

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED

JAN 7 3 22 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

Workers' Compensation Division

AGENCY: Bureau of Employment Programs TITLE NUMBER: 85
CITE AUTHORITY: 21A-2-6(1); 21A-2-6(2); 21A-2-6(14); 21A-2-19; 21A-3-7(b); 21A-3-7(c)
23-2B-3; 23-2-4; & 23-1-1

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

21A-2-6(1); 21A-2-6(2); 21A-2-6(14); 21A-2-19; 21A-3-7(b); 21A-3-7(c) &
23-1-1

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 24

TITLE OF RULE BEING ADOPTED: Qualified Loss
Management Programs

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS February 6, 1997

Andrew N. Richardson
Andrew N. Richardson
Commissioner
Bureau of Employment Programs

Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Gaston Caperton
Governor
Andrew N. Richardson
Commissioner



January 7, 1996

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

RE: Final Filing
Exempt Legislative Rule
Title 85, Series 24
"Qualified Loss Management Programs"

To the Honorable Ken Hechler,

Please consider this letter as my written approval for the final filing of the above noted exempt legislative rule.

Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular Session, 1994, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same bill and to Executive Order No. 5-94 of the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the consent or approval of a department secretary.

Thank you very much for your assistance in this matter.

Very truly yours,

Andrew N. Richardson
Andrew N. Richardson
Commissioner

ANR:RBS:llm

**Summary of Proposed Exempt Legislative Rule
Statement of Circumstances
Qualified Loss Management Programs
Title 85, Series 24**

This legislative rule is a new rule to implement the provision of West Virginia Code, §23-2B-3, regarding qualified loss management programs.

The goal of this rule is to establish workers' compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses. The rule also provides for post-injury assistance to the worker which will result in a reduction in the workers' compensation fund deficit.

The rule provides for a prospective credit to the premium tax rate of a subscribing employer who participates in a qualified loss management program. The prospective credit is provided for a period of up to three years.

The rule specifies the qualifications of loss management service providers. The rule provides that the amount of credit against premium rates shall vary from firm to firm based upon the loss reduction success experienced by all of the subscribing employers of the sponsoring loss management firm.

The rule provides employer participation requirements, criteria for withdrawal of plan approval, a penalty for early termination of the program, notification requirements, and a process for administrative hearings.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 85CSR24, "Qualified Loss Management Programs"

Type of Rule: Exempt
 Legislative Interpretive Procedural

Agency: Workers' Compensation Division, Bureau of Employment Programs

Address: Legal Services Division
P. O. Box 3922
Charleston, WV 25339-3922
Contact Person: Randall B. Suter, Legal Services Division
Phone No. (304) 926-5130

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	NET IMPACT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$34,544,160*	\$(64,150,236)	\$(29,606,076)	\$(29,606,076)	\$
PERSONAL SERVICES	**				
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT	**				
OTHER	34,544,160	(64,150,236)	(29,606,076)	(29,606,076)	

2. Explanation of above estimates:

*Annual increase is based upon premium credits (8%) given to program participants. As the number of participants cannot be predicted, the annual increase figures were based on a 100% participation rate. Annual decrease is based upon an estimated 5% reduction in claims pay-outs. Again, the decrease is based upon a 100% participation rate.

**Personal services (\$88,900) and equipment (\$8,000) were previously included in cost estimates for 85CSR23, "Loss Prevention". Such costs cannot be reasonably allocated between 85CSR23 and the present rule.

3. Objectives of these rules:

The purpose of this rule is to implement the provisions of West Virginia Code, §23-2B-3, to promote the voluntary implementation of qualified loss management programs through the provision of a premium tax credit. The goal of this rule is to establish Workers' Compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses, and post-injury assistance to the worker which will result in a reduction in the Workers' Compensation Fund deficit.

Rule Title: 85CSR24, "Qualified Loss Management Programs"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Workers' Compensation Division has a large deficit. The implementation of voluntary safety programs will reduce the participating employers' rate of loss and the resultant pay outs from the Fund. The premium tax credit is a limited incentive to implement and underwrite such programs.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Certain employers may voluntarily undertake steps to focus their attention on safety issues. Some expenditures may be required by employers to implement their program. Much of the cost of such programs will be underwritten by the provision of premium tax credits. The loss reduction experienced as a result of the focus on safety will ultimately result in a lower premium rate for the employer and a lower loss experience rate for the risk pool.

C. Economic Impact on Citizens/Public at Large.

The goal of this rule is to provide incentive to employers to develop loss management programs so as to improve worksite safety and reduce claims experience. The ultimate aim of this rule is to provide for a reduction in the Workers' Compensation deficit by reducing workplace injuries and illnesses.

Date: January 11, 1995

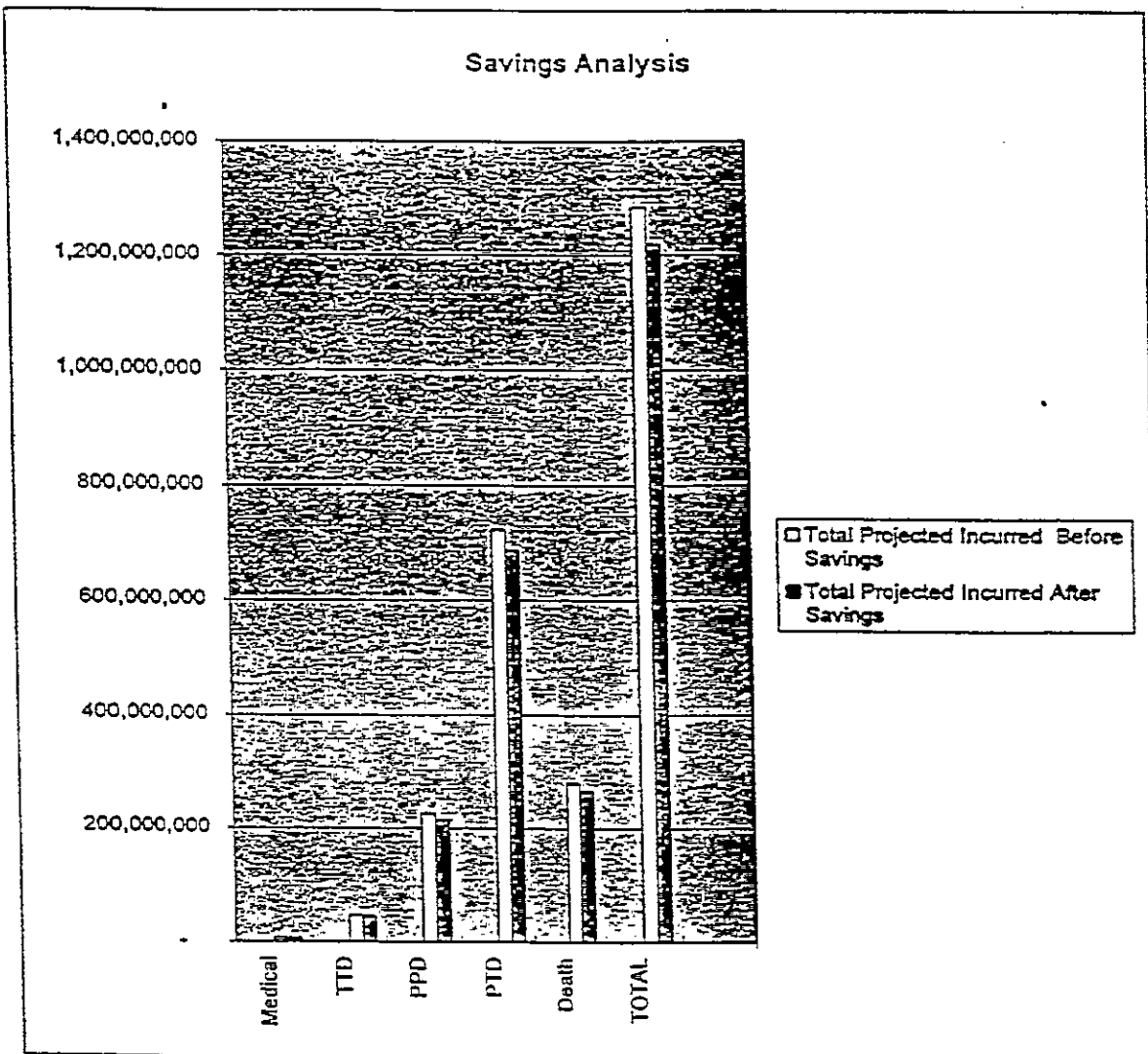
Signature of Agency Head or Authorized Representative

Andrew N. Richardson

Andrew N. Richardson
Commissioner, Bureau of Employment Programs

SAVINGS ANALYSIS

Benefit Type	Projected Claim Count for FY96 net of 5% Reduction	Average Cost Per Claim Assuming All Other Things Equal	Total Projected Incurred Before Savings	Total Projected Incurred After Savings
Medical	22,969	276	6,670,442	6,336,920
TTD	23,799	1,867	46,780,628	44,441,596
PPD	16,469	13,049	226,219,727	214,908,741
PTD	2,142	320,631	723,022,161	686,871,053
Death	1,120	237,754	280,311,765	266,296,177
TOTAL	66,500		1,283,004,723	1,218,854,487



Unaudited - For management discussion purposes only.

HISTORICAL TREND DATA
SOURCE: MIRA (OPEN CLAIMS DATA)

<i>Benefit Type</i>	<i># of Claims</i>	<i>% of Claim Type to Total # of Claims</i>	<i>Total Incurred (Discounted)</i>	<i>Average Cost Per Claim Type</i>
Medical	91,573	34.54%	25,263,975	276
TTD	94,882	35.79%	177,177,053	1,867
PPD	65,660	24.77%	856,805,911	13,049
PTD	8,539	3.22%	2,737,865,293	320,631
Death	4,463	1.68%	1,061,095,342	237,754
	<u>265,117</u>	<u>100.00%</u>	<u>4,858,207,574</u>	

PROJECTED ANNUAL SAVINGS

<i>Benefit Type</i>	<i>Projected Claim Count for FY96</i>	<i>5% Reduction Amt of Claims by Type</i>	<i>Average Cost Per Claim Assuming All Other Things Equal</i>	<i>Projected Annual Savings by Claim Type</i>
Medical	24,178	1,209	276	333,522
TTD	25,052	1,253	1,867	2,339,031
PPD	17,336	867	13,049	11,310,986
PTD	2,255	113	320,631	36,151,108
Death	1,179	59	237,754	14,015,588
	<u>70,000</u>	<u>3,500</u>		<u>64,150,236</u>

Unaudited - For management discussion purposes only.

FILED

85 CSR 24

JAN 7 3 23 PM '97

TITLE 85

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EXEMPT LEGISLATIVE RULES

BUREAU OF EMPLOYMENT PROGRAMS

WORKERS' COMPENSATION DIVISION

SERIES 24

QUALIFIED LOSS MANAGEMENT PROGRAMS

§85-24-1. General.

1.1. Scope. -- This rule implements the provisions of West Virginia Code, §23-2B-3, regarding qualified loss management programs.

1.2. Authority. -- West Virginia Code, §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); ~~§23-2-B-3; §23-2-4;~~ and §23-1-1. Pursuant to West Virginia Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.

1.3. Filing date. --

1.4. Effective date. --

§85-24-2. Purpose of rule.

The purpose of this rule is to implement the provisions of West Virginia Code, §23-2B-3, to promote the voluntary implementation of qualified loss management programs through the provision of a prospective premium tax credit. The goal of this rule is to establish workers' compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses, and post-injury assistance to the worker which will result in the rendering of higher quality health care to the employee and ~~in~~ a reduction in the workers' compensation fund deficit.

§85-24-3. Definitions.

As used in these rules, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Act" means the workers' compensation laws of the state of West Virginia which are codified at chapter twenty-three of the Code of West Virginia.

3.2. "Client employer" means an employer who participates with a qualified loss management service provider in accordance with and under the provisions of this rule.

3.3. "Commissioner" means the commissioner of the bureau of employment programs pursuant to West Virginia Code, §21A-2-1, and West Virginia Code, §23-1-1, and any deputies designated pursuant to West Virginia Code, §21A-2-12 & -13.

3.4. "Credit factor" means a multiplier, determined in accordance with this rule, utilized to calculate premium tax credits.

3.5. "Director" means the executive director of the workers' compensation division, who is appointed by the commissioner and who serves as the chief operating officer of the daily operations of the workers' compensation division, provided by West Virginia Code, §23-1-4.

3.6. "Division" means the workers' compensation division within the bureau of employment programs as provided for by West Virginia Code, §21A-1-4, and West Virginia Code, §23-1-1 et seq.

3.7. "Experience modification factor" means an actuarially determined multiplier of the premium tax base rate used to determine an individual employer's the premium tax rate (Note: The experience modification factor has been historically referred to as the experience modification rate or EMR).

3.8. "Good standing" with the division means that the employer has not defaulted on its obligations to make payments to the division. Being in delinquent status, as provided for in West Virginia Code, §23-2-5(b), is not equivalent to being in default and does not deprive the employer of good standing. The term default is defined in West Virginia Code, §§23-2-5(d), -5(e), -6, & -8. The term default also includes those situations under West Virginia Code, §23-2-5(f)(2)-(4), where an employer returns to default status upon breaching a reinstatement agreement. If an employer fails to meet the requirements of those sections, then it is in default and is not in good standing with the division.

3.9. "Incurred losses" are claims reserves consisting of compensation awards, medical payments, and claims expense payments.

3.10. ~~3-9.~~ "Injury" means compensable injuries or illnesses for which costs are incurred by the division within the meaning of W. Va. Code, §23-4-1 et seq.

3.11. ~~3-10.~~ "Joint labor and management safety committee" means a formally structured process to provide for and foster employee and employer involvement in safety reforms. Such structures include, but are not limited to, groups such as quality circles and self directed work teams. A tiered safety organization is permitted, if employees participate at each level of the organized committees.

A joint labor and management safety committee must exhibit the following characteristics to be considered acceptable:

- a. Safety must be a priority of the group;
- b. The group must have the authority to conduct safety inspections of the work area for which they are responsible and to determine and recommend corrective measures to management;
- c. The group must meet regularly and minutes must be kept of the meetings;

d. Each member of the committee shall have an equal vote;

e. Members of the committee shall not experience any loss of wages or other retaliation while attending safety committee meetings or performing duties at the direction of the safety committee;

f. At least fifty percent (50%) of the members of the tiered safety organization and of each committee shall be employee representatives; and

g. All members of the committee shall be trained in matters related to workplace safety, such training shall include attendance at a seminar on basic safety programs sponsored or approved by the division.

3.12. "Loss costs" are incurred losses on an accrual basis per one hundred dollars (\$100.00) of payroll for the period under measurement.

3.13. ~~3.11.~~ "Operating personnel" means those individuals employed or utilized by a qualified loss management service provider to provide qualified loss management services to client employers. Such individuals include all specialists in safety, rehabilitation, and occupational health utilized by the qualified loss management service provider. Such individuals do not include clerical employees.

3.14. ~~3.12.~~ "Quarter" means the four calendar quarters: January 1 through March 31; April 1, through June 30; July 1 through September 30; and October 1 through December 31 of each calendar year.

3.15. ~~3.13.~~ "Regular subscriber" means an employer who is a subscriber to all parts of the compensation fund including the surplus fund.

3.16. ~~3.14.~~ "Self-insurer" and "self-insured employer" mean employers who have elected one or both of the options contained in W. Va. Code §23-2-9, and who pay individually and directly, or from their own benefit fund or system of compensation, the compensation and other benefits provided to injured employees or their dependents under the Act.

§85-24-4. Employer participation; eligibility.

4.1. Participation. Participation by an employer in a qualified loss management program is voluntary. No employer shall be required to participate in a qualified loss management program under the provisions of this rule.

4.2. Eligibility. Regular subscribers to the workers' compensation fund in good standing with an experience modification factor equal to or greater than 1.5 are eligible to participate in a qualified loss management program under the provisions of this rule. The failure of an employer to maintain good standing during its period of participation in a qualified loss management program shall result in the termination of participation by the employer. Self-insurers are not eligible to participate in the qualified loss management program established by this rule.

4.2.1. Individual employers, who have an experience modification factor less than 1.5, may participate in a qualified loss management program if the employer is a member of an employer group under section five of this rule and the employer group has an aggregate experience modification factor, developed from the aggregate experience of members of the group, equal to or greater than 1.5.

4.2.2. If the employer's or the group's experience modification factor drops below 1.5 during its participation in a qualified loss management program, the employer's eligibility will not be affected.

§85-24-5. Small employer's group associations.

5.1. Description. Small employers may associate with other small employers to form an employer group for purposes of seeking qualified loss management services under the provisions of this rule.

