer an administrative fee to handle these second-injury claims.

Benefits to the injured worker

- Provides a bargaining tool with which to seek re-employment; and,
- Reimburses employees for expenses such as tools, clothes and moving costs and union initiation fees for eligible workers.

Referrals

- Referrals are typically made from the carrier/employer. When the insurer or carrier closes a claim they send information regarding the injured worker to the Department of Labor and Industry.

Service Delivery System. Interested workers that meet the eligibility criteria are given a PWP card which certifies to the potential employer that they are eligible for all program benefits. PWP is a worker-activated program in that it empowers the injured worker to seek employment. Although the Department does not offer placement assistance, numerous calls were coming in from employers that wanted to hire a "preferred worker." Six months ago, the Department entered into a cooperative agreement with the Employment Division (located in the Department of Human Resources) to allow "preferred workers" and interested companies to register with them. The Employment Division now matches preferred worker qualifications with job openings.

The PWP card may be used for three years from date of issue. The first employer to hire the worker is required to complete the card and return it to the Department within 90 days of hire to qualify for the premium exemption and other benefits. In the past, the worker could only use one job-site modification and one wage subsidy in the three-year period. Consequently, if they switched employers in the three-year period, they could not use these benefits again. The rules were changed to allow the "preferred worker" to use each benefit twice in a three-year period. This permits job mobility within and between

companies, allowing workers to better maintain employment. Although the worker may use two worksite modifications with the same employer (up to the $25,000 limit), the second wage subsidy must be used with a new employer.

The Department employs seven re-employment consultants. Each consultant monitors approximately 100 cases, of which 35 are new job modifications and between 35 and 60 are old modifications that are still being "debugged." These consultants travel all over the state and work closely with insurers, counselors and early RTW specialists. Since the most common injury is to the back, the most common job modification is office chairs. Most chairs are antiquated and need to be adjusted for the particular tasks. However, the types of job modifications performed vary widely. For example, the Department had a custom-made saddle built for a cattle ranch hand that dislocated his hip at a cost of $1,650. The average job-site modification cost for all injuries is less than $10,000.

Marketing Program. To advertise PWP (as well as EAIP), the Department requires insurers to send notices to the employers and employees on five different occasions when there has been an injury. Additionally, the Department staff has been conducting seminars and workshops around the state that explain the benefits available.

System Financing. The Re-employment Assistance Reserve, which had a balance of approximately $65 million in FY 1992, supports PWP and other VR and RTW efforts. The Reserve is funded through employer and employee contributions to the workers' compensation system. Workers pay two and a quarter cents and employers pay four and a quarter cents daily toward the Reserve, for a total of six and one-half cents per day. Until 1990, this RTW fund remained untapped. Between July 1990 and November 1991, the state put $2 million into the PWP. In FY 1993, $6.1 million from the Reserve was allocated to the PWP.

Program Outcomes. In FY 1990, the PWP signed 2,209 agreements with employers, ranging from premium exemption to equipment purchases. This was a 13 percent increase from the previous year. In FY 1991 and FY 1992, 7,772 cards were issued, and 2,259 workers (30 percent) have been hired to date. Before the injury, 12.5 percent of "preferred workers" were in "white collar" occupations, compared to 53.2 percent after the injury. However, the Department has no control over the type of job taken or how long the person stays at the job. In FY 1993, 3,096 cards were issued, and 495 workers were hired. PWP Reserve expenditures for FYs 1989, 1992 and 1993 were:

Category/Fiscal Year	FY1989	FY1992	FY1993
Worksite Modifications	$0.3 m.	$1.9 m.	n.a.
Wage Subsidies	$2.4 m.	$3.2 m.	n.a.
Other	$0.1 m.	$0.6 m.	n.a.
TOTAL	$2.8 m.	$5.7 m.	$6.1 m.

Introduction of the EAIP program may well reduce the use of PWP, since EAIP may be viewed as a pre-emptive employer strike in some sense.

Problems. Department staff complain that it is difficult for the worker to explain all the available benefits of PWP to the potential employer. Outsiders to the system complain that, due to the "red-tape," very few workers are able to participate in the program.