5.2. Definitions. Small employer. For purpose of this rule, "small employer" means an employer with fifty (50) or less employees and a premium tax less than \$40,000 per year.

Employer group. For purposes of this rule, "employer group" means an association of small employers with the same industrial classification code or an association of small employers with similar industrial classification codes as approved by the division.

5.3. Eligibility. an employer group may be formed from independent employers or in conjunction with an existing association of businesses.

5.4. Board of Governors. Each employer group shall appoint a board of governors composed of active member of the employer group. The board of governors shall be responsible for contracting with an approved qualified loss management service provider on behalf of the employer group.

5.4.1. Individual employer eligibility for the employer group shall be determined by the board of governors and the qualified loss management service provider. In no event shall an employer participate in the qualified loss management program if it does not meet the eligibility requirements of section four of this rule.

5.4.2. No additional individual employers shall be added to an employer group more than thirty (30) days after the appointment of the board of governors. No additional individual employer shall be added to an employer group after the onset date of a qualified loss management program for the employer group.

§85-24-5.6. Qualifications for loss management service providers.

In order to offer a credit to its client employers, a loss management service provider must submit and receive approval of its loss management program from the division following the procedures outlined below and containing the key elements indicated.

6.5.1. Loss management service providers must submit a loss management program to the workers' compensation division. The program shall be submitted in a time frame and form as prescribed by the division. Such submission may result from a request for proposal, issued or caused to be issued by the division, in a manner prescribed by the request for proposal. Such submission shall be in a manner prescribed by the division and in accordance with the rules of the purchasing division of the West Virginia department of administration. Each loss management service provider shall meet the following minimum qualifications.

~~6.5.2. A loss management service provider must be recognized by the division. Such a service provider shall be recognized if it has demonstrated an ability to significantly reduce workers' compensation losses by implementing a loss control management program containing both pre injury safety elements and post injury claims management.~~

~~In the determination of whether the service provider is a recognized loss management service provider, the following shall be considered in addition to the threshold requirements of 6.2.5.2:~~

~~6.5.2.1. The time period over which the loss management service provider has offered its program;~~

~~6.5.2.2. The number of client employers subscribing to the loss management program over the seven years prior to application; and~~

~~6.5.2.3. The effectiveness of the program offered by the loss management service provider. In determining the effectiveness of the program, the following shall be considered:~~

~~a. Pre program and post program injury frequency, injury severity, injury costs, and employer modification factors;~~

~~b. The data contained in 5.2.3.a shall be provided for all of the loss management service provider clients, and not just select clients, over the seven years prior to application;~~

~~c. All data shall be provided in a readable format prescribed by the division and shall contain copies of the experience modification factor calculations for the client employers; and~~

~~d. The division shall have the right to inspect books and business records of the loss management service provider in order to verify that it is a complete list and accurately represents the experience of such client employers.~~

6.5.3. Personnel. A loss management service provider must evidence its ability to perform services based upon qualifications of its operating personnel. All elements of operating personnel qualifications shall be reviewed.

6.5.3.1. Information regarding the job-related training and experience of all operating personnel must be submitted to the division.

6.5.3.2. Each loss management service provider shall have specialists on staff including experienced and qualified specialists in safety and occupational health.

6.5.4. Safety. A loss management service provider must have a structured approach to focus top level management of the employer, as well as other employer personnel, on safety.

6.5.4.1. A loss management service provider must provide a means of measuring and insuring the employer's commitment to implementing safe workplace practices.

6.5.4.2. A loss management service provider must provide for the implementation of a joint labor and management safety committee as part of its loss management program.

6.5.5. Safety audit. A loss management service provider shall provide an annual safety audit of each client employer. Such an audit shall include, but not be limited to, a report of all occupational injuries or illnesses.

6.5.5.1. Where such client employer is subject to the recording and reporting provisions of 29CFR Part 1904, the report shall include the information required in the format prescribed by the division provision (form OSHA No. 200 or successor).

6.5.5.2. Where such client employer is subject to the recording and reporting provisions of 30CFR Part 50, the report shall include the information required in the format prescribed by the provision (MSHA Mine Accident, Injury, and Illness Report Form 7000-1 or successor).

6.5.5.3. Where such client employer is not subject to either of the foregoing federal reporting regulations, the report shall include the information required in the format prescribed by 29CFR Part 1904 (form OSHA No. 200 or successor).

6.5.6. Post injury response. A loss management service provider must provide a loss management program which:

6.5.6.1. Contains plans of action and specific techniques, consistent with the Act, which are designed to assist an injured worker in obtaining necessary medical care;

6.5.6.2. Contains specified means of maintaining contact with the injured worker and continuing claims control throughout the recuperation period;

6.5.6.3. Contains specified means of maintaining contact with medical providers throughout the recuperation period; and

6.5.6.4. Contains specified means to encourage an injured worker to return to work at the earliest possible time, including the development of modified work programs.

6.5.7. These additional elements must be included in a loss management program:

6.5.7.1. The approved loss management service provider ~~must offer its qualified loss management program to every~~ may not discriminate against any eligible client employer desiring to avail itself of the credit assigned to the service provider by the division;

6.5.7.2. The program must contain a provision stating that the credit factor applicable to the first year is subject to change in the second and third years;

6.5.7.3. The program must contain a provision stating that a credit will not apply after the client employer has received a credit for three (3) years; and

6.5.7.4. The program must contain a provision stating that a client employer must be involved in the program for ~~one~~ year three (3) years before eligibility for the credit is established. ~~Credits are applied to the year period following each year of participation in the program and are calculated based upon participation year data. If participation in the program terminates prior to completion of a three year program, the client employer is penalized the amount of credit received.~~

6.5.7.5. The program must contain a provision that the qualified loss management service provider shall notify the division, prior to commencement of qualified loss management services, of each participating client employer.

~~6.5.~~7.6. The program shall contain a provision to allow a qualified loss management service provider to terminate its services to a client employer or to a member or members of an employer group prior to the expiration of the one year eligibility requirement in the event the client employer is not committed to workplace safety, resulting in a reduction of occupational injuries and illnesses, and post injury assistance to the worker.

a. Disputes under this provision between qualified loss management service providers and client employers are not subject to resolution under the provisions of this rule.

b. Wrongful termination by a qualified loss management service provider may, in the division's discretion, result in withdrawal of plan approval under section nine of this rule.

~~§85-24-6. Assignment of credit factors.~~

~~6.1. Each qualified loss management service provider approved to offer a loss management program under the provisions of this rule shall be assigned a credit factor upon notice of approval or acceptance of proposal.~~

~~6.1.1. Loss management service providers approved or accepted under this rule shall, be assigned a credit factor of .08 (8%) for the first and second year of their loss prevention program.~~

~~6.1.2. Third year credit factors assigned in the above fashion shall be halved.~~

~~6.2. Upon accumulation of three years of program experience under this rule, the credit factor shall be based upon table 85-24A which compares the experience modification factors for years prior to the implementation of a loss management program to years subsequent to the implementation of a loss management program and expresses that comparison in the form of a ratio.~~

~~6.2.1. Data covering the ratio calculation shall be aggregated over all the client employers of the loss management service provider for the most recent five year period. Two experience modification factors, one for years prior to the program implementation and one for subsequent years, shall be used to determine the ratio.~~

~~6.3. The assigned credit factor shall be effective until the next July 1 after assignment. The credit factor shall be recalculated for every fiscal year thereafter. The recalculated credit factor shall be effective during the fiscal year for which it is calculated.~~

~~6.4. If the loss management program submitted by a loss management service provider contains data on client employers with at least three (3) governing classes, as contained in the "West Virginia workers' compensation classes and rates, fiscal year 1995," the credit will be applicable to all client employers in the program. Otherwise, the calculated credit factor shall apply only to those client employers whose governing class is in the submitted data. For client employers with other governing classes, the credit factor for newly established loss management service providers shall apply unless the credit factor developed by submitted data is less than the credit factor for newly established service providers whereupon such credit factor developed from the submitted data shall apply.~~

~~6.5. The assigned credit factor shall not exceed .15 (15%) for any year.~~

§85-24-7. Assignment of credit factors.

7.1. Each new qualified loss management service provider approved to offer a loss management program under the provisions of this rule shall be assigned a credit factor upon notice of approval or acceptance of proposal.

7.1.1. Loss management service providers approved or accepted under this rule shall be assigned an initial credit factor of .10 (10%).

7.1.2. Subsequent credit factors shall be assigned to loss management service providers based upon the aggregate performance of their client employers in accordance with the scale developed under the provisions of subsection 7.2.

7.2. Upon accumulation of sufficient program experience, as determined by the compensation programs performance council,

the credit factor assigned to the loss management service provider shall be based upon the percentage of the aggregate reduction in loss costs for all of the loss management service provider's client employers or any industrial groupings determined to be appropriate by the compensation programs performance council.

7.2.1. The scale for determining credit factors shall be developed in the following manner:

a. The compensation programs performance council shall make the determination at a public meeting or meetings held in accordance with the provisions of 85 C.S.R. 14, "Procedural Rules for the Compensation Programs Performance Council."

b. Such a determination shall be filed with the office of the secretary of state for publication in the state register pursuant to the provisions of W. Va. Code, §29A-2-1 et seq.

c. Such a determination shall be filed with the office of the secretary of state at least thirty (30) days prior to the first day the determination becomes effective.

7.2.2. Loss costs for client employers who do not complete one year of the programs shall not be utilized in the ratio calculation.

7.3. The assigned credit factor shall be effective until the next July 1 after assignment. The credit factor shall be recalculated for every year thereafter in the fashion provided for in this section. The recalculated credit factor shall be effective during the fiscal year for which it is calculated.

~~§85-24-7. Credits.~~

~~7.1. Each client employer who participates in a loss management program approved under the provisions of this rule shall be entitled to a prospective credit to premium taxes as determined by the credit factor multiplier.~~

~~7.1.1. A client employer must participate in an approved loss management program for at least a one year period before being entitled to claim a premium tax credit.~~

~~7.2. Application of the premium tax credit shall be as follows:~~

~~7.2.1. After the first year of approved program participation, the premium tax credit shall be applied to the period of program participation and taken by the client employer in the following year period;~~

~~7.2.2. After the second year of approved program participation, the premium tax credit shall be applied to the period of program participation and taken by the client employer in the following year period;~~

~~7.2.3. After the third year of approved program participation, the premium tax credit shall be applied to the period of program participation and taken by the client employer in the following year period; and~~

~~7.2.4. Participation in an approved program for a partial period after the first full year of participation shall result in a pro rata premium tax credit applicable to the period of program participation and taken by the client employer in the next subsequent year period.~~

~~7.3. The maximum time a premium tax credit shall be allowed for any client employer is three years.~~

~~7.4. The amount of credit applied to the first year of program participation shall be based on the credit factor assigned to the loss management service provider on the date the employer subscribes to the program.~~

~~7.5. The amount of credit applied to the second and third years of program participation shall be based on the credit factor assigned to the loss management service provider on the first day of July of the pertinent year.~~

~~7.5.1. The credit for the third year of participation in a loss management program shall be halved.~~

~~7.6. An employer who has subscribed to an existing program of a qualified loss management firm prior to the effective date of this rule shall be subject to a reduction in credit eligibility as follows:~~

~~7.6.1. Participation for one year or less shall result in credit eligibility for the full three years;~~

~~7.6.2. Participation for more than one year but less than two years shall result in credit eligibility for two years;~~

~~7.6.3. Participation for two years or more but less than three years shall result in credit eligibility for one year; and~~

~~7.6.4. Participation for three years or more shall result in no credit eligibility.~~

~~7.7. Changing loss management service providers prior to credit eligibility. If a client employer's enrollment in an approved program terminates, for any reason, before such employer becomes credit eligible and such employer subsequently becomes enrolled in another approved program, the employer's prior participation shall not be combined with the subsequent enrollment in order to comply with the required one year of participation to become credit eligible. In such case, the prior participation shall be disregarded and a new start up date shall be applied. The credit shall be calculated in accordance with the provisions of section eight of this rule.~~

~~7.8. Changing loss management service providers after credit eligibility established. If a client employer's enrollment in an approved program terminates, for any reason, after the client employer becomes credit eligible, a pro rata credit will be applied. To the extent that a client employer subsequently enrolls in another approved program within thirty days of such termination and participates in the program for the remainder of the subject period, the client shall be entitled to a full credit for the period. The start-up date of the employer's enrollment in the prior program shall be the date used to determine credit eligibility, subject to any adjustment that may be required because of a difference in the level of credit of the two loss management service providers involved.~~

§85-24-8. Credits.

8.1. Each client employer who participates in an approved loss management program for a three (3) year period and who achieves the necessary reductions in loss costs shall be entitled to a prospective credit to premium taxes.

8.2. Start-up calculations. Prior to and as a condition of the start-up of a qualified loss management program on behalf of a client employer, the division shall provide the following information to the loss management service provider and the client employer.

8.2.1. Baseline loss costs. The client employer's ultimate loss costs will be established for the three (3) most recent fiscal years, prior to the implementation of the

employer's qualified loss management program, for which data is available. This is the baseline loss costs.

8.2.2. A loss costs modification factor will be determined for the client employer by dividing the baseline loss costs by the base loss costs established from the most recent rating study. This is the baseline modification factor.

8.2.3. Trended base loss costs shall be projected by the division for the three (3) years covering the period of participation in the qualified loss management program. Trended base loss costs shall be based on anticipated changes in costs, inflation and benefit changes.

8.3. Loss cost reductions. At the conclusion of the each year of program participation, the division will calculate the loss costs for that year. The loss costs will be compared to the baseline loss costs to determine the percentage reduction in loss costs for each period.

8.3.1. Communications. The division shall communicate to the client employer and the loss management service provider the percentage of loss costs reductions and the amount of projected premium tax credit at the conclusion of each period. The division shall make such entries in its books to show the amount of prospective credit (subject to subsequent year adjustments) achieved thus far.

8.4. Amount of credit. The amount of prospective credit achieved by a client employer shall be based on the credit factor assigned its loss management service provider for each period and the percentage of its overall reduction in loss costs for the three (3) year period in accordance with the following table.

Table 85-24A

<u>% OVERALL LOSS COSTS REDUCTIONS</u>	<u>% OF CREDIT FACTOR ALLOWED</u>
<u>40% and more</u>	<u>Full credit factor allowed</u>
<u>30% to 40%</u>	<u>80%</u>
<u>20% to 30%</u>	<u>60%</u>
<u>10% to 20%</u>	<u>40%</u>
<u>5% to 10%</u>	<u>30%</u>
<u>Less than 5%</u>	<u>0%</u>

Example: A loss management service provider has been assigned a 10% credit factor for each year of the three year program period. The client employer achieves an overall three year percentage reduction in loss costs of 26%. The client employer is entitled to 60% of the loss management service provider's credit factor.

In other words, 60% of 10% = 6% (.6 x .1 = .06).

The client employer is entitled to a 6% (.06) credit for the first two years of the program and a 3% (.03) credit for the third year of the program. Note: The credit achieved in the third year of program participation is halved.

8.5. The maximum time a premium tax credit shall be allowed for any client employer is three (3) years.

8.6. The prospective credit shall be calculated using the credit factor assigned to the loss management service provider for each of the three (3) years of participation. The credit calculated for the third year of program participation shall be halved.

8.7. Changing loss management service providers. If a client employer's enrollment in an approved program terminates before such employer completes three (3) years of program participation and such employer subsequently becomes enrolled in another approved program, the employer's prior participation shall only be combined with the subsequent enrollment (1) if enrollment in the first program was for more than one year; (2) if enrollment in the first program resulted in a reduction in loss costs of at least 10% as calculated in accordance with the provisions of 8.4 (adjusted for any partial period in excess of one year participation); (3) if the employer subsequently enrolls in another approved program within thirty (30) days of such termination; and (4) if program participation terminates due to the fault of the qualified loss management service provider.

8.8. Prospective credit. Except as follows, within ninety (90) days following the conclusion of the third year of program participation, the division will refund to the client employer the amount of prospective credit achieved by the client employer.

8.8.1. Retrospective plans. For client employers participating in a retrospective rating plan, either group or individual, the prospective credit will be refunded ninety (90) days following the final reconciliation and adjustment of the client employer's retrospective rating plan for all periods covered by the three (3) years of program participation.

a. The prospective credit for a client employer participating in a retrospective rating plan will be based on the retrospectively adjusted premium tax for each period of program participation.

~~§85-24-9.8-~~ Withdrawal of plan approval.

9.1. ~~8.1-~~ If the division determines, after a meeting with the loss management service provider, that the loss management service provider is not in compliance with program requirements, the division is authorized to withdraw approval of the loss management program previously approved or accepted under this rule.