C. Lessons from the Northwest—The Tale of the Two States

Washington and Oregons' successes have resulted from innovative thinking, courage, dedication and a great deal of very hard work. They have also stemmed from highly collaborative efforts, with all the principal players listening and learning. One of the keys to the process has been open communication, allowing myths to be dispelled and "business as usual" to take on a whole new meaning. Washington and Oregon, despite their tremendous success, freely admit they have not found a workers' compensation panacea. Some of the problems common to both states are described in this section.

Educating the medical community. Physicians can be a source of misinformation. They often recommend retraining in cases in which the injured worker is not VR-eligible, further complicating case resolution. Physicians also will not release an injured worker to return to work if he/she perceives poor claims management by the company. Unaware of options such as light duty, physicans may fear further injury to the worker if he/she returns to work. They forget that work is important for the emotional and social health of the worker which is necessary for physical recovery. Finally, physicians caring for injured workers may abuse the system in their own ways, ordering unnecessary tests, surgery and physical therapy. Oregon has attempted to minimize these problems through the use of managed care organizations (MCOs) and physician education more generally.

Educating the business community. Raising the consciousness of the business community is often an uphill battle. It is difficult to convince employers that injured workers are not "damaged goods". Insurance carriers have obtained lists of injured workers and provided them to employers as a guide to (not) hiring. Oregon and Washington are trying to convince all firms to adopt some of the more successful practices of the self-insured employers, including disability prevention, risk management, early RTW and others.

Lack of communication. Often problems result from misunderstandings and miscommunication. The injured worker waits at home for an employer phone call which never comes. The employer, in the meantime, waits to hear from the injured worker. Each expects the other to make the first move, thinking it would be inappropriate to call first. They are unaware of their rights and consequently put the burden on state agencies.

A system of disability management. The system sadly has evolved into one of disability *management* rather than disability prevention. Unfortunately, managing the disability once it occurs is actually "profitable" for many participants. As one staff member of the Washington Department of Labor and Industries stated: "Only in the workers' compensation system do injuries get worse over time. A non-catastrophic injury can become disabled in the system as a result of administrative, legal, medical and employability problems."

Late intervention. Each claims manager at the Washington Department of Labor and Industries handles approximately 350 open cases at any point in time, resulting in rapid staff turnover. This compares to average caseloads of 120 to 150 for private providers. Sometimes the case is at least a year old by the time it is referred for "early" intervention. This further complicates RTW efforts since there is the presumption that a worker who is disabled for a period of time is "damaged goods" and was responsible for the accident.

Cheaters in the system. Small firms in industries with high accident rates have an incentive not to pay the workers' compensation premium rates. For example, the logging industry pays twice the minimum wage per hour for insurance due to their high experience rating. Those in the industry complain that the Washington Department of Labor and Industries' rate and the spotted owl are the two biggest threats to logging. Firms get around the law by not obtaining a business license or by forming a corporation and appointing everyone to executive officer positions. This has been a problem in Washington, which lacks the auditing resources necessary to catch these firms. This abuse affects everyone, because when too many people cheat the system, the base is reduced and rates increase for those remaining legally within the system.

Washington and Oregon are actively addressing these problems. They admit that the easy cost-cutting has already taken place. Further gains will be far more difficult to realize. However, they continue to educate the medical and business communities concerning the benefits of early RTW and disability prevention. They continue to look for innovative, effective ways to get the injured worker back to work as soon as possible.

V. Suggested RTW Design Parameters

This section provides general considerations concerning VR and RTW programs, before presenting a number of suggested RTW design parameters which Texas policymakers might consider in the near future.

A. General Considerations

There is a remarkably strong consensus among workers' compensation and VR policymakers and program staff, private rehabilitation professionals, employers and workers about some of the more essential elements of RTW and related policies. (This consensus also is reflected in the growing literature on VR and RTW which is summarized briefly in Appendix A.) Such a consensus exists in few policy areas as it appears to surrounding RTW. Important related elements of this consensus include the following:

- *Disability (risk) prevention*, rather than disability management, is key. Workers' compensation, VR and RTW programs would all face an easier job if there were fewer work-related injuries and if both employers and workers took more to heart the message that all accidents are preventable.

- *Expanded education for both the medical and business communities* could yield substantial benefits for the workers' compensation system, employers, carriers and workers.

- *Early intervention*, once an injury has occurred, is absolutely vital to injured workers' success in returning productively to the workplace.

- *Fostering trust and mature, cooperative relationships* among the key players involved in the system, especially employers, workers and the public entities (i.e., TWCC and TRC) responsible for serving them, is essential as well.

These elements tend to make good sense from economic, psychological and other perspectives. There really has been little disagreement regarding any of these elements in recent years, however much their use and prevalence may have lagged in practice.

In addition, as the literature (e.g., Ross 1991; Hyatt 1992) and the U.T. Center's state VR and RTW canvass (Table 3.1) indicate, there is wide variation in the approaches and practices which are being implemented around the country, whether in the form of pilot/demonstration efforts or full-blown programs for injured workers under workers' compensation. In terms of RTW and related efforts, the range encompasses everything from the complete absence of VR and RTW references in state law (e.g., Delaware) and simple referrals for VR services for groups in need of such assistance (e.g., Texas) to aggressive disability prevention and early RTW programs, complete with financial incentives for both employers and injured workers (e.g., Washington and Oregon).

Presently, there is considerable documentation concerning the types of VR and RTW interventions which states offer for injured workers, with the possible exception of services provided directly by the employers-of-injury or arranged by their insurance carriers. As King et al. 1993 suggest, information about employer- and carrier-based RTW efforts remains largely anecdotal (e.g., Beaudway 1986; Epes 1992).

Some of the very best evidence available on VR and RTW interventions and their effectiveness can be found in: Dean et al. (1993), Lam et al. (1989), Olander et al. (1990) and Gardner (1991), concerning the longer-term earnings impacts and benefit/cost ratios for VR and RTW; and Padgett et al. (1993), regarding early RTW programs in Texas. These studies have been well designed and implemented, given the data available and existing methodologies.

Recently, support has been growing for the use of publicly funded incentives to promote hiring injured workers and a number of other related experimental initiatives to foster RTW and reduce workers' compensation premiums and disability costs for employers, workers and society. Both Oregon and Washington, the case study states, are using such approaches. They have done so deliberately and with the active support of partnerships forged with business, labor and government. Yet, the definitive word on whether such approaches are efficient and effective has not been written. Well designed evaluations of these relatively new approaches to promoting early RTW—carefully documenting and analyzing their impacts, benefits and costs—have not been conducted.

Moreover, neoclassical economic theory and existing empirical evidence from studies of similar incentive-based efforts, such as the Targeted Jobs Tax Credit and various wage subsidies, are not at all encouraging. Such credits and subsidies unfortunately have been found to further "stigmatize" the populations targeted for assistance (Burtless 1985) and overwhelmingly to be "windfalls" for participating employers (e.g., Bishop 1993). Most participating employers have received the benefits of such credits or subsidies without substantially altering their hiring or employment practices regarding the targeted groups when compared their similarly situated counterparts. It is possible that such incentives may have very different effects when the targeted group is a known quantity—an injured worker seeking early RTW with or rehire by the employer-of-injury—rather than just another member of a targeted class of worker seeking a job.

As pointed out below, all of this is not to say that approaches such as Oregon's Preferred Worker Program and its Employer Assistance Incentives Program should be ignored or avoided by Texas policymakers. Rather, it suggests that, if attempted in Texas, they should be initiated cautiously and tried as pilot or demonstration projects—accompanied by comprehensive evaluations—before proceeding to scale. This is the approach taken with Texas' Early RTW Pilots which were begun in Ft. Worth, Irving and

San Antonio with TRC participation (Padgett et al. 1993). It would also work well in Texas for some of the newer concepts now being implemented in other states.

B. Suggested RTW Parameters

The RTW parameters which are suggested here for Texas policymakers to consider have been developed based on: an extensive review of the VR and RTW literature; a 1993 canvass of VR and RTW programs in all states and the District of Columbia; and site visits conducted in Washington and Oregon in August 1993. These RTW parameters are also based in part on the earlier analysis of Texas RTW patterns and programs performed for the T.W.C. Research Center by King et al. (1993). These suggestions are further based on two important premises regarding the Texas workers' compensation and VR environment; namely, that both workers' compensation and VR services for covered injured workers will continue to be voluntary, and that funding for TRC's VR services, now derived almost exclusively from the federal/state VR program, will remain largely unchanged.