~~9.2. 8-2.~~ Should the division withdraw approval of the loss management program, the division shall provide at least thirty days written notice that such approval is withdrawn and that its participation in the qualified loss management program authorized West Virginia Code, §23-2B-3, is terminated.

~~9.3. 8-3.~~ A copy of the required notice shall be sent by the division to each of the service provider's client employers.

§85-24-~~10.9.~~ Termination of participation by client employer.

~~10.1. 9-1.~~ The client employer may terminate participation in the loss management program upon three years of continuous participation in the program without penalty.

~~10.2. 9-2.~~ If the client employer terminates participation in the loss management program prior to three years of continuous participation in the program, ~~no credit shall be granted to the client employer. a penalty shall be applied to the premium tax of the client employer in the amount of the premium tax credit previously granted. Such penalty shall be due immediately upon termination of participation of the client employer.~~

§85-24-~~11.10.~~ Notification

The division shall send all notices required under the provisions of this rule by certified mail addressed to the loss management service provider or client employer at their last known residence or place of business: Provided, That, if any loss management service provider or client employer is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

§85-24-~~12.11.~~ Administrative protests and hearings.

~~12.1. 11-1.~~ Protest. An aggrieved loss management service provider or employer may protest any order, decision, designation or redesignation made under the provisions of this rule.

12.2. ~~11.2.~~ Petition. In order to preserve its right to protest, the loss management service provider must file a written petition with the division, stating the order or decision protested and the exact nature of the issue in controversy. In the written petition, the loss management service provider must designate a person or entity to receive official notices related to the protest and the loss management service provider must provide the address of the person or entity. The written petition must be received by the division within thirty (30) days after the loss management service provider receives notice of the objectionable order or decision or within sixty (60) days of the date of the objectionable order or decision, regardless of notice. This period may not be extended or waived.

12.3. ~~11.3.~~ Acknowledgment. Within thirty (30) days after receiving the written protest, the division shall issue a notice acknowledging the protest and providing an opportunity for hearing. Filing of a written protest temporarily stays the order or decision protested until a decision is rendered on such protest by a hearing examiner: Provided that, such temporary stay shall not exceed ninety (90) days from the date of the order or decision protested unless the loss management service provider is not provided an opportunity for hearing within that ninety (90) day period, in which case the temporary stay shall not exceed that date which the loss management service provider is provided an opportunity for hearing.

12.4. ~~11.4.~~ Subsequent administrative hearing proceedings shall be in accordance with 85 C.S.R. 7 "Rules for Selected Hearings."

§85-24-13. Retaliation complaint procedure.

13.1. A member of a joint labor and management safety committee shall not experience any loss of wages or other retaliation while attending safety committee meetings or performing duties at the direction of the safety committee.

13.2. Filing. Any member of a joint labor and management safety committee who experiences such loss of wages or retaliation may file a complaint within thirty (30) days of occurrence regarding such activity.

13.2.1. The complaint shall be filed with the president or chief executive officer of the employer, if the employer is a corporation or a limited corporation; with the managing partner if the employer is a partnership; with the general partner if the employer, parent or related business is a limited partnership; or, with all the members if the employer is a limited liability company; or with the owner if the employer is a sole proprietorship.

13.2.2. A copy of the complaint shall be filed with a division designee.

13.2.3. A copy of the complaint shall be filed with the joint labor and management safety committee and shall be made a part of the minutes of their next scheduled meeting.

13.3. The individual with whom the complaint is lodged at the employer's level shall be the responsible party to investigate the complaint and make a detailed report and response to the member of the committee who has complained. Said report will detail any remedial action taken by the employer.

13.3.1. A copy of the report and response shall be filed with a division designee.

13.3.2. A copy of the report and response shall be filed with the joint labor and management safety committee and shall be made a part of the minutes of their next scheduled meeting.

13.4. Remedies. The remedies contained herein shall not preclude any other action, either state or federal, for which the committee member is eligible.

§85-24-~~14.12~~ Severability

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not effect the provisions or the applications of these rules which can be given affect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.

Table 85-24A

The qualification for a schedule rating credit is as follows:

Ratio of Experience Modification For Subsequent Years to that for Prior Years	First and Second Year Credit	Third Year Credit
0.807 or less	15%	7.5%
More than 0.807 but at most 0.820	14%	7.0%
More than 0.820 but at most 0.833	13%	6.5%
More than 0.833 but at most 0.847	12%	6.0%
More than 0.847 but at most 0.860	11%	5.5%
More than 0.860 but at most 0.873	10%	5.0%
More than 0.873 but at most 0.887	9%	4.5%
More than 0.887 but at most 0.900	8%	4.0%
More than 0.900 but at most 0.913	7%	3.5%
More than 0.913 but at most 0.927	6%	3.0%
More than 0.927 but at most 0.940	5%	2.5%
More than 0.940 but at most 0.953	4%	2.0%
More than 0.953 but at most 0.967	3%	1.5%
More than 0.967 but at most 0.980	2%	1.0%
More than 0.980 but at most 0.993	1%	0.5%
More than 0.993	none	none

ATTENDANCE SHEET & SPEAKER'S LIST

PUBLIC HEARING FEBRUARY 15, 1996

RE: PROPOSED RULE 85CSR24,
"QUALIFIED LOSS MANAGEMENT PROGRAMS"

<u>NAME</u>	<u>REPRESENTING</u>	<u>CHECK IF YOU WANT TO SPEAK</u>
<u>Beverly A. Jarrett</u>	<u>Regulatory Training Center</u>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
<u>Elizabeth Lippo</u>	<u>Home Care Plus</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Mario Alvarez</u>	<u>Eastern Electric</u>	YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Mike Solomon</u>	<u>Employee Service</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>SCOTT MASA</u>	<u>ROBINSON + McElwee</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Larry Green</u>	<u>Long-Airdux Co.</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Cliff Lively</u>	<u>Bulk Materials</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Sam Fawcett</u>	<u>ESC</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Paul M. Staff</u>	<u>Concorp, Inc.</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Hershell Revco</u>	<u>Supervale</u>	YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Paul J. Gilmer Jr</u>	<u>City of Charleston</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>BRAD CROUSER</u>	<u>Jackson & Kelly</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>John W. Crawford</u>	<u>Pittston Coal Mgmt Co.</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>DR. MOHAN RANADIVE</u>	<u>Corporate Health Services</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Linda Noel</u>	<u>Steptoe + Johnson</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>David Slater</u>	<u>Gates McDonald</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<u>Chf. P...</u>	<u>WC</u>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

Compensation Programs Performance Council

Attendance Sheet (WVC, §6-9A-3)

Meeting of February 27, 1996
Morgantown, West Virginia

The council is required to keep a list of individuals attending its meetings and of those who wish to address the Council.

Name	Who do you Represent?	Your Mailing address if you wish to receive copies of notices & minutes	Do you wish to Speak? (Yes/No)
Len Hill	ESC		No
Ed Pauley	ESC		NO
W. Haines	Hester Ind.		NO
Dave Laurie	UMWA		NO
Michael Refior	UMWA		NO
Belinda Landers	CSB Logging		NO
Ed Zell	HMSI	1 PPG Place, Suite 2700 Pittsburgh, PA 15222	NO
Robert C. Johnson	SMR Technologies Inc ATCS Co.	HCR 79 Bx 200 Feltwick, WV 26202-9718	NO
David Slater	Gates McDonald		NO
Richard B. Under	Chamberlain & Flowers		NO
William W. Underwood	ALAMCO, INC	P.O. Box 1740 CLARKSBURG, WV 26301	NO
✓ Dick Waybright	WV. Forestry Assn	P.O. Box 4880 Ravenswood, WV 26164	Yes
✓ Jeff Price	Bedwith Lumber Co.	PO Box 3A Slaby Fork WV 26291	Yes

Compensation Programs Performance Council

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Matt Mengs	AFG INDUSTRIES	RR 3 Box 151N BRIDGEPORT WV 26330	NO
John Budiascak	H. E. NEUMANN Co.	92-16 th ST Wheeling WVA 26003	NO
TONG LEROY	AFG Industries	RR 3 Box 151N BRIDGEPORT WV 26330	NO
PAUL HAWK	GENERAL PAVING Co	P.O. BOX 3180 MORGANTOWN, WV 26505	NO
PAM PAYNE	UNITED HOSPITAL CENTER	RT. # 19 S # 3 HOSPITAL PLAZA CLARKSBURG, W. Va. 26301	NO
Leigh Ann Kersting	United Hospital Center	same as above	NO
SCOTT MARSHALL	MYLAND	PO BOX 4310 MGTN WV	NO
Steven Thompson	United Security	PO Box 1023 Bridgeport, WV 26330	NO
CURT HASSLER	WVA	PO BOX 625 MORGANTOWN, WV 26506	NO
RL Samson	HELMICK Corp	PO BOX 71, FMT, 26554	NO
Stephanie Kaskas	Mt. State Dist	PO Box 4300 Mgt	NO
James B. Clark	Mt. State Dist	P.O. Box 4300 Morgantown	NO
Dalhi Mali	W.S. Thomas	1854 Morgantown Ave	NO

Compensation Programs Performance Council

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Name	Who do you Represent?	Your Mailing address if you wish to receive copies of notices & minutes	Do you wish to Speak? (Yes/No)
Mike Stone	W. S. Thomas	1854 Morgantown Ave Fayette WV 26554	No
D. Helwick	Helwick Corp	POB 71 Frost WV 26554	NO
Kathy Snyder	Jackson & Kelly	P.O. Box 619	NO
CRAIG LEFEVRE	APPALACHIAN HARDWOOD CENTER	P.O. 6125 Morgantown WV	NO
Roger Wright	WVU	P.O. 6125 Morgantown, WV	NO
Opel Stophar	WVU	Same as Above	NO
Billie Jean Kelly	Lakeview	Rt 6 Box 88A, Mays	NO
Janet Forbes	The Limited Inc.	3 Limited Parkway Columbus, OH 43230	NO
Alon Ducatus	WVU	Inst Occup Environment WVU School Med Morgantown WV 26506-9199	YES
Tammy Jeffries	Maloney + Co	PO Box 520 Kingwood, WV 26537	No

WEST VIRGINIA WORKERS' COMPENSATION DIVISION
BUREAU OF EMPLOYMENT PROGRAMS

BEP-LEGAL DIVISION
96 MAR -5 AM 7:51

RE: Public Hearing on
Rule 85 C.S.R. 24
Qualified Loss Management Programs

Transcript of proceedings had in the
above-entitled matter held at the Charleston Civic Center,
Room 206, 200 Civic Center Drive, Charleston, West
Virginia, on the 15th day of February, 1996, commencing at
10:10 a.m., pursuant to notice.

KARON L. VORHOLT
Certified Court Reporter
634 Pioneer Lane
Charleston, West Virginia 25312
(304) 984-1242

ORIGINAL

APPEARANCES: PERFORMANCE COUNCIL MEMBERS:

Thad D. Epps

Chris E. Jarrett

Fred Tucker

David Harris

Richard Humphreys

ALSO PRESENT: ANDREW N. RICHARDSON, Commissioner
Bureau of Employment Programs

RANDALL B. SUTER, Counsel
Legal Division

Reporter's Certificate 20

1 MR. EPPS: I'd like to call the public hearing to
2 order. My name is Thad Epps. I'm a member of the
3 Performance Council. Chairman Richardson should be here
4 shortly. I came from the Capitol and I know that he's been
5 tied up on a couple other things down there, so he may be a
6 little bit tardy. Our Vice-Chairman, Edward Sullivan, will
7 be a little bit late. So we drew straws and I ended up
8 with the short straw.

9 This public hearing is intended to cover
10 two proposed rules: Proposed Rule 85 C.S.R. 11,
11 Enforcement of Reporting and Payment Requirements and
12 Proposed Rule 85 C.S.R. 24, Qualified Loss Management
13 Programs. We will discuss the Qualified Loss Management
14 Programs rule first because we think that maybe one of our
15 experts on the other rule may be here a little bit later.

16 MR. SUTER: Mr. Epps, with your leave, I'd like
17 to note that we probably ought to do this in the format of
18 two separate hearings so that we have two separate
19 transcripts to attach.

20 MR. EPPS: So having been so advised, we will
21 open the hearing on Rule 24, Qualified Loss Management
22 Programs. All of you, if you don't have a copy, there were
23 copies on the back table. The announcement for the public

1 hearing, I think, was self-evident. We have the sign-up
2 sheets here, and according to what I have on the sheet we
3 only have one person that cares to speak. However, before
4 that occurs I would like to ask Bill Board if he would
5 address the group on this particular rule. For those of
6 you that may not know, this rule originated in a special
7 committee that Bill chaired and he is probably the leading
8 expert in the room.

9 MR. BOARD: Thank you, Thad. Just by way of
10 introduction, my name again is William E. Board, B-o-a-r-d.

11 MR. EPPS: Can you-all hear in the back?

12 (Affirmative responses.)

13 MR. BOARD: My name is William E. Board,
14 B-o-a-r-d. I'm the Personnel Director for McJunkin
15 Corporation located here in Charleston, West Virginia, and
16 my position with the Safety and Loss Advisory Committee to
17 the Finance Committee of the Performance Council has been
18 that of Chair.

19 Our mission statement has been to recommend
20 action regarding the implementation of West Virginia Code
21 23-2B-1, 2 and 3, as passed by the Legislature in 1993, and
22 handouts of this code section have been provided.

23 Our Committee process has three focus

1 points. First of all, we are made up of two business, two
2 labor, two safety consultants and two Workers' Comp service
3 providers. The member names of that committee, and I'll
4 briefly review them again: Paul Becker for the Safety and
5 Health Extension Service of West Virginia University; Mike
6 Cavender of Acordia, West Virginia; Jerry Flick of
7 Employers Services Corporation; Chris Hamilton of the West
8 Virginia Coal Association; Roger Hammack of the United Mine
9 Workers; Warren Perine of the West Virginia Safety Council;
10 Joe Powell of the West Virginia AFL-CIO, and I represent
11 the West Virginia Manufacturers Association.

12 We've received input from a variety of
13 sources and our committee members have all committed to, in
14 one way or the other, committed to enhancing -- have been
15 committed to enhancing safety and reducing accidents not
16 only in our own work places and those places that we can
17 affect but in all West Virginia work sites as well.

18 We have also developed proposed rules for
19 this section and we've also satisfied the public notice
20 requirements by this public meeting and the public meeting
21 in Morgantown on February 27, 1996.

22 The proposed rule implements the provisions
23 of 23-2B-3 providing for a voluntary program for regular

1 subscribers, not self-insurers, providing a prospective
2 premium credit to certain employers who implement a
3 Qualified Loss Management Program in accordance with this
4 proposed rule.

5 I'd like to point out something, the over-
6 all goal is to establish Workers' Compensation reforms by
7 increasing employer and employee commitment to safety and
8 not in a sense to focus on premium credit alone. Regular
9 subscribers to the Fund in good standing may participate in
10 a QLMP and the self-insurers are to be addressed under
11 rules regarding the self-insurers.

12 The program element, the purpose is to help
13 insure the professional administration of these programs.
14 An order for a Qualified Loss Management Program must be
15 approved by the Workers' Compensation Division to do
16 business in the state.

17 Let me just review some factors that we
18 feel must be recognized in order for such a firm to be
19 approved for providing this service. They should have a
20 demonstrated ability to reduce Workers' Compensation losses
21 by a loss management program containing pre-injury safety
22 elements and post-injury claims management.

23 Other elements considered as to whether the

1 loss management service provider is to be recognized . . .
2 includes the time period that the program has been offered,
3 that is the length of service this vendor has been in
4 business; the number of client employers that the QLMP
5 represents; the effectiveness of the program for previous
6 employers.

7 There are some basic personnel requirements
8 that, one, they should have a safety and occupational
9 health staff on board. The program must demonstrate a
10 structured approach to focus employers on safety. The
11 program must provide for a Joint Labor Management Safety
12 Committee. Loss management service providers must perform
13 safety audits in part based upon established forms and
14 protocols.

15 The program must have a meaningful post-
16 injury response to assist the injured worker. And if
17 approved, the program must be offered to all eligible
18 employers. The purpose of this is to prevent the QLMPs
19 from picking the best clients to drive up their credit
20 ratio numbers.

21 The program element must include
22 notification to the Division, the Worker's Compensation
23 Division, of client employer participation. And, finally,

1 the QLMP is allowed to terminate a client employer prior to
2 expiration of one-year participation. The purpose of this
3 again, is the employer needs to be serious and committed
4 toward place safety and to the injured worker.