A number of suggested RTW design parameters are provided and discussed briefly in the following pages. Each should be viewed as a suggestion only. Each would also entail costs (and likely benefits) which would have to be considered.

1. Education and marketing efforts should be expanded, regarding workplace safety generally and disability prevention and early RTW in particular. Such efforts should be targeted to the medical and business (employer) communities. In part, these would market innovative or model early RTW approaches used in TRC's Early RTW Pilots and in other states around the country, resources available for their implementation, key contacts—including state agency staff, as well as experienced employer and medical personnel—and the important advantages of early intervention and quick returns to the workplace.

2. TRC's existing Early RTW Pilots should also be enhanced and expanded to other areas of the state, based on interest carefully cultivated by TWCC and TRC program staff among industry associations and employer and worker groups. Padgett et al. (1993) make a very strong case that the "right stuff" is already there programmatically. The costs of early RTW appear to be quite low, and the initial outcomes very good. TRC, the participating employers and related groups have developed a solid understanding of how to implement such early RTW efforts in these pilots and could serve as the nucleus for expanding them.

3. TRC's efforts to computerize skills transferability assessment should be continued and examined for possible enhancements and expansion potential. The existing joint project (with the Texas SOICC) provides frontline TRC counselors with improved access to information necessary for assessing injured workers' current skills and skills

transferability, as well as their opportunities for reemployment. The effort has merit and should be continued in some form, whether with SOICC or other entities. With improvements in technology and the knowledge developed from this pilot program, more effective models may be possible in the future. TRC is currently exploring enhanced models.

4. Oregon's Preferred Worker Program and its companion, the Employer-At-Injury Program, should be piloted in Texas. These two programs involve worker wage and training subsidies as well as marketing efforts for employers to hire/rehire injured workers rather than let them sit idle while collecting their impairment income benefits. While the empirical evidence on hiring/employment subsidies, tax credits and similar efforts is not very encouraging, there is considerable interest and experimentation in other states to warrant piloting such programs on a small scale. As indicated above, there is also reason to think that such incentives might be more productive for injured workers with their employer-of-injury than for the other targeted groups on which the existing research has focused.

Adequate funding for such incentive programs would need to be secured, since they are likely to be expensive. Oregon's programs are funded out of its Re-employment Assistance Reserve which is supported by both employer and worker contributions. Oregon assesses employers $0.0424 per worker per workday and covered workers at $0.0225 per workday. If participation were required of all covered firms and workers in Texas, such an effort would yield enormous sums of money. A much lower rate—say as little as $0.005 per worker per workday for employers and $0.0025 per workday for covered workers—would yield on the order of $16-$18 million annually. A small pilot or demonstration effort could possibly be funded through other funding sources.

5. A public sector Early RTW initiative should be implemented as well. A few state agencies should be selected—based on a combination of accident/injury rates, resource availability and interest—to demonstrate the public sector cost savings potential as well as the possible benefits for injured state employees. Most of the emphasis in the literature has been on private sector initiatives; however, in many communities (e.g., Austin), employment in the public sector is a significant share of the total workforce. Moreover, if early RTW is good for private employers, it should be even better for those in the public sector.

6. A two-tiered system for serving injured workers more effectively and efficiently should be developed and tested. Of the VR options available, most injured workers (in other states) have tended to do better—in terms of returning to work and recovering their preinjury earnings—with less intensive, workforce attachment than with more intensive education and retraining approaches. Such less intensive early RTW efforts also tend to be

less costly by far. At the same time, there are injured workers who clearly have benefited from and could benefit from receiving more traditional, more intensive VR services.

7. More concerted, ongoing evaluations should be instituted, to document the costs as well as the impacts of VR and early RTW on longer-term employment and earnings for injured workers and accompanying effects on employers-of-injury and carriers. Given the availability of archived Unemployment Insurance (UI) wage records in Texas (King et al. 1993), workers' labor market outcomes could be tracked inexpensively, both for participating injured workers, as well as for a similar group of nonparticipants. The techniques for measuring *net* employment and earnings impacts from VR and RTW participation have been well established recently by Dean et al. (1993); they should be applied to Texas' VR and early RTW efforts for injured workers covered by workers' compensation as well.

8. Additional analysis should be conducted on those groups of injured workers whose RTW patterns have been less than successful. While the most common pattern in Texas under both the old and new law is returning to steady postinjury employment, a substantial share of injured workers either fail to return to work at all or do so initially only to exhibit subsequent patterns of unstable employment. Special efforts should be made to better understand the characteristics of these injured workers and the factors affecting them. Such analyses make use of the T.W.C. Research Center's existing data bases developed by King et al. (1993). The analysis needs to be multivariate rather than simply descriptive, so that the various factors likely to affect the RTW process can be controlled for. The results of these analyses could facilitate better targeting of safety and disability prevention efforts, development of early RTW programs focused on those injuries, occupations and industries with the greatest potential benefit, and thus increased efficiency and effectiveness.

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APPENDIX A
VR and RTW Programs in the Literature

This summary of recent VR and RTW research is organized into the following topic areas: program goals and objectives; program components; service delivery; system financing; and program outcomes, costs and benefits.

Program Goals and Objectives

The first VR law in the United States was enacted by Massachusetts in 1918. It covered only those industrial workers affected by work-related accidents and occupational diseases (Texas Joint Select Committee on Workers' Compensation Insurance 1988). Other states followed Massachusetts' lead enacting similar provisions in their workers' compensation statutes, and in 1920, the U.S. Congress passed and the President signed Public Law 636 creating the federal/state VR program which provided for VR for occupationally disabled workers regardless of the worker's occupation.

State workers' compensation programs, which date from 1911, sought to provide workers with cash benefits and medical care necessary to relieve them from the negative effects of work-related injuries (Berkowitz and Berkowitz 1991). Injured workers were to be provided medical care which would return them as close as possible to their preinjury physical condition. Berkowitz and Berkowitz (1991, p. 184) summarize the VR/workers' compensation linkage as follows:

> "The rehabilitation services were designed, not to make the worker better off, but to restore the worker, as closely as possible, to the position enjoyed prior to the injury. If return to the previous job was not possible, then, analogously with the concept of maximum medical improvement, the worker was entitled to a job as close as possible to the one held before the accident. If the worker had some educational deficiency, that might or might not be repaired. The test would not be what was good for the worker but whether further education or training was necessary to repair the effects of the accident."

In 1973, based on the recommendations of the 1972 National Commission Report on State Workmen's Compensation Laws, the federal/state VR program began shifting towards serving the severely disabled, giving occupationally injured workers lower priority (Berkowitz and Berkowitz 1991). Emphasis on early RTW for workers' compensation claimants is growing, both as a goal and a component (Habeck et al. 1991; King et al. 1993).

Program Components

VR for injured workers may consist of some combination of the following components: counseling and guidance; evaluation; job modification and placement; education and training; and general services. These VR services can be further categorized. Counseling and guidance correspond to rehabilitation assessment and counseling. Evaluation encompasses vocational evaluation and testing, physical evaluation/testing and job analysis. Job modification and placement may include placement and job modification and redesign, among others. Education and training may entail vocational schooling, academic schooling, and on-the-job training (OJT). Finally, general services may consist of physical rehabilitation coordination, home modification and others.

Increasingly, program staff and researchers alike view RTW as an integral part of more comprehensive disability prevention and management programs. The success of VR and RTW programs depends on the elaboration of well structured disability management programs (Tate et al. 1986; Bruyere et al. 1991), which the National Institute on Disability and Rehabilitation Research (1988, 1990) defines as proactive programs directed at minimizing the impact of disability (injury or disease) on workers' capacities to perform their jobs. Habeck et al. (1991) found that the central elements of successful programs were:

- Top management commitment and supportive polices;
- Education and involvement of employees at all levels, including union participation from the outset;
- A coordinated, team approach across departments for effective claim management and job placement;
- Active use of safety and prevention strategies to avoid disability occurrence;
- Earlier intervention and ongoing monitoring for health risk and disability cases;
- Systematic procedures for effective use of health care and rehabilitation services;
- An organized RTW program with supportive policies and modified duty options;
- Use of incentives benefit design, cost accounting, and performance evaluation to encourage participation of employees, supervisors, and managers; and
- An integrated management information system to monitor incidence, benefit use, services, costs and outcomes.