5 The assignment of credit factors to loss
6 management service providers: The initial assignment for
7 all approved QLMPs will be three years. In Years One and
8 Two the factor is 8%, Year Three, 4%. The assignment of
9 credit factors to QLMPs after three years will be then
10 assigned on a ratio basis, and that chart is, I believe,
11 attached to this handout. The purpose of this section
12 again is to have more effective QLMPs with higher credit
13 factors.

14 Under credits, the QLMP must participate a
15 full year to receive a credit. The credit is applied to
16 the year after participation premiums. The purpose of
17 this, to meet the requirement that the credit be
18 prospective, which is in the rule. And finally, the
19 maximum length of credit, as I said earlier, is three
20 years.

21 The termination of participation in a QLMP
22 by the client employer can occur prior to three years'
23 participation. There's a penalty in the amount of the tax

1 credit previously granted. The penalty is due immediately
2 upon termination by the client employer.

3 Finally, if the plan approval is withdrawn
4 the loss management service provider, if it is withdrawn,
5 it would be for the reason that the loss management service
6 provider is not in compliance with the rule. And I believe
7 Mr. Suter can comment later if there are any questions on
8 the notice of hearing procedures afforded to loss
9 management service providers who are found -- or charged at
10 least with noncompliance with the rule.

11 Finally, I'd just like to say that our
12 recommendations, I know you're always interested in time
13 frames, and at this point and time we are still looking at
14 June 30/July 1 time frame implementation. We would like to
15 try to remain flexible with this but I think the work of
16 our committee is -- I think that we can still make that.

17 Again, I'd like to thank the Performance
18 Council and Finance Committee for your support in the past
19 and the present with our work, and I'll be glad to try to
20 answer any questions I can. I have members of our
21 subcommittee that worked on QLMPs available for questions.

22 MR. EPPS: Well, Council certainly thanks both
23 you and your committee because you've done enormous work on

1 more than one rule and we really do appreciate that. Do
2 any members of the Council have any questions of Mr. Board?

3 (No response.)

4 MR. EPPS: Thank you very much.

5 MR. BOARD: Thank you.

6 MR. EPPS: Mr. Suter, do you have additional
7 comments?

8 MR. SUTER: No, I have no additional comments.
9 Mr. Board's pretty well recapped the entire rule. If there
10 are any questions, I'd be happy to try to answer them.

11 MR. TUCKER: Mr. Suter, the 1993 Legislation
12 under 23-2B-3, for my edification, the last Section G of
13 that statute, under the law as it exists now, and we have
14 the premium rate credit qualified. None of those are in
15 place at this time; is that correct?

16 MR. SUTER: Correct. The purpose of this rule is
17 to implement the provisions of 23-2B-3. If you'll recall
18 we had public hearings with regard to the provisions of
19 23-2B-2, the mandatory program called Loss Prevention --

20 MR. TUCKER: Right.

21 MR. SUTER: -- back in September, and neither of
22 those programs have been implemented to date.

23 MR. TUCKER: The last sentence in the paragraph

1 in that part of the statute says, "shall not become
2 effective until the Commissioner in conjunction with the
3 Compensation Performance Council promulgates an appropriate
4 rule to implement the section's provisions." That's the
5 purpose of what we're doing now.

6 MR. SUTER: Yes. Both of the rules have been --
7 well, today it's just 23-2B-3, the voluntary program, but
8 both of the rules have been filed as proposed rules and the
9 next filing would occur upon approval by the Performance
10 Council, and that would be a final filing of the rule with
11 an effective date, whenever the Performance Council would
12 say.

13 MR. TUCKER: The time frame for written comment
14 on this Rule 24 is March 11, 1996, is the deadline; is that
15 correct?

16 MR. SUTER: Yes, that's the last day for written
17 comment. I put that on the front of the Notice of Hearing.
18 It's sort of an arbitrary figure from time to time but we
19 wanted to give people an ample opportunity after the public
20 hearings to make additional comments in writing.

21 MR. TUCKER: Prior to this hearing have you had
22 any comments in written form?

23 MR. SUTER: I have had a couple of notations.

1 There were a couple of indications that were passed on to
2 me, and they were more in the nature of "We're glad that
3 you're performing this kind of work" as opposed to direct
4 comments on the substance of the rule.

5 MR. TUCKER: Thank you, Mr. Suter.

6 MR. EPPS: Any other questions of Mr. Suter?

7 (No response.)

8 MR. EPPS: Thank you. According to the
9 attendance sheet and speakers' list, we have only one
10 individual who indicated an interest to speak, Beverly
11 Jarrett, Regulatory Training Center. Beverly. Would you
12 state your name and where you're from for the record.

13 MS. JARRETT: Hi. I'm Beverly Jarrett,
14 Regulatory Training Center. And it's kind of difficult to
15 come here and pick up this information and then try to
16 assemble some sort of comments from it very quickly. So I
17 do intend also to send my written comments to Mr. Suter,
18 which I did after I attended the public hearing in
19 Morgantown on September 22nd. I hand delivered some
20 comments to Mr. Suter's office and apparently -- that was
21 about the Loss Prevention Program, and I'm just a little --
22 you know, I'm trying to figure out the differences between
23 these programs. So I'm just going to make some generalized

1 comments, and as I said after I have a chance to look this
2 over I'll make more direct comments to Mr. Suter.

3 We provide -- at our facility we provide
4 safety training and safety services for the businesses
5 primarily here in the Kanawha Valley but we do extend out
6 beyond that and we want to be considered as a firm that
7 provides these services across the state.

8 I'm just a little new to the process, I
9 guess, this kind of legislative process and what to do and
10 how to kind of get on the inside track or know what's
11 coming up so that I'm better prepared when I come to these
12 sort of meetings because I don't like to feel unprepared.
13 And by commenting in September, I thought maybe I would
14 receive some kind of written information or I'd be on some
15 kind of a mailing list and I'm not, other than just a
16 notice that I received from the employers -- from Jerry
17 Flick actually with the ECS -- or ESC. I'm sorry Jerry --
18 stating that this meeting was coming about.

19 So I guess my big comment is: How do I
20 find out more information and then just to let you know
21 that I am interested, I don't think it's a good idea to
22 come to a public hearing and just sit back and not say
23 anything because I have a lot to say. I just -- obviously,

1 I need to get my thoughts together and present it in a more
2 professional manner. But I do want our firm to be
3 considered for this type of work, and I noticed that --
4 very quickly, that this particular 23-2B-3 says that "a
5 recognized loss management firm participates in the
6 program." Now as we don't call ourself a loss management
7 firm, you know, I would want to make sure that you think
8 about all these types of centers that provide this kind of
9 service even though you're not really recognized as that,
10 in that light.

11 And again, that's really all I have to say
12 except for the fact that I will be saying more in written
13 comments. Thank you.

14 MR. EPPS: Any questions?

15 (No response.)

16 MR. TUCKER: If you would check with someone --
17 with Mr. Suter, somebody will give you that information so
18 that you can get ...

19 MR. EPPS: According to the sign-up sheet, Ms.
20 Jarrett was the only one that indicated they would like to
21 speak. Is there anyone else in the room that would like to
22 speak to this particular rule?

23 MR. REVEAL: I would like to.

1 MR. EPPS: Come up and state your name and who
2 you represent.

3 MR. REVEAL: My name is Herschel Reveal. I
4 represent Supervalu, Milton Division, in Milton, West
5 Virginia. I have two concerns. My first concern is when a
6 law of this magnitude is being proposed, which is a
7 tremendous asset to the businesses. My concern is, is the
8 employer representatives that's on the committee that have
9 something to gain from a law of this nature, and my concern
10 is that a law of this magnitude should have representatives
11 that have nothing to gain, meaning your loss management
12 program companies that were on the committee to help decide
13 or develop this proposal.

14 My second comment is taking in
15 considerations of companies such as mine who in the last
16 two to three years have already recognized that we must be
17 committed to safety to reduce our Workers' Comp losses, and
18 we have enacted several programs that go way beyond the
19 proposals in this law.

20 My concern is, I am already audited from an
21 outside third-party company. I have a management service
22 company to assist me in management of my Workers' Comp
23 claims. My major concern would be, why should I have to,

1 under the law -- to get the programs here, why should I
2 have to pay an extra fee to a loss management company? I'm
3 already paying such a fee for the management, assistance in
4 the management of my Workers' Comp claims and for an
5 outside party to inspect me periodically.

6 This inspection that is done at my company
7 consists of three days complete management evaluation from
8 the president of the division down to each employee. I
9 want to commend the safety and in the quality of our
10 programs, not only in the written fashion but in the
11 implementation stage.

12 I feel there's other companies out there,
13 such as myself, that have already recognized that safety is
14 a key part of our business. And we are doing as much as we
15 can in-house and are paying as much as we can out of pocket
16 to reduce our losses. By my own thoughts we meet the
17 criteria set in this law. The only difference is we are
18 not considered a loss management program. We have all the
19 programs but we're not considered that company.

20 I would like for the committee to take a
21 look at giving employers such as ourself as another option,
22 maybe developing a second option being that the state
23 itself come in and inspect our programs, take a look at our

1 quality of our risk control or safety personnel, our
2 commitment to safety and make a decision that possibly we
3 could get the credit or some type of assistance in this
4 proposal instead of purely saying that the employers must
5 go through a loss control management program company.
6 Thank you.

7 MR. EPPS: Thank you. Are there any questions by
8 any of the members of the Council?

9 (No response.)

10 MR. EPPS: Thank you very much. Yes, sir.

11 MR. ALDERMAN: May I make a few comments, sir?

12 MR. EPPS: Yes, sir. Would you come up and
13 identify yourself.

14 MR. ALDERMAN: My name is Morris Alderman,
15 Mineral Wells, West Virginia. I am representing Eastern
16 Electric and Electronics Company, Inc., electrical and
17 general contractors in the area.

18 I have had 25 minutes this morning to go
19 over this very briefly, which is I have not been able to
20 get over it. But I am wondering if the few comments that
21 I've heard this morning, is small business been taken into
22 consideration when these rules and regs are being made? I
23 am hearing that you must have medical, you must have other

1 personnel on staff. What does this do for the small people
2 who don't have the number of people working for them that
3 can afford this? Where does it put them?

4 I have been told -- I attended last week, I
5 believe it was, in the small business in the State of West
6 Virginia. I am told that the small business in the State
7 of West Virginia is a major employer. Where does this put
8 them? Thank you very much.

9 MR. EPPS: Thank you. Any questions?

10 (No response.)

11 MR. EPPS: Anyone else like to address the
12 Council?

13 (No response.)

14 MR. EPPS: All right. A reminder that this
15 particular rule, Qualified Loss Management Programs, we
16 will be having a second public hearing on February 27th in
17 the Dogwood Room of the Ramada Inn, in Morgantown, and the
18 last day for written comments is March 11, 1996.

19 The process that will be followed at the
20 conclusion of all the comment period, both oral and
21 written, will be that the Council, the Council's committees
22 will take into account all of the comments and as a result
23 of all of that we will adjust as necessary the rules and

1 then we will discuss the rules and act on it as an entire
2 Council.

3 If there are no more comments on this
4 particular rule then I declare the public hearing on
5 85 C.S.R. 24 closed.

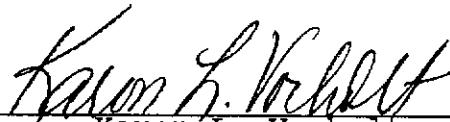
6 (Whereupon, the public hearing
7 was concluded at 10:36 a.m.)

REPORTER'S CERTIFICATE

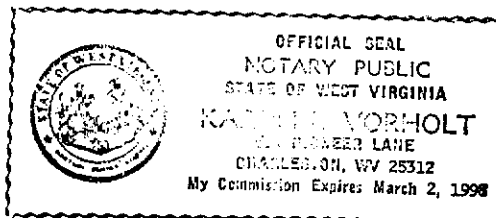
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Karon L. Vorholt, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned case as set forth in the caption hereof.

Given under my hand this 24th day of
February, 1996.



Karon L. Vorholt
Certified Court Reporter



THE WORKERS' COMPENSATION DIVISION

RE: QUALIFIED LOSS MANAGEMENT PROGRAM

TRANSCRIPT of HEARING held in the Dogwood Room, Ramada Inn, Morgantown, West Virginia, on the 27th day of February, 1996.

APPEARANCES: ANDREW RICHARDSON, Commissioner;
PAUL THOMPSON, Member, Performance Council;
EVERETT SULLIVAN, Vice-Chair
Performance Council;
CHRIS JARRETT, Member, Performance Council;
FRED TUCKER, Chair, Claims and
Administration Committee, Performance
Council;
RICHARD HUMPHREYS, Member, Performance
Council;
THAD EPPS, Chairman, Finance Committee,
Performance Council;
RANDY SUTER, ESQUIRE
Legal Staff, Workers' Compensation.

BEP-LEGAL DIVISION
96 APR -5 PM 2:46

BACHMAN COURT REPORTING

ROUTE 7, BOX 40 A

FAIRMONT, WEST VIRGINIA 26554

304-366-3816

1 COMMISSIONER RICHARDSON: My name is Andy
2 Richardson. I'm the Commissioner of the West Virginia
3 Bureau of Employment - - - excuse me, Bureau of Employment
4 Programs.

5 I'd like to introduce the members of the West
6 Virginia Compensation Program's Performance Council. To my
7 far left, and I might say appropriately to my far left - - -

8 MR. THOMPSON: He's got that right.

9 COMMISSIONER RICHARDSON: (Cont'g) - - - is my
10 friend, Paul Thompson, a member representing the interests
11 of workers nominated from the Steel Workers of the American
12 Federation of Labor.

13 Next to Paul is Everett Sullivan who is also a
14 representative of Organized Labor representing Construction
15 Trades. Everett is the Vice-Chair of the Performance
16 Council.

17 Chris Jarrett represents the West Virginia Chamber
18 of Commerce and is a member ah - - - and is associated - - -
19 I guess, you're the - - - the head in West Virginia of the
20 West Virginia American Water, is that correct?

21 MR. JARRETT: It's close enough, yeah
22 (yes).

23 COMMISSIONER RICHARDSON: If you need a drink of
24 water, he's the guy you go see.

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COMMISSIONER RICHARDSON: (Cont'g) To the far right, and inappropriately so I might add, is Fred Tucker who serves on the Council as the Claims and Administration Committee Chair and Fred is a representative of the United Mine Workers of America.

Next to Fred coming closer to me is Dick Humphreys who has been associated with West Virginia University's Institute for Labor Studies for many, many years. He represents the general interests of workers.

And then to my immediate right is Thad Epps from Union Carbide representing the interests of manufacturing. Thad is the Chairman of the Finance Committee.

So as you can see these folks have appropriately stuck me right in the middle.

This morning we will begin with a presentation from Randy Suter of our legal staff, an overview of the regulations that have been proposed, and I have two (2) names listed as desiring to provide comments this morning. If there are others who would like to comment - - - John, are there any more sheets in the back?

MR. KOZAK: There's one (1), but nobody else indicated they wanted to speak.

COMMISSIONER RICHARDSON: Okay, if anyone else does want to speak, will you please let Mr. Kozak - - -

1 COMMISSIONER RICHARDSON: (Cont'g) wait, John,
2 our head of the Legal Division, be aware of that desire.
3 Randy?

4 MR. SUTER: Mr. Commissioner, so
5 that we're not particularly redundant Mr. Board would like
6 to address it on behalf of the Safety and Loss Advisory
7 Committee to have an overview before.

8 COMMISSIONER RICHARDSON: All right, good
9 presentation, Randy. Our next presenter will be - - -

10 MR. BOARD: Good morning.

11 COMMISSIONER RICHARDSON: Good morning.

12 MR. BOARD: I'm William E. Board, B-
13 o-a-r-d, and I am the Chairman of the Safety and Loss
14 Advisory Committee to the Finance Committee of the
15 Performance Council.

16 It was our committee's charge to study and recommend
17 action regarding the implementation of West Virginia Code
18 twenty-three two B one, two, and three (23 2B 1,2,3) as
19 passed by the Legislature in 1993. Handouts of this Code
20 section, I think, have been provided or are being provided
21 today.

22 Our committee process ah - - - I'd like - - - I'd
23 like to speak to just briefly. The makeup of the Safety and
24 Loss Advisory Committee consists of two (2) business, two

1 MR. BOARD: (Cont'g) (2) labor, two (2) safety
2 consultants, and two (2) Workers' Comp. Service Providers.
3 The members of my committee which is an eight (8) person
4 committee are here with me today, except for two (2).

5 Paul Becker of the Safety and Health Extension
6 Service of West Virginia University is not here today, could
7 not be with us today.

8 Mike Cavender is here today with the West ah - - -
9 with the West Virginia ah - - - with the Accordion.

10 Jerry Flick of Employer's - - - Employer Services.

11 Chris Hamilton could not be with us today of the
12 West Virginia Coal Association.

13 Roger Hamick is here today - - - thank you for
14 coming, Roger, of the United Mine Workers.

15 Warren Bryant of West Virginia Safety Council and
16 Joe Powell of the West Virginia AFL CIO - - - Joe is not
17 here today either, but all of - - - all of these members
18 that I've mentioned to you have worked very diligently to
19 get us to this point today and I appreciate their work.

20 I represent the West Virginia Manufacturer's
21 Association and I'm with McJunkin Corporation.

22 Essentially the committee process solicited input
23 from a variety of sources throughout the State and as we - -
24 - as we began our task of each member submitting ah - - - we

1 MR. BOARD: (Cont'g) were asked to commit to
2 enhancing safety and reducing accidents and injuries at West
3 Virginia work sites. I hope everyone will keep - - - keep
4 that in mind as we - - - as we go through this.

5 We have developed proposed rules which are being
6 satisfied by Public Notice Requirements and Public Meetings
7 in Mor - - - in Charleston and in Morgantown today, February
8 27th, 1996. The proposed rule implements the provisions of
9 West Virginia Code twenty-three two B three (23 2B 3) which
10 provides for a voluntary program for regular subscribers,
11 but not self-insureds. It also provides a prospective
12 premium credit to certain employers who implement a
13 Qualified Loss Management Program in accordance with this
14 proposed rule.

15 The purpose of the Rule is to promote the voluntary
16 implementation of Qualified Loss Management Programs and the
17 overall goal, again I'd like to stress, is to establish
18 Workers' Compensation reforms by increasing the employer and
19 employee commitment to safety.

20 Again, the participants in this program are regular
21 subscribers in good standing who may participate in a
22 Qualified Loss Management Program. Again, self-insured are
23 to be addressed under Rules regarding self-insured.

24 A little bit about the program itself. The

1 MR. BOARD: (Cont'g) Qualified Loss Management
2 Program must be approved by the Workers' Compensation
3 Division, and again, its purpose is to help insure
4 professional administration of these programs.

5 Briefly as a review of the factors for approval of a
6 Qualified Loss Management Program, a Q.L.M.P. must
7 demonstrate the ability to reduce Workers' Comp. losses
8 through such a Loss Management Program containing pre-injury
9 safety elements and post-injury claims management. Other
10 elements considered as to whether the Loss Management
11 Service Provider is recognized includes, the time period for
12 the program which has been offered, the number of
13 client/employers, the effectiveness of the program for
14 previous employers.

15 There are basic personnel requirements, such as
16 having a Safety and Occupational Health staff on board. The
17 program must demonstrate a structured approach to focus
18 employers on safety and must provide for a joint
19 Labor/Management Safety Committee. It ah - - - the Loss
20 Management Service Providers must perform safety audits in
21 part based upon established forms and protocols. It must
22 have a meaningful post-injury response to assist the injured
23 worker.

24 If approved, the program must be offered to all

1 MR. BOARD: (Cont'g) eligible employers, and
2 purpose of this is to prevent the Qualified Loss Management
3 Programs from picking the best clients to drive up any
4 credit ratio numbers that might be available. Program
5 element must include notification to Workers' Compensation
6 Division of the client/employer participation. The Q.L.M.P.
7 allowed to - - - is allowed to terminate the client/employer
8 prior to expiration of one (1) year participation, and the
9 reason for this is that the employer needs to be serious and
10 committed to work place safety and to the injured worker.

11 Finally the assignment of credit factors to the Loss
12 Management Service Providers is also a ah - - - is an
13 element. The initial assignment for all approved Q.L.M.P.'s
14 for this credit factor is for the first (1st) and second
15 (2nd) year, it's established at eight percent (8%); for year
16 three (3) for years - - - for year three (3), four percent
17 (4%). The third (3rd) year participation is - - - is always
18 half ($\frac{1}{2}$). The assignment of credit factors to Q.L.M.P.
19 after three (3) years would be ah - - - just briefly the
20 ratio is the ratio of experience modification factors for
21 subsequent years, experience modification factors for prior
22 years is to be no greater than fifteen percent (15%). The
23 purpose here is that we - - - we're looking at more
24 effective Q.L.M.P.'s - - - that more effective Q.L.M.P.'s

1 MR. BOARD: (Cont'g) are rewarded with higher
2 credit factors.

3 In order to parti - - - in order to establish a
4 credit they must participate a full year to receive the
5 credit. The credit is applied to the year after
6 participation premiums. The purpose here is to meet the
7 requirement that the credit be prospective in nature and not
8 retrospective. Finally the maximum length of the credit is
9 three (3) years.

10 I would like to add again or punctuate just that the
11 overall goal is not to establish credits necessarily, but to
12 ensure that we have safe working places and ah - - - our
13 original mission statement here that I read which was that
14 we - - - that our committee has - - - has committed to
15 establishing safe work places in - - - in West Virginia.

16 There is a provision for termination of
17 participation in the Q.L.M.P. by the client/employer,
18 termination prior to three (3) years of participation.
19 There can be termination prior to three (3) years of
20 participation. There is a penalty in the amount of the tax
21 credit previously granted. The penalty due ah - - - the
22 penalty is due immediately upon termination by the
23 client/employer. The plan can be - - - withdraw of plan
24 approval can occur by Workers' Comp. if there's a finding

1 MR. BOARD: (Cont'g) that the Loss Management
2 Service Provider is not in compliance with the Rule. There
3 are subsequent notice and hearing procedures established for
4 that.

5 In conclusion, I would like to thank our committee
6 and I would like thank the support - - - thank the
7 Performance Council and the Finance Committee for your
8 support during our efforts to ah - - - to bring this
9 ah - - - these regulations and this study to a conclusion.

10 As far as our time frame, we're still looking at
11 June 30 of 1996 for implementation. I'll take any questions
12 you may have.

13 COMMISSIONER RICHARDSON: I don't have a question.
14 I have a comment. I ah - - - I've had some discussions
15 lately with staff as well as Mr. Epps, the Finance Committee
16 Chair, on the responsibility that we have under the changes
17 to the Workers' Compensation Law to establish a new rate
18 making and underwriting system effective July 1 of 1996. I
19 would merely encourage you to be sure that we're in sync
20 because obviously this is an element of underwriting; this
21 is an element of rate making if there is a Qualified Loss
22 Management Program that is up and operational. We just need
23 to be sure that - - - that there's a pivot point of
24 interaction between the general rate making and underwriting

1 COMMISSIONER RICHARDSON: (Cont'g) process and
2 a special targeted program for premium incentives for
3 safety.

4 MR. BOARD: Well, we have a quorum
5 today, Commissioner, so we was planning on having a meeting
6 today following this.

7 COMMISSIONER RICHARDSON: Good, good. Other
8 members of the Performance Council have comments or
9 questions?

10 All right, thank you very much.

11 MR. BOARD: Thank you.

12 COMMISSIONER RICHARDSON: The next speaker will be
13 Doctor Alan Ducatman with West Virginia University. Doctor
14 Ducatman heads up the Institute for Occupational and
15 Environmental Health at the West Virginia University School
16 of Medicine. Doctor Ducatman is also a member of the
17 Workers' Compensation Health Care Advisory Panel created
18 under the 1990 Law. This is a group of health care
19 providers from throughout the State of West Virginia who
20 provide expertise and advice to the Commissioner and the
21 Division in the development of medical policies. Welcome.

22 MR. DUCATMAN: Thank you, Mr.
23 Richardson. I've brought a summary of the comments that I
24 wish to make. It would be helpful if I passed those out on

1 MR. DUCATMAN: (Cont'g) some place at the
2 table?

3 COMMISSIONER RICHARDSON: Yes, yes.

4 MR. DUCATMAN: I came to talk about
5 Public Health in work places which is what I do. Some of
6 you may know that workers come to me referred by physicians
7 from around the State, sometimes from other States, from all
8 the corners of this State; and based on that experience,
9 physician's experience, I have some concerns, concerns about
10 things that I'm glad you're doing and concerns about things
11 that I hope you do well.

12 Historically in West Virginia the attribution of
13 risk, insurance risk or rather the absence of that
14 attribution, has reaped a tremendous toll on workers. Let
15 me explain what I mean.

16 The first (1st) problem relates to disincentives and
17 it's a problem that, I believe, the State's Compensation
18 Agency has recognized over the past several of years and is
19 struggling to address. If one fails to attribute risk based
20 on measurable employer experience, and I want to emphasis
21 experience, what happens next is that employers are
22 convinced in a very straight forward bottom line fashion
23 that there is no reason to invest in prevention or for that
24 matter even in best available health care. There is no

1 MR. DUCATMAN: (Cont'g) reason to foster
2 modified duties for injured or ill workers so that they
3 might return to the work place with dignity or even to
4 consider and monitor whether the local clinicians to whom
5 the workers are going are doing a good job on behalf of
6 those workers. Why would an employer bother to do those
7 things if all the savings that might - - - might come to the
8 employer for doing those things well, for the improvements
9 in safety or early intervention or improved care merely have
10 to be shared with some vast pool of folks that the employer
11 doesn't know? So that's a disincentive problem and we have
12 had that problem in West Virginia and I pause it to you all
13 that it is one (1) of the reasons why we are now struggling
14 and why one (1) of the reasons why I see things in my clinic
15 in West Virginia that I have not seen in any other State and
16 I've been in a number.

17 There's also a problem of incentives. The
18 incentives that have historically been set up that you are
19 now struggling to address, and I commend you for doing it,
20 are backwards. The most marginal, the most disabling, the
21 least empowering, and the least willing to make any kind of
22 adjustment employers historically have had ever reason to
23 come to West Virginia and they in turn have made things
24 difficult for other types of employers who then share the

1 MR. DUCATMAN: (Cont'g) risk with them. That's
2 not a good situation. It's not a situation any other State
3 would choose to emulate.

4 Now, The Fund has recognized this problem and I'm
5 very happy that you've done it. It's a Public Health
6 problem based on a larger economic picture, but I'm deeply
7 concerned that the recognition be done correctly both for
8 the Public Health benefits that can be obtained and for the
9 consequences to workers, for that matter, to employers and
10 ultimately to the citizens of West Virginia who ultimately
11 own the Fund.

12 Now we've heard that the purpose of the new proposed
13 changes are to - - - not to establish economic credit, but
14 to ensure safe work places in West Virginia and I agree with
15 that goal, but I'm not sure that I've heard a measurement
16 component that would guarantee that we're actually working
17 towards that. I'm sure because I'm an optimist that we will
18 hear of such a thing in the future, but I haven't heard it
19 so far. All I've heard is the candy. I haven't heard the
20 performance and I'm a Public Health person. We believe in
21 measuring performance and in sometimes delivering bad news.
22 At which point incidently the messenger usually gets shot.

23 So what I would propose to you is that we need to
24 begin the difficult process of analyzing our own - - - our

1 MR. DUCATMAN: (Cont'g) own data, West
2 Virginia's data and I will further hypothesize to you that
3 this will not be accomplished by selling or buying concepts
4 of risk reduction from outside vendors. I am not concerned
5 with the fact that we are doing that. I am just saying that
6 it alone is not enough. It will not address the workers
7 needs that I see in my clinic. Outside vendors can help us
8 only to the extent that we can first (1st) measure what we
9 are doing. Results will be achieved through a very
10 difficult process of legitimate data collection, data
11 understanding, and real summary measurements. This is done
12 in other States. West Virginia can do it.

13 I believe the Compensation Fund and the individuals
14 who advise it in numerous capacities are aware of this need.
15 My concern is that we address it. I am also aware that it
16 will cost something to address this need for the
17 Compensation Fund to internally begin to really analyze
18 copious data it has available to it will require an internal
19 administrative investment.

20 Recently the Fund, because an individual within The
21 Fund couldn't go, was nice enough to allow me to go up to
22 Boston where the Robert Lee Johnson Foundation was holding a
23 meeting at which they expected sixty (60) individuals from
24 Compensation Funds around the country to show up and, in

1 MR. DUCATMAN: (Cont'g) fact, two hundred fifty
2 (250) or more came and the room was overflowing and then
3 some. And they were giving regulations and Rules for a
4 small grant that they were proposing that we all, various
5 funds, the various States, could compete for and they gave
6 one (1) very important hint about some of the things they
7 were looking for and they said very clearly, "You know, we
8 don't care if you increase your administrative costs. As we
9 have looked at States that have had successes, the States
10 that have had successes have had to make administrative
11 investments in understanding their data. What we care about
12 is that you monitor the quality of your health care, that
13 you monitor worker access, and that you monitor your own
14 inventions."

15 I would suggest although Robert Lee Johnson is not
16 also interested in safety and health in the work place that
17 we add those to their goals since they're essentially a
18 medical foundation and we say that we also monitor those
19 things, that we monitor the incidents and occur - - -
20 injuries, illnesses, et cetera, and we can do that. We have
21 the data. What we need is the will. That's point one (1).

22 Point two (2) is that there is a tremendous need for
23 real prevention/intervention strategies. Prevention is the
24 name of the game in Public Health. Yes, you can do

1 MR. DUCATMAN: (Cont'g) secondary prevention by
2 doing better health care or medical monitoring to find
3 conditions early, but primary prevention is where the action
4 is and it always has been and we are not even yet at a
5 tertiary prevention within our State. And I am concerned
6 this new initiative, positive as it is, may go forward
7 without a real means to monitor that we are doing primary
8 prevention and, in fact, any real means for small industries
9 in particular to access primary prevention resources which
10 are not yet available to them.

11 Examples, a secondary or tertiary prevention - - -
12 example from my experience with The Fund, one (1) industry
13 suffered a large outbreak of a very rare condition called
14 thoracic outlet syndrome leading to a large number - - - I'm
15 not sure if it was seven (7) or nine (9) or twelve (12)
16 surgeries, more than would happen in a large State in a
17 year. Now, the best guess for the cause of that problem - -
18 - let me rephrase that. The best guess for how to intervene
19 to prevent that problem further would be to look at the
20 provider. It is most unlikely that all of those things were
21 related to a work place, but we had no monitoring system in
22 place. I will go on to tell you that all of those surgeries
23 did not have the desired outcome.

24 We need to not be in that position. We cannot

1 MR. DUCATMAN: (Cont'g) afford to do that to
2 workers so the medical part of the system needs to look at
3 its own house, but that's only about twenty-five percent
4 (25%) of the problem in West Virginia. The other seventy-
5 five percent (75%) is the impairments that we suffer as a
6 result of the things that we do.

7 An example that would illustrate that would be an
8 outbreak of carpal tunnel syndrome, most of which were
9 probably real in another industry in West Virginia, which
10 got to be very substantial before anybody thought to
11 intervene and at the point that intervention was considered
12 it was then found out that the industry was not truly
13 solvent and what we had out of that industry was essentially
14 a path of mayhem leading up to nothing except for
15 impairments for workers.

16 We shouldn't be in that position. We have the
17 expertise to not be in that position. Both of those
18 outbreaks would have been worth preventing and both could be
19 prevented.

20 The State needs a mechanism to monitor for untoward
21 events, for outbreaks early in work places and it also needs
22 a place where small business can go to get vertically
23 integrated advice and that will not be done solely by the
24 concept of selling reductions in risk through outside

1 MR. DUCATMAN: (Cont'g) consulting agencies
2 because small business where much of our problem exists will
3 not be empowered to get those types of resources. They will
4 not be economically worth it and we will fail to address
5 some or much of our problem.

6 I suggest that the Fund needs to help set up a
7 vertically integrated system whereby industries heading
8 towards trouble can get help and the investment, again,
9 would be worth it.

10 And when I say, "industry," I am not meaning in any
11 sense to exclude my patients. My patients are labor and
12 they don't see their life as being controlled by industry
13 and yet the Fund in order to direct resources is almost
14 certainly going to have to work though that other half of
15 this puzzle which is industry itself.

16 A third (3rd) illustrated, I think, by my second
17 (2nd), the Workers' Compensation authority needs to invest
18 in its own physician. It needs to rely on some of us
19 outsiders less heavily. It's not because we don't enjoy
20 trying to help. It's not because I don't like getting the
21 calls. It's because the calls are too infrequent to help in
22 the large scale of things.

23 The Fund needs someone at home who is beholdng to
24 no one else. Who has no outside agenda. Who is not looking

1 MR. DUCATMAN: (Cont'g) to push their own
2 clinic or their own contacts and this must be a very well
3 trained authoritative individual. The reason for that is
4 because some of the care - - - and the Health Care Advisory
5 Panel is keenly aware of this, some of the care given in
6 this State needs to be looked at and the way you look at
7 care is not to ask a Claims Manager without a medical
8 education to go up against physicians. It's an unequal
9 contest with only one (1) plausible outcome.