Bruyere and Shrey (1991) stress the importance of strengthening "occupational bonds" between employers and employees. Work-related injuries can cause severe disturbances in the injured employee's life, and employers can make disability management programs work only by keeping an atmosphere of mutual trust. Mutual trust exists if the employer and the management team show concern for the injured employee. Earlier contact with the injured employee (e.g., a phone call) can positively influence RTW program results. Dent (1990) found that employers who contacted injured employees immediately after an accident to express concern and hope of recovery might speed RTW by 21 percent.

Education and involvement of employees at all levels, including unions, is another feature of successful disability management programs (Tate et al. 1986). Corporate officials, union representatives, supervisors and workers alike need to be informed about companies' disability management programs. The various program components must be fully explained to employees so that they understand their rights and responsibilities.

Bruyere and Shrey (1991) point out four major requirements of safety and prevention programs: first, objective worker evaluations; second, classification of physical job demands; third, medical surveillance and follow-up; and finally, graduated progression to an acceptable permanent job placement option. These same requirements are also featured in a comprehensive model for employer-based rehabilitation (National Institute on Disability and Rehabilitation Research 1988, 1990).

Dent (1990) identifies the purposes of earlier intervention as: helping an employee understand benefits policies and regulations; informing an employee of obligations during his or her disability; creating a RTW expectation; guaranteeing the employee that light-duty work can be made available; and assessing employee motivation and the resources for supporting RTW efforts. Early referral of an injured worker to VR providers is a key element of successful programs. Van Hoosert and Rice (1989) conclude that "the longer the injured or disabled worker is separated from work ... the more difficult it is for the individual to return to gainful employment".

Some private rehabilitation associations suggest referring injured workers within 30 days after a back injury and within 60 days for all other injuries. State practices differ widely. Hyatt (1992) recommends using a set of guidelines to relate particular types of injuries and referral time intervals. Premature RTW can delay a worker's recovery from an accident, while a late RTW can produce adverse effects.

There are many ways of referring injured workers to VR. An injured employee can be referred to a vocational rehabilitation program through an employer, insurance carrier, lawyer or the workers' compensation agency. Washington has an electronic

system that receives information from certified rehabilitation specialists vendors and automatically refers injured workers for VR. A similar approach is utilized by Core Management, a disability management company in California.

Adoption of a systematic procedure for effective use of health care and rehabilitation services has been the strategy used by companies concerned with the escalating VR costs. Some companies are establishing managed care departments that focus attention on reviewing costs and services of medical and rehabilitation services. Fletcher (1993) refers to some managed care techniques that companies are using, including: limiting injured workers initial choice of provider; limiting provider changes by employee; fee schedules; hospital payment review; bill review; and utilization review.

Injured workers' RTW experience depends on companies adopting systematic early RTW plans including: early identification of individuals at risk for job- or disability-related problems; management of physical symptoms; willingness to modify jobs; and establishment of personnel policies that facilitate work return (Tate et al. 1986). They explain job site and work accommodations as part of broader transitional work programs, in which injured workers are reemployed doing some kind of modified work. Modified work usually requires less physical or emotional exertion from injured workers. Injured workers may also be assigned to light-duty jobs, performing the assigned job until a medical or VR case manager releases them to return to regular work permanently.

Habeck et al. (1991) provide an example of the successful work transition program that Herman Miller, Inc. has adopted to provide modified work for its injured employees. The program begins with early identification of injured or ill employees through the company's Health Service Department. Following early identification, every case of injury, illness or absence is carefully monitored, coordinated and analyzed with the participation of the employee, supervisor and treating physician. Once this process is concluded, the employee is sent to a transition work center established by the company if it is found that he/she is not capable of executing his/her job. At the center, a manager helps him/her to find a productive work opportunity or a modified work schedule corresponding to his/her limitations and abilities and the company's needs.

Finally, development of a management information system to record the many activities that a RTW program requires may also contribute to success. According to Centineo (1986), to document and record all activities concerning a RTW program in a systematic way helps to implement and monitor a RTW plan, to remind the insurance carrier or company of those injured workers to be released shortly (from medical treatment) and to inform injured workers' supervisors of their estimated RTW date. Such procedures help to accelerate an injured worker's actual RTW date.