10 If you want to monitor physician behavior, if you
11 want to stop providers who are not enabling workers to get
12 the best health care, you are going to need a doctor at
13 home, a house call on a permanent basis, and that would be
14 my recommendation to you.

15 Again, this is an expensive investment. It is
16 outside of the usual cost that you see in State Government.
17 The mechanism would have to be set up if the Fund were to do
18 it. If the Fund were to do it, there would be a lot of
19 happy parties and it would not be disputatious thing in my
20 opinion.

21 And then something that I haven't written in my
22 submission to you, but which all of this leads to and that
23 is that no one has written anywhere in Law that a good way
24 to empower individuals to get to where we need to be in this

1 MR. DUCATMAN: (Cont'g) State is to set up
2 Labor/Management Committees and address these issues
3 internally. That has multiply advantages, both at the
4 implementation stage and at the morale stage so that people
5 can be empowered to address these problems at a local level
6 and I would strongly urge this group to consider ways to
7 foster that process so it become equal, collaborative, and
8 not adversarial. Thank you.

9 COMMISSIONER RICHARDSON: Questions for Doctor
10 Ducatman?

11 I have a comment. Doctor Ducatman and I have
12 previously discussed a number of these items that he
13 mentioned this afternoon or this morning and I think that
14 West Virginia is well served to have Doctor Ducatman and his
15 expertise on board at West Virginia University. I think he
16 adds immeasurably to the medical profession and the insights
17 into Occupational Medicine issues in West Virginia and I'm
18 very pleased to be able to draw on his advice. He is right.
19 We do need an in-house physician, a Staff Medical Director,
20 because the current design of this is very difficult for us
21 to ah - - - to tap his expertise and the other members of
22 the health care panel on the ongoing daily inquiry nature
23 that we are more and more seeing. I appreciate your
24 comments, Doctor.

1 MR. EPPS: I have a question.

2 COMMISSIONER RICHARDSON: Sure, Mr. Epps.

3 MR. EPPS: Doctor, I was ah - - -
4 I was impressed with your comment that you made about - - -
5 about the fact that - - - well, one (1) of the things that
6 you found, perhaps, lacking in the Rule that we're talking
7 about right now was a measure of performance and my question
8 is not necessarily that I need a detailed answer now, but my
9 question is do you have some ideas as to how that might be
10 measured and, if you do, I think we would sure like to see
11 those.

12 MR. DUCATMAN: Sir, there are forty-
13 nine (49) templates or so for how that might be done there.

14 MR. EPPS: Okay, good.

15 COMMISSIONER RICHARDSON: Other questions from
16 members of the Performance Council?

17 Thank you, Doctor.

18 The next speaker and the only other speaker, unless
19 I am informed otherwise, is Mr. Dick Waybright. Dick is the
20 Executive Director of the West Virginia Forestry
21 Association. Welcome.

22 Again, if there are other folks who would like to
23 comment, please ah - - - please let us know. Let's
24 see - - - Randy, you may want to simply wait at the back of

1 COMMISSIONER RICHARDSON: (Cont'g) the room and
2 if anyone does want to comment, you can get their name for
3 me. John's had to go out for a few minutes.

4 MR. WAYBRIGHT: Mr. Chairman and members
5 of the Performance Council, I'm Dick Waybright. I'm the
6 Executive Director of the West Virginia Forestry
7 Association. Our membership in West Virginia totals over
8 nine hundred (900) members. Many of those members are
9 loggers and the rest of our members depend on logging as
10 part of their livelihood.

11 Today I speak primarily on behalf of our loggers who
12 are the most affected by the recent rate increase of this
13 past year. I emphasize that the average logging operation
14 in West Virginia consists of five (5) persons or less.
15 That's the total company for that operation and in
16 emphasizing that I would like to point out what the Loss
17 Management Program regulations as proposed today that we
18 suggest that small companies be allowed to pool together and
19 participate in those - - - in that program due to the fact
20 the cost may exceed whatever benefit that they may have.

21 And in regard to the recent rate increases we know
22 now that some loggers have stopped logging and gone out of
23 business and we anticipate more of those occurring as the
24 future comes. We believe that that cost has to be kept

1 MR. WAYBRIGHT: (Cont'g) down.

2 In regard to that also, we would request that the
3 premium credit be given sometime prior to a one (1) year
4 deadline, that either at the beginning or at least earlier
5 in the process. Again, looking back at the credit, if they
6 were going to receive an eight percent (8%) credit, and if
7 they have to put the money up front to start that program,
8 we believe that many of our people will not participate and
9 cannot participate just because of the cost of the program.
10 So we'd like to request those two (2) options be put into
11 the regulations. Thank you.

12 COMMISSIONER RICHARDSON: Questions for Mr.
13 Waybright?

14 MR. TUCKER: Yes, Mr. Waybright, I'm
15 interested in the concept you're talking about, you want
16 more of your companies or members to be able, like, going
17 into a group so that they can be considered. Four (4) or
18 five (5) companies to go together, have twenty-five (25)
19 people versus five (5) individual companies as five (5)
20 people. I'd like to have - - - if you could tell me some
21 comments on how you'd like - - - that would work, I'm
22 interested to take a look at that.

23 MR. WAYBRIGHT: Okay, we've been very
24 successful in some other programs involving State

1 MR. WAYBRIGHT: (Cont'g) regulations to pull
2 our smaller companies together so that they have
3 enough - - - really to qualify for something and get, you
4 know, something working. I'll be glad to submit something
5 like that to you.

6 MR. TUCKER: I understand that you
7 folks, other than coal miners, are at the top of the rate
8 structure. You have ninety (90) members in your
9 association?

10 MR. WAYBRIGHT: We have nine hundred
11 (900) members.

12 MR. TUCKER: Nine hundred (900), I'm
13 sorry. Okay.

14 MR. WAYBRIGHT: Now that's - - - they're
15 not all loggers. Many of those are loggers or they depend -
16 - - of course, the whole industry depends on logging - - -
17 wood products, or sawmill, or whatever. A logger has to - -
18 -

19 MR. TUCKER: Is your association
20 though is it primarily logging or what kind of business do
21 they do?

22 MR. WAYBRIGHT: Our association is
23 involved in the manufacture of wood products as well as the
24 production of timber and also, of course, the management of

1 MR. WAYBRIGHT: (Cont'g) timberlands in the
2 State so we have a lot of - - - you know, we're the only
3 Forestry Association in the State so therefore we encompass
4 the whole - - - what we call the forestry community,
5 involves all the parts of forestry.

6 MR. TUCKER: You'll have to excuse my
7 ignorance. Do I understand this to be like those folks, we
8 have people in the business of making the split rail fences,
9 things of that nature, you know, that take the wood products
10 and - - - through business - - -

11 MR. WAYBRIGHT: Many of those people are
12 in my association, yes sir.

13 MR. TUCKER: Okay, I just what to
14 make sure that - - -

15 MR. WAYBRIGHT: And one things I'd like
16 to point out to you in regard to logging, the logging
17 industry, you know, those people just in the logging
18 industry are all basically independent businesses out here
19 in West Virginia. We have very few of what you'd consider
20 the rail mill, or the sawmill, or wood product company that
21 actually has a logging company as a part of their business.
22 They contract that with all these other independent
23 businesses so that's why - - - and there is basically about
24 fourteen (14), fifteen hundred (1500) - - -

1 MR. TUCKER: That's the kind of
2 information I would like to have, you know, if I was in
3 business, maybe my company made these split rail fences in
4 my situation, you know, maybe John Doe's company done the
5 mining for us to get the timber to me and I work with them
6 to make the fence, but you say - - - are your people
7 categorized by logging because they're in the type of
8 business they are within the system?

9 MR. WAYBRIGHT: Yes, within the system,
10 yes, there's - - - you know, timber production is the
11 logging category which they have to pay under and then, of
12 course, then we also have saw milling and, of course,
13 manufacturing would fall under that.

14 MR. TUCKER: If you could give me
15 some, you know, an insight into that, I'd appreciate it.

16 MR. WAYBRIGHT: I'll be glad to send it
17 to you.

18 COMMISSIONER RICHARDSON: Any questions?

19 MR. SULLIVAN: Mr. Waybright, I
20 understood you to say that if I am the sawmill operator,
21 then I subcontract to the loggers for their supply of that
22 material to the mill?

23 MR. WAYBRIGHT: Well, it works two (2)
24 different ways. If I'm a sawmill operator and I have to go

1 MR. WAYBRIGHT: (Cont'g) out and purchase
2 timber, then I can hire a contractor to harvest that timber
3 and bring that timber into my sawmill. In addition to that
4 what you find in most cases in West Virginia is where we
5 have an independent loggers who are buying that timber and
6 then they bring that log in and sell it to that sawmill, or
7 the wood yard, or whatever, you know, the person that may be
8 buying the sawed log or sawed logs at that time.

9 MR. SULLIVAN: Do you have a contract
10 or a owner of a mill that would involve several
11 subcontractors that would be bringing the logs into the
12 mill?

13 MR. WAYBRIGHT: Oh, yes. We have ah - -
14 - any mill in the State of West Virginia would involve
15 several independent contractors bringing in logs. Just to
16 give you - - - you mentioned rail mill, we have one (1) rail
17 mill that ah - - - I just saw statistics on the other day
18 had eighty-six (86) different firms that they purchased logs
19 from this past year.

20 MR. SULLIVAN: All those loggers are
21 independent - - -

22 MR. WAYBRIGHT: Independent contractors,
23 yes. Now we do have a few companies that, you know, maybe
24 xyz sawmill that may have their own logging company or

1 MR. WAYBRIGHT: (Cont'g) logging - - - it's
2 their logging, you know, division with them. Generally,
3 most of them are all independent businessmen, you know,
4 contractors.

5 MR. SULLIVAN: You have nine hundred
6 (900) members?

7 MR. WAYBRIGHT: We have nine hundred
8 (900) members in the association of which, you know, not all
9 of those are loggers, but, of course, the whole association
10 depends on logging because it's a wood products industry.

11 MR. SULLIVAN: What part of them would
12 be loggers?

13 MR. WAYBRIGHT: Of the association
14 members, probably in the neighborhood of two (2) or three
15 hundred (300), but there are probably fourteen hundred
16 (1400) or more logging firms in the State of West Virginia.

17 MR. SULLIVAN: But they don't all
18 belong to your association?

19 MR. WAYBRIGHT: No, they don't all
20 belong to the association.

21 MR. SULLIVAN: Well, what - - - okay,
22 thank you.

23 MR. WAYBRIGHT: But I speak in behalf of
24 all of them because they all have the same problems.

1 MR. SULLIVAN: They might want to join
2 the association.

3 MR. WAYBRIGHT: Well, they - - - they
4 might want to do that too, but I think our main goal is to
5 try to keep them all in business because all the members of
6 the associations as well as other industries in the State,
7 wood industries, depend on the logging industry.

8 MR. SULLIVAN: What requirements do
9 they have to get a contract from me if I'm the owner of the
10 mill and I sublet to you as a logger, what do you have to
11 have in order for me to contract? Is there any State
12 requirements?

13 MR. WAYBRIGHT: Well, a logger in West
14 Virginia has to be certified and licensed to be logging of
15 the Seven Patrol Act passed in 1982 requires that West
16 Virginia loggers all be licensed loggers, have to register
17 with the State, meet certain qualifications there, plus each
18 firm has to have a certified logger supervisor on that crew
19 no matter what the size crew and, like I say, generally the
20 size of the crew on any size logging operation is five (5)
21 or four (4) loggers. That, if you compare that to any other
22 State, is probably one of the most stringent regulations of
23 any State regarding logging and that certification requires
24 mandatory training beginning with this eight (8) hours - - -

1 MR. WAYBRIGHT: (Cont'g) two (2) different
2 sessions of eight (8) hour training that you have to have in
3 order to be certified and it's a three (3) year
4 recertification program that they go under too.

5 MR. SULLIVAN: Do you provide that
6 under the association?

7 MR. WAYBRIGHT: We may assist in that.
8 The State Division of Forestry is mandated to, you know,
9 provide the service but we assist in some of the programs
10 that offer the certification classes of that type.

11 MR. SULLIVAN: Thank you.

12 MR. WAYBRIGHT: Any other questions?

13 COMMISSIONER RICHARDSON: Mr. Epps?

14 MR. EPPS: Not a question, but a
15 comment not only for your benefit, but for the benefit of
16 those that may not have been down in Charleston. The two
17 (2) points that you made, Mr. Waybright, relative to the
18 pooling and the up front incentive is - - - was a point that
19 was made at the previous hearing that we had on this same
20 Rule in Charleston and your comments were very consistent
21 with the comments that we had from - - - from some others,
22 primarily people that represented small business, and that's
23 going to be looked at very hard when we - - - when we review
24 this Rule. And for anybody that may not be aware of the

1 MR. EPPS: (Cont'g) process that we go through
2 I'm Chairman of the committee that - - - that is dealing
3 with this particular Rule and once this - - - when we finish
4 this hearing and after the written comments are submitted,
5 why ah - - - Mr. Board's committee will probably review all
6 of the comments that we have gotten, both written and verbal
7 at the two (2) hearings and they will then remassage the
8 Rule and it will be presented to my committee and we will
9 review it and massage it and then we will present it to the
10 full Council for adoption, or rejection, or whatever, but
11 the point I wanted to make was that your comments relative
12 to the - - - to the timbering industry were echoed by other
13 small employers in the State and that's something that has
14 to be looked at in this Rule.

15 MR. WAYBRIGHT: Well, I'd emphasize
16 that, you know, the logging industry is made up of small
17 employers and we don't have any large logging crews that you
18 might think of. It's not like a glass or something.

19 MR. EPPS: Right.

20 MR. WAYBRIGHT: These are all small
21 businesses here in the State of West Virginia. Thank you.

22 COMMISSIONER RICHARDSON: We have one (1) last
23 Johnny come lately, Jeff Price with Beckwith Lumber, I
24 suspect, will echo some of the same sentiments that Mr.

1 COMMISSIONER RICHARDSON: (Cont'g) Waybright
2 has just shared with us. Jeff, welcome this morning.

3 MR. PRICE: Thank you. Dick did a
4 very good job. I don't know if I can compare it. There's
5 two (2) points. The first (1st) one is the ah - - - that
6 cost for small businesses as far as the Loss Management
7 Service Providers. I'm afraid that this program will not be
8 beneficial to small businesses. When I look at it for my
9 business and for my employer - - - we've got about fifty
10 (50) to sixty (60) people and, again, we're a lumber company
11 and looking at the discount versus the cost that a provider
12 would charge us, it might not be beneficial for us to use
13 this program even though many of the things we're doing
14 right now is similar to the ends of the program. That
15 causes a concern. Now I'd like to echo what Dick said about
16 maybe a small group, a group discount, or a group program
17 for whatever business this might be, logging or lumber
18 companies, whatever.

19 The second (2nd) thing is the credit. In the
20 program you're supposed to wait one (1) year before you get
21 credit and Dick also touched on that, but the demarcation
22 factor below that is below one point o (1.0) you'll be
23 available to use this program so maybe if in first three (3)
24 or six (6) months if your modification factor hit below

1 MR. PRICE: (Cont'g) point nine (.9) or point
2 eight five (.85) and if you can see some immediate results
3 instead of waiting a year. I'm sure the committee, of us
4 out here in the audience are - - - as far as the
5 modification factor should be below the point nine (.9) or
6 point eight (8) now and we're already doing safety
7 incentives, safety programs, and safety committee so why not
8 give us that incentive and give us the discount sooner than
9 one (1) year.

10 The third (3rd) thing I'd like to mention when we're
11 talking about loggers, for my company we have about twelve
12 (12) contract loggers. We do not do any logging ourselves.
13 We have about ten (10), twelve (12) contract loggers and
14 that's probably a total of forty-five (45) to fifty (50)
15 people. Those are all subcontractors.

16 And the last thing I'd like to comment on, with this
17 qualification - - - Qualified Loss Management Program and
18 the program that was introduced last fall, the Series
19 Twenty-Three (23) Loss Prevention which is mandatory if your
20 Experience Modification Factor, you know, is above a certain
21 factor I think will greatly help the Fund in the future.
22 That's all I have.

23 COMMISSIONER RICHARDSON: Questions for Mr. Price?

24 MR. TUCKER: Yes, Mr. Commissioner.

1 MR. TUCKER: (Cont'g) Maybe you can enlighten
2 me a little bit. The cost of the program versus the
3 discount may not be of advantage to your company, is that
4 what I understand you to say?

5 MR. PRICE: It might not be, yes.

6 MR. TUCKER: Okay, would you
7 elaborate on that for my benefit a little bit?

8 MR. PRICE: Okay, from my point of
9 view as a Safety Director, there's many people here on
10 safety prevention and if you're my boss, okay, you're the
11 owner of the company. And right now I'd have to stress that
12 we're doing a lot of the same things and in the past couple
13 of years our safety record is very good so we're already
14 doing it. I'll look at what our discount will be over the
15 next three (3) year or the next year with eight percent (8%)
16 or three percent (3%) or what ever the case maybe and then
17 I'll look at some Service Provider. That Service Provider
18 might tell me, "Well, per year we'll charge you Two Thousand
19 Dollars (\$2,000.00) or three thousand (3,000), four thousand
20 (4,000) per year to come to monitor you, to do safety audits
21 so you can get the discount through me from Workers' Comp.
22 and I'll take that number and write it down and I'll go back
23 to you and say, "Sir, they don't charge - - - they're going
24 to charge us Five Thousand Dollars (\$5,000.00) to use them

1 MR. PRICE: (Cont'g) to go through Workers'
2 Comp., but it's only going to save us four thousand (4,000).
3 So there's no use for us to use this program. We'll stay
4 with what we've got."

5 MR. TUCKER: In other words, what I
6 understand you to say is - - - and I could be wrong on
7 this - - - you don't need somebody - - - if you're already
8 doing what you're supposed to do, you don't need to pay Five
9 Thousand Dollars (\$5,000.00) to have somebody tell you
10 you're doing a good job?

11 MR. PRICE: Exactly, exactly. If
12 you look at the Experience Modification Factors, one point
13 below one point zero (1.0) factors - - -

14 MR. TUCKER: What do you use - - -
15 consider a fair previous record, you know, getting down to
16 my next point, you know, talking about the year before you
17 get the credit and it's point nine (.9). What do you
18 consider a fair common denominator? In other words,
19 programs put into effect June the 1st, 1996, for example,
20 let's say that happens, okay. What do you consider as fair
21 as a small business person, a Safety Director, for you
22 company? What's the common denominator if I was looking at
23 your company to see whether - - - how your performance has
24 been? How long do you think that you should have maintained

1 MR. TUCKER: (Cont'g) the safety record that
2 you now already have? What do you consider in your capacity
3 as a fair common denominator - - - MR. PRICE: Just off my
4 head I'd like to research it and get back to you.

5 MR. TUCKER: Well, I mean - - - you
6 know, I'm just telling you - - - you know, I think you make
7 a valid point. If you're doing what you're supposed to be
8 doing, you don't need to pay a consultant to add Five
9 Thousand Dollars (\$5,000.00) to the cost of your business.
10 If you're doing something right, you don't need for me to
11 come and tell you you're doing it right and give me Five
12 Thousand Dollars (\$5,000.00) for telling you that.

13 MR. PRICE: Exactly, that's one of
14 my concerns.

15 MR. TUCKER: Okay, but now if you
16 could get me the information, you know, what you consider,
17 you know, your viewpoint, you know, if you establish your
18 safety record by your performance in your capacity with your
19 employer for X amount of time. Do you follow where I'm
20 coming from?

21 MR. PRICE: Yes, as of right now,
22 talking about - - - no. Our premium is based on the last
23 three (3) years, previous years.

24 MR. TUCKER: Uh-huh (yes).

1 MR. PRICE: And out of those three
2 (3) years you get a modification factor. I'm not sure how
3 you get it, but there is one.

4 MR. TUCKER: Well, I'm not either,
5 but you understand where I'm coming from?

6 MR. PRICE: Yeah (yes), so you look
7 at the last three (3) years and you look at our premium and
8 you'll see a modification factor so really the modification
9 factor is on the average of three (3) years. So you'd look
10 at that modification factor, that's already going back three
11 (3) years. You got to say point nine (.9), that's an
12 average of three (3) years. So that might mean - - - but
13 really you're not looking at last year. You're looking at
14 1992 up to now.

15 MR. TUCKER: In other words, you may
16 not have been there but a year, you're doing your job. The
17 guy two (2) or three (3) years ahead of you may not have
18 been doing the job.

19 MR. PRICE: So you look at an
20 average of the last three (3) years, that would be for the
21 premium and the Experience Modification - - -

22 MR. TUCKER: That's what I'm trying
23 to figure out in my mind what, you know, people in your
24 situation - - - what do you consider a fair and equitable

1 MR. TUCKER: (Cont'g) way to treat you right if
2 I'm doing a modification factor - - -

3 MR. PRICE: Well, I consider, it
4 would be fair, it'd probably be - - - if you want to keep it
5 consistent with the ah - - - everything else then use the
6 last three (3) years the same way as you use rate making,
7 make the rate and let the previous three (3) years and then
8 average that modification factor.

9 MR. TUCKER: Treat you as an
10 individual, not as a categorization.

11 MR. PRICE: Yes.

12 MR. TUCKER: In other words, your
13 company should not be guilty by association?

14 MR. PRICE: Exactly.

15 MR. TUCKER: I just want to make sure
16 that I - - - if you, you know - - - you could get me some
17 comments on that, I'd appreciate it.

18 MR. PRICE: I sure will.

19 MR. SULLIVAN: Mr. Price, how many
20 people do you have employed at your mill?

21 MR. PRICE: Between fifty (50) and
22 sixty (60) at the mill and that number is including
23 foresters and land buyers and stuff.

24 MR. SULLIVAN: They're not - - - are

1 MR. SULLIVAN: (Cont'g) they all directly
2 employed by your company?

3 MR. PRICE: Yes, that number is.

4 MR. SULLIVAN: And then the loggers,
5 you have ten (10) to twelve (12) logging companies?

6 MR. PRICE: Contractors, yes sir.

7 MR. SULLIVAN: They're independent from
8 your operation?

9 MR. PRICE: Yes, sir.

10 MR. SULLIVAN: So the loggers have no
11 bearing on what happens to them as to what happens to your
12 safety record at the mill?

13 MR. PRICE: No, sir.

14 MR. SULLIVAN: And you have ten (10) or
15 twelve (12) of those contractors?

16 MR. PRICE: Yes, sir.

17 MR. SULLIVAN: It takes that many to
18 supply to you what you need to operate your mill?

19 MR. PRICE: Yes sir, and those ten
20 (10) or twelve (12) contractors vary with the season so
21 you're looking between forty-five (45) or fifty (50) people
22 or something like that.

23 MR. SULLIVAN: That are out logging for
24 your mill?

1 MR. PRICE: Yes, sir.

2 MR. SULLIVAN: That are not in your
3 employment?

4 MR. PRICE: Yes, sir.

5 MR. SULLIVAN: They're subcontracting
6 to you?

7 MR. PRICE: Yes, sir.

8 MR. SULLIVAN: Thank you.

9 MR. JARRETT: Mr. Price, from what
10 you've said I would interpret that to mean you have a strong
11 safety program in place right now?

12 MR. PRICE: Ah - - - yes, sir.

13 MR. JARRETT: It's in-house entirely?

14 MR. PRICE: Yes, sir.

15 MR. JARRETT: And you have a rate
16 which is indicative of a strong safety program?

17 MR. PRICE: Yes, sir.

18 MR. JARRETT: Do you have any idea
19 what your costs to put your safety program in place on a per
20 employee basis would be on an annual basis?

21 MR. PRICE: I could get that number
22 for you. I have it, forward it to you.

23 MR. JARRETT: I'd be interesting in
24 knowing what you're spending on a per person basis.

1 COMMISSIONER RICHARDSON: Other questions or
2 comments for Mr. Price?

3 I can say that the Beckwith Lumber organization does
4 have a very aggressive and proactive safety program from the
5 discussions that I've had with Mr. Price and Mr. Beckwith
6 and others associated with the firm. They are noteworthy in
7 that regard in that industry. Okay.

8 MR. PRICE: Thank you, sir.

9 COMMISSIONER RICHARDSON: Thank you very much.
10 I'll give one (1) final altar call. Would anyone - - -
11 would anyone else care to testify, to witness?

12 MR. KELLY: Are questions in order
13 or is that another phase of the meeting?

14 COMMISSIONER RICHARDSON: Sure, if you'll come
15 forward and state your name and association, we can ah - - -
16 try to react to your questions and if the speakers are - - -
17 those speakers who are still here perhaps they can react as
18 well.

19 MR. KELLY: Okay, well, I'm Jim
20 Kelly and I'm from a Risk Management Firm in Pittsburgh.
21 I'm an old retired insurance guy that used to travel down in
22 West Virginia when I was young and I represent several
23 potential Loss Management Firms and so I'm wondering about -
24 - - you've indicated that you plan to implement this program

1 MR. KELLY: (Cont'g) in July of this year or
2 June of this year, I think the date was?

3 COMMISSIONER RICHARDSON: Current time line
4 contemplates full receipt of these comments, I believe, next
5 week.

6 MR. EPPS: That's right.

7 COMMISSIONER RICHARDSON: And then the joint
8 committee on ah - - - safety will review them, incorporate
9 them, respond to them in terms of the proposed regulations,
10 submit them to the Finance Committee for their consideration
11 at which time the plan is to have this fully implemented by
12 July 1.

13 MR. KELLY: Well, at some point in
14 the process you're going to have to identify and qualify
15 ah - - - recognize Loss Management Firms, are you not, so
16 that - - - so that they would be available to serve the
17 employers and there is a process alluded to in paragraph
18 five point one (5.1) and so forth that says that, you know,
19 a Loss Management Firm has got to submit a plan and submit
20 background information on its employees and submit
21 information regarding its clients and its record and so on
22 and it suggests that this submission may result from a
23 request for proposal. And I'm wondering is there a request
24 for proposal that has been prepared or an application or a

1 MR. KELLY: (Cont'g) format or anything that
2 would identify what it is that is required or is it strictly
3 freeform and then ah - - -

4 MR. EPPS: The answer to your
5 question is, no. The reason for the answer to the question
6 is because where we are right now is in the formation of the
7 Rule and this is a Public Hearing on the Rule itself. That
8 particular part of the Rule may stay the way it is or it may
9 change as a result of the testimony that we hear from you
10 and others and the written testimony so that - - - and that
11 part of the Rule was questioned at the hearing we had in
12 Charleston.

13 So the answer to the question is that once we get
14 all the feedback and we put the Rule together then at that
15 point then that particular issue will have to be addressed,
16 but not until we get the Rule. All this is at the moment is
17 a proposed rule. But the issue you raise is a very valid
18 one that at some point have to be addressed, yes sir.

19 MR. KELLY: There, obviously, are a
20 number of Loss Management Firms that have been developed
21 throughout the country over the past several years in
22 response to very similar problems to West Virginia's as far
23 as the cost of employee benefits and particularly Workers'
24 Compensation is concerned and I would anticipate that you

1 MR. KELLY: (Cont'g) would want to have an
2 opportunity to evaluate any and all firms who would qualify
3 and who would be able to bring their expertise to bear on
4 the problems in West Virginia.

5 And I'm wondering how you're going to identify those
6 potential Loss Management Firms and keep them appraised of
7 what's going on, if you will, so that they will know at what
8 point you will be considering their proposals and what
9 specifically you want in their proposals and - - - and what
10 your minimum guidelines will be, for example, you mentioned
11 one (1) consideration will be a time period that these firms
12 have operated. You know, a logical question might be, well,
13 what's your minimum you're looking for? If you're looking
14 for ten (10) years and a firm's only been in business three
15 (3) years, they probably wouldn't go to the trouble of
16 presenting a proposal to you and on down the line with some
17 other requirements that would seem to me should be made
18 somewhat Public so that a firm will know whether to submit a
19 proposal in the first place and secondly they'll be some
20 basis for determining whether or not they were considered
21 impartially and so on.

22 But, for example, you know, I've been trying to keep
23 track of what's been going on with the Performance Council
24 now for - - - since the Legislation was published and it's

1 MR. KELLY: (Cont'g) been difficult for me to
2 do that. I became aware of this meeting really by accident,
3 whereas I'd hoped to be aware of it by intent, so to speak.
4 So if - - - if I could get on a mailing list somehow
5 or - - - or be aware of this and certainly there are other
6 similar organizations that would like to be aware of this as
7 well.

8 COMMISSIONER RICHARDSON: Did you indicate a
9 desire to be on the mailing list on the attendance sheet
10 today?

11 MR. KELLY: Not today, no.

12 COMMISSIONER RICHARDSON: Okay, well, if you'll do
13 that - - -

14 MR. KELLY: But I'll do that.

15 COMMISSIONER RICHARDSON: Yeah (yes).

16 MR. KOZAK: If you give me your
17 business card, I'll get you on it.

18 MR. HUMPHREYS: Commissioner?

19 COMMISSIONER RICHARDSON: Yes.

20 MR. HUMPHREYS: I'm wondering, you seem
21 to be speaking to the Section 35-24-4 here which runs for
22 several pages and are you seeing in this fairly extensive
23 outline some problems with - - - for vendors in figuring out
24 what is going to be expected and, if so, is there something

1 MR. HUMPHREYS: (Cont'g) you might want to
2 submit?

3 MR. KELLY: Well, I - - - yeah
4 (yes), I have submitted some material and I find it in here
5 which is - - - which is reassuring, but I think it's
6 important to know specifically what it is the people that
7 are going to be judging the qualifications of the Loss
8 Management Firms are looking for. You know, it's mentioned
9 in here, for example, that accident frequency is something
10 you're interested in, accident severity, and those are all
11 important terms; but there's no reference to that fact that,
12 for example, they need to be from OSHA logs and that they
13 need to be related to ah - - - to exposure information. In
14 other words, payroll, types of business, and so on. So I
15 think these things are important to be spelled out so that -
16 - - so that you can evaluate Loss Management Firms on a
17 common basis and make a judgement as to their level of
18 qualification.

19 COMMISSIONER RICHARDSON: Mr. Kelly, you obviously
20 have some very good insights into this and I hope you'll
21 reduce them to writing and forward them to us for - - - as
22 comments on these regulations 'cause I - - - listening to
23 some of the things that you're pointing out I think it would
24 be very, very, helpful to us in our deliberations.

1 MR. THOMPSON: If I remember right, Mr.
2 Kelly, didn't you attend the Finance Committee bringing your
3 speakers in from Pittsburgh in connection with this and at
4 that time didn't you say you would submit to the Division?

5 MR. KELLY: Oh, yes, and I did.

6 MR. EPPS: Good.

7 MR. KELLY: I can photocopy what I
8 submitted and, maybe, bring it up to date.

9 MR. SULLIVAN: And you're from
10 Pittsburgh?

11 MR. KELLY: Yes.

12 MR. SULLIVAN: And you have a company
13 there?

14 MR. KELLY: Yes.

15 COMMISSIONER RICHARDSON: Thank you, and I know
16 everyone here joins me in wishing the University of
17 Pittsburgh a great misfortune Thursday night - - -

18 MR. KELLY: They've been very
19 successful in that over this year.

20 MR. SULLIVAN: Don't forget, we're
21 coming on strong.

22 COMMISSIONER RICHARDSON: My experience with
23 Fitzgerald Field House in 1976 we played Pitt only days
24 after Pitt had won the National Football Title and we went

1 COMMISSIONER RICHARDSON: (Cont'g) up and gave
2 them a beating at the Field House, but the highlight of the
3 evening was when one (1) of the West Virginia fraternities
4 paraded a banner in front of the Pitt cheering section that
5 said, "Dorsett goes Pro, takes cut in pay."

6 MR. KELLY: Well, I should tell you
7 this, that my oldest son was always a devoted Pitt fan and
8 about, I guess, seven (7) years ago now he moved down to
9 Paul's country and he works for Dupont down in Parkersburg
10 and he has converted one hundred percent (100%). He is a
11 total Mountaineer. And I have a new grandson who, I
12 suspect, will also be a converted Mountaineer.

13 COMMISSIONER RICHARDSON: God bless them.
14 With that, are there further comments from the Public?

15 If not, thank you so much for joining us. I will
16 declare the Public hearing closed. We will recess for about
17 ten minutes. At eleven-thirty (11:30) we will reconvene.

18 MR. KOZAK: You may want to mention
19 that the written comment period expires on March the 11th
20 also.

21 COMMISSIONER RICHARDSON: All right, listen up.
22 The written comment period for the regulations that have
23 been under consideration this morning expires March 11th, so
24 please have your comments forwarded to the address on the

1 COMMISSIONER RICHARDSON: (Cont'g) front of the
2 regulations by that date. We will reconvene in about twelve
3 (12) or fifteen (15) minutes at eleven-thirty (11:30) for
4 the full Performance Council's regular meeting. Thank you.

5 Whereupon, the hearing was duly concluded.

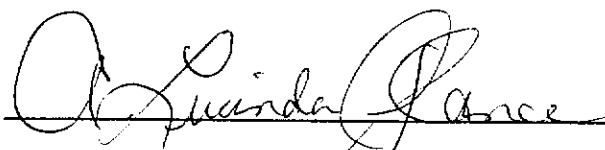
6 * * * * *

7

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, TO-WIT:

I, A. Lucinda Glance, Certified Stenomask Reporter, do hereby certify that the foregoing is, to the best of my skill and ability a true and accurate transcript of all of the evidence introduced and proceedings had in the above-captioned hearing on the 27th day of February, 1996, as reported by me by stenomask and thereafter reduced to typewriting.


CERTIFIED STENOMASK REPORTER

**Testimony: Public Health System Needs
of the Workers' Compensation System in West Virginia.
Alan M. Ducatman, MD**

1. The attribution of insurance risk (or rather, the absence of attribution) in West Virginia Workers' Compensation has caused historic public health problems in workplaces; these problems are now recognized and the state's compensation structure is struggling to address them.
 - A. The first problem relates to disincentives. Failure to attribute insurance risk based on measurable employer experience convinces employers that there is no logical reason to invest in prevention, to foster modified duty when it might be available, or even to consider and monitor whether local clinicians are providing a reasonable standard of care for injured or ill workers. Why would an employer bother if savings from improvements in safety, or early intervention, or improved health care, always have to be shared with every other employer in the state?
 - B. There is also a problem of incentives. The most marginal, the most disabling, the least compliant operations have every incentive to come to West Virginia.
 - C. The Fund has recognized this problem and has considered a means to introduce risk-related incentives. But I am deeply concerned that this be done correctly, both for the public health benefits that can be obtained and

for the consequences to workers, employers, and all citizens of West Virginia.

We need to begin the difficult process of analyzing our own data in order to understand who, where, and what are our problems. This will not be accomplished by selling or buying concepts of risk reduction from outside vendors. Outside vendors can help us only to the extent that we can first understand our own data. Results will be achieved through the difficult process of legitimate data collection, data understanding, and real summary measurements. Other states can do this. West Virginia can too, and the administration of the Compensation Fund is keenly aware of the benefits to all.

The real need is for the fund to gain its own internal data analysis competency. The investment would be well worth it.

2. There is a tremendous need for prevention intervention strategies. For example, one industry suffered a large outbreak of thoracic outlet surgical procedures. The prevention/intervention for this would have been simple medical review. The surgeries were all unsuccessful and another industry had an outbreak of carpal tunnel. The intervention here would have been more complex, requiring intensive workplace analysis. Both would have been worth preventing! These both should have been recognized and intervention should have begun early. The state needs a mechanism to engage vertically-integrated expertise to help employers. This expertise exists and it is time to use it for improved public health.

3. The Workers' Compensation authority needs its own physician, who is expert, even handed, and not responsible to outside economic interests. This will be enormously beneficial to the quality of worker care in the state, as well as to the drive to improve public health in workplaces.

Again, this is an expensive investment, which would be more than compensated by improved quality of care and improved ability to manage data.



3-5-96

Randall B. Suter, Counsel
Legal Services Division
PO 3922
Charleston, WV 25339-3922

Re: Comments on Qualified Loss Management Providers

Mr. Suter,

I wish to qualify these comments by stating I too, am a State of West Virginia employee, as Full Professor in the Marshall University's Safety Technology Program in Huntington, West Virginia.

As Chair of the Safety and Health Council in Proctorville, Ohio; a consortium representing small businesses, committed to safe and healthy industrial workplaces, a few comments are as follows:

1. Small businesses may lack the resources to fund safety and worker's compensation reduction activities. It is suggested a qualified provider either offer services to the small (disadvantaged) business at a modest fee, or small businesses obtain the benefit and/or assistance by 'pooling' and retain a qualified provider at a discount rate by grouping businesses under a consortium. The incentives may be in the form of discounts if the small business experience rate is good to excellent (as defined by the evaluating committee). Or, perhaps small businesses could obtain a fee waiver to obtain loss management services....? There could be an incentive for the at-risk clients; businesses which consistently cost the most and have the poorest experience rating, may need services which they cannot afford.
2. There is some concern for the qualification of providers. Large providers with well-established staff and clients will obtain access to certification to do business in the State much more easily than a small legitimate safety consultant business. To equalize the 'playing field', requests for proposals (RFP's) could offer the State of West Virginia innovative techniques and approaches in reducing experience rates and in improving safety performance. Perhaps experiments (pilot studies) in alternative methods of examining safety effectiveness, and in general encourage research in what works. This could be the incentive for small consultant businesses to apply for provider certification by offering innovation.

cont.

3. The other concern in loss management certification is fees:
 - * Clients may be induced into a variety of fee structures, being lured by premium relief, by paying for provider services,
 - * The activity becomes more a process of obtaining premium relief instead of evaluating injury and illness levels causes and controls,
 - * The temptation to apply unreasonable controls in claims reduction may take forms of compensating workers to withdraw from claims process to maintain better experience ratings thereby ensuring premium credits,
 - * Both provider and client working out 'deals', thereby missing the point about lowering claims and illnesses/injuries.

4. In regards to the loss prevention legislation, Title number 85CSR23, it is unclear in part 3.8 "measurable improvements" the 'demonstrative evidence of safety improvements'; what that exactly will mean. If based on ratio scales such as incident rate, severity rates, etc., the same unrealistic results will appear as evidenced by OSHA reporting/recording activities: a majority of the OSHA citations are within recordkeeping and reporting of accidents.

Because of the legislation, we have an unprecedented opportunity to set up a system of analysis. It may be more beneficial to examine a definition of 'safety performance' listed in 3.11, as something other than the combined premium tax size and experience modification factors (Table 85-23-A).

A more precise form of testing the effectiveness of the Table 85-23-A as a measure of safety performance could be examined as part of loss prevention. Through RFP's an outside criterion (evaluator) chosen randomly would be ideal. Then, one could track the effect of Table 85-23-A on actual control techniques (such as loss management providers).

Testing and measurement could be focused on behavioral sampling, the presence of safety (not lack of it). We, as a State could redefine the categories of accidents and injuries into more precise bits of information, and obtain (finally) a clearer insight into safety program effectiveness. Imagine the more fertile information obtained at the no-loss stage! Even today, we focus on problem-solving and providing answers, but are frozen when attempting to ask the right questions. Can a worker incentive-based system (Worker's Compensation) address an objective that goes beyond 'reward for injuries'?

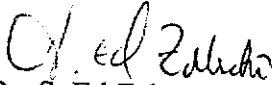


cont.

5. When working in the State of New Jersey, we had two counties which participated in incentive safety and loss reduction programs. County and state employees which completed a list of objectives received 'points' in W.C. premium discounts. Also, the county liability self-insurance premium received a variable discount rate based on their safety performance. All these activities, we coordinated with the primary focus of reducing our losses. We could imitate this arrangement in WV. Our list could include: safety meeting attendance, annual training attendance, level of OSHA voluntary compliance participation, quality of safety policy and written safety programs, pre-loss data, etc..

We do hope the comments are helpful, since our goals are quite similar - to improve operational effectiveness of the State of West Virginia.

Sincerely,


Dr. S. Ed Zakrzewski,
Full Professor
Safety Technology Program
Marshall University
Huntington, WV 25755

Council Services

- 1995 Ergonomics Analysis program development, Huntington Veterans Administration Medical Center, Huntington, WV
- Fire (child) fatality investigation, Wayne County, WV
- Calgon, Confined Space Rescue Training, Cattleburg, Ky
- Tackett vs. Geupel Construction, et. al. - fall protection
- Adjunct Faculty Consultant, Safety Engineering Program, Kennedy Western University, Thousand Oaks, Ca
- 1994 Audit: Green Acres Regional Center, Lesage, WV
- Audit: Allied Warehousing Inc., Huntington, WV
- 1993 American National Rubber Co., Kenova, WV; annual presentations - Haz Mat, Bloodborne, Haz Comm standards
- 1992 OSHA Citation Review: American Energy Corp., Charleston, WV
- 1989 Boyd Security Systems, Fairlawn, NJ- New York Times truckers' strike mediation
- Marketed Program: "Driver Improvement Programs" (DIP), NJ
- 1988 Gifford vs. Mission, Expert Witness, Tx
- 1987 Marketed Program: "Property and Casualty Loss Control", NY
- 1986- On-going community services in toxicity testing and chelation performance analysis
- Coleman vs. Mobil Oil Corp., Expert Witness, Tx - back injury
- 1986 Marketed Programs: "Confined Space Entry Training" US Army, Pa
"Forklift Certification", Fairfax, Va
- On-going investigation by state of New Hampshire Environmental Protection Bureau
- 1985 Harris vs. Kirby, Expert Witness, Tx - tractor trailer driver injury
- Marketed Program: "Advanced Defensive Driving, ADD", Tx
- 1980 Ferguson vs Cerda, Tx - pool injury



Appalachian Hardwood Center □ Division of Forestry

West Virginia University

College of Agriculture and Forestry

Comments on Qualified Loss Management Program

March 11, 1996

Randall B. Suter, Counsel
Legal Services Division
PO Box 3922
Charleston, WV 25339-3922

Dear Counselor Suter:

Please accept the following comments regarding the proposed rule "Qualified Loss Management Programs" from the Appalachian Hardwood Center at West Virginia University.

We are offering these comments as a potential loss management service provider that has substantial experience in pre-injury safety elements and as an organization concerned about the future of small business in West Virginia. The focus of our work has been the wood products industry in West Virginia including logging, sawmilling, secondary processing, and various other wood products companies. Many of the companies we work with are small, employing less than ten people. While we believe this program to be a valuable source of potential relief for these WV companies, we have serious concerns over several sections of the proposed rule.

From a general perspective, we see programs concentrating on pre-injury safety elements to be preeminent in achieving the objectives of the legislation. Yet, the rule is structured to exclude organizations that are focused exclusively on either pre-injury safety elements or on claims management. Not only does the rule restrict participation of certain qualified service providers, but sets the stage for creating an oligopolistic (and perhaps monopolistic) offering of loss management services. By artificially and unnecessarily restricting competition among service providers, the proposed rule, if accepted as is, will not provide WV employers will the highest quality, least cost program for Workers' Compensation relief. This proposed rule, in our opinion, serves to restrict the overall potential effectiveness of the program for WV employers. In many

respects, the rule sets the stage for increasing ill will among Workers' Compensation subscribers.

With respect to the individual sections of the rule, we are providing the following specific comments:

Section 5.2. Is it essential, to meet the purpose of the rule, for a recognized loss management service provider to have both pre-injury safety and post-injury management claims experience? If a provider can show that they have developed and implemented effective safety programs **or** they have managed claims so to minimize unnecessary or fraudulent payments, this experience should help the workers' compensation fund obtain the objectives of reducing workers' injuries and fatalities and reducing the fund's deficit. Requiring a service provider to have experience in both areas will effectively eliminate participation of organizations with valuable experience and ultimately reduce the overall effectiveness of this program.

Sections 5.2.1. and 5.2.2. These sections are contradictory and ambiguous because section 5.2.1. specifies the time period over which the loss management service provider has offered its program, while section 5.2.2. seems to disqualify those potential loss management providers with less than seven (7) years of experience. If so, an arbitrary barrier to entry is created, and therefore, a handful of companies, or one company for that matter, could essentially control loss management services.

Section 5.2.3. b further clouds the issue of seven (7) years of "required" experience. Furthermore, in this section, data is referred to. Who is responsible for collecting and reporting this data? If the intent is for the service provider to be responsible for collecting and reporting the appropriate data, it is unlikely that most potential service providers would have maintained such extensive data. Also, pre-program safety data (OSHA) often is not available due to small size of company and reporting requirements for OSHA Form 200. (companies

with 10 employees or less do not have to maintain OSHA Form 200)

Section 5.3.2. requires each loss management service provider to have a safety specialist on staff. How does this relate to the 7 year experience requirement? Must a service provider have had qualified staff for seven (7) continuous years prior to becoming a qualified loss management service provider? If a claims management firm, for instance, simply hires a safety specialist, can they become a loss management service provider based solely on their claims management experience, and meet the specifications of this rule? The rule needs to be clear regarding "experienced and qualified specialists". If a certified safety professional and/or a certified industrial hygienist are required, it should be stated.

In **section 5.4.1.**, how does a loss management service provider measure employer's commitment? Performance can be measured, but commitment is a qualitative characteristic that means different things to different people. We suggest that the phrase "and insuring the employer's commitment" be removed.

Section 5.4.2. mentions a joint labor and management safety committee. Many small companies will see a benefit to enrolling in this program. In the logging sector, for instance, companies with less than ten (10) employees are predominant. However, for these companies, a joint labor and management safety committee requirement is unrealistic.

Section 5.5. needs some clarification because some injuries are not required to be reported on an OSHA Form 200, yet the injuries are compensable under workers' compensation. A more precise definition of a reportable occupational injury or illness is needed.

Section 5.6.2. puts claims control on the loss management service provider. Our interpretation is that claims control is the responsibility of workers' compensation. This entire section seems to eliminate potential loss management providers who are pro-active safety providers but do not have experience on the claims side of this issue.

Section 5.7.1. Why does a service provider have to offer its services to every employer desiring service? If a service provider is a small operation, and cannot or does not desire to work with a client with a large number of employees, why should the provider be forced to do so?

Section 5.7.6. a. Disputes under this rule **need** to be handled by The Workers' Compensation Bureau. One way to handle termination of service is by providing a documentation policy within this rule for provider or employer to follow so that grounds for termination will be documented. The Workers' Compensation Bureau could then provide the necessary and intended arbitration function.

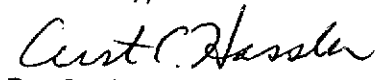
Section 7.6. effectively penalizes the companies that have pro-actively pursued safety programs with a qualified loss management provider. In fact, it seems that many of the provisions of this rule discourage companies that already have safety programs in place from participating.

In **section 7.7.**, we question penalties for changing providers. Recently in the state of Pennsylvania, a large private workers' compensation firm, specializing in the forest industry (NORTIM), that provided safety training and would likely have qualified as a loss management provider under these guidelines went out of business. If a loss management provider discontinues doing business, is it appropriate to assign a new start date for an employer? Why not pro-rate credit in this case as in **section 7.8.**

Randall B. Suter
March 11, 1996
5 total pages

We hope these comments have been helpful. New rules and change will never please everyone, but we hope that the insight and comments from the perspective of small forestry and wood products firms will guide the Qualified Loss Management Program to meet its goal of reducing injuries and reducing the workers' compensation fund deficit. If small (less than 11 employees) firms are not specifically identified and provisions made for them within this program, we are skeptical that this program will realize the full potential it is capable of. If you have any questions regarding these comments, please contact Dr. Curt Hassler, Joel Stopha, or Tim Pahl at the Appalachian Hardwood Center at West Virginia University (304) 293-7550.

Sincerely,


Dr. Curt Hassler


Joel Stopha


Tim Pahl

Beckwith Lumber Company, Inc.

Manufacturers

WEST VIRGINIA HARDWOODS

SLATY FORK, WEST VIRGINIA 26291
PHONE (304) 572-1220

March 6, 1996

DEP-LEGAL DIVISION
96 MAR -8 PM 3:55

WV Workers' Compensation
Randall B. Suter, Counsel
Legal Service Division
PO BOX 3922
Charleston, WV 25339-3922

Dear Sir:

I am submitting written comments on the proposed rule; Qualified Loss Management Programs, Title number 85. At the public hearing in Morgantown on February 27, 1996, I made a few comments and was asked some questions by the performance council. I will stress my concerns and suggestions in this letter, and answer the questions that were asked by the performance council.

I have some concerns that this proposed rule will not be beneficial to small businesses in West Virginia. The cost of a loss management service provider could easily outweigh the benefits of this program. For example, a loss management service provider may charge \$2000.00 per year, and a small business may only save \$1500.00 a year through the credit rating. Therefore, it would not be beneficial for a small company to participate in the qualified loss management program.

Before I give my suggestions, I would like to point out one thing that has been overlooked. First, for a business to be eligible for this program, they must have an experience modification factor of .993 or less. For a business to have an experience modification factor of .993 or less, they are doing something right (safety) in the first place.

I have two suggestions to address this concern. My first and main suggestion is that since businesses that have an experience modification factor of below .993 already have strong management support for safety, why make them use a loss management service provider? Since this is the case, why not provide an in-house service through Workers' Compensation like the division is doing with the safety professional in Title 85 (Loss Prevention). For example, we (Beckwith Lumber) have a comprehensive safety program. We won Sawmill of the Year in 1995 for the state of West Virginia, the Governor's Safety Award for 1995 and went through a comprehensive OSHA inspection which resulted in a fine of less than \$200.00.

If businesses with a experience modification factor like ours are doing things right in the first place, why should we pay a loss management service provider to tell us that we are doing