Service Delivery Mechanisms/Structures

Delivery of VR services can take place either through public or private institutions or some combination of the two. Services delivered by federal/state and private providers tend to differ. Traditional federal/state VR services tend to focus more on education and training, while private organizations focus more on worker evaluation, job modification and placement.

Injured workers are referred to private VR services by their employers, insurance carriers or the state workers' compensation agency. The trend in VR appears to be for large companies to contract out services to cost-containment firms (Madeja 1992). Unfortunately, as King et al. (1993) point out, very little is known about the nature and extent of early RTW services being provided within and by the employers-of-injury.

The relevant question concerning VR service delivery is not whether the service is provided by a public or private agency or by the employer-of-injury, but rather whether appropriate, high quality services are being delivered by competent professionals. Rehabilitation counselor's are ultimately responsible for assessing the physical and mental condition of injured workers and for discussing reemployment possibilities with employers (Willard and Gault 1989; Madeja 1992).

System Financing

Federal/state VR services are financed via tax revenues. State agencies operate these VR programs with matching federal funds, with states paying approximately 20 percent and the federal government paying the remaining 80 percent. VR services for workers' compensation claimants tend to be funded through the federal/state VR program, industry contributions to a special or second-injury fund and/or direct payments to private rehabilitation providers (Texas Joint Select Committee 1988).

The underlying rationale for not funding dedicated VR funds for injured workers is that the costs of work-related injuries and their remedies should be paid largely by the employer/carrier rather than the general public (Texas Joint Select Committee on Workers' Compensation Insurance Research Papers 1988). Responsibility for returning the injured employee to a condition of employability should rest squarely on the employer-of-injury (Hyatt 1992). Thus, with few exceptions, employees are exempt from contributing (directly) to any costs arising from their rehabilitation.

Recent changes in state workers' compensation statutes have altered this situation somewhat. For example, Oregon operates its Preferred Workers Program, which assists with RTW for its injured workers, using worker and employer contributions to a reserve

fund known as the Re-employment Assistance Reserve. Workers and employers, respectively, contribute 2.25 and 4.24 cents daily to this program (Bussewitz 1991).

Program Outcomes

Using longer-term data collected nationwide from over 700 VR programs serving more than 39,000 individuals with disabilities, Olander et al. (1990) characterized VR program outcomes. They found that:

- Local unemployment rates and the amount of funds spent on VR services do not substantially affect outcomes;
- Location does not affect program outcomes;
- The top quartile of VR programs helped 50 percent of those served RTW, while the lowest quartile only put 16 percent back to work; similarly, the top-ranked VR programs produced client earnings and related benefits valued at $8,100 a year, while the bottom quartile yielded less than $2,200 per person;
- Programs with "enriched services", e.g, higher ratios of staff to participants and higher costs, do not necessarily achieve better results than less expensive programs;
- Large program differences cannot be fully explained by factors such as serving more difficult or severely disable population, location in a small community or a higher than average unemployment rate; and
- Program success is not guaranteed if a facility utilizes computers, installs work samples identifying skills or adopts counseling techniques based on the latest rehabilitation theories.

Dean et al. (1993) also evaluated the federal/state VR program, applying a quasi-experimental design (i.e., treatment vs. comparison groups) to Rehabilitation Services Administration (RSA) data for more than 40,000 persons treated and whose cases were closed by VR in FY 1980. RSA data for both men and women were linked to long-term Social Security Administration (SSA) earnings data, including up to eight years of postprogram data. They examined seven different disability-related groups: visual; hearing/speech; musculo/skeletal; internal injury; mental retarded; mental illness; and substance abuse. Positive and statistically significant net impacts on first-year earnings were found for VR treatment for musculo/skeletal, internal and mental illness for both men and women; impacts were considerably larger for men. VR for mentally retarded men also yielded positive and significant first-year earnings impacts. Many of these positive earnings impacts were sustained over the eight-year postprogram period, including, for men, those in the musculo/skeletal, the internal and mental illness groups; for women, sustained effects were less evident, although present for musculo/skeletal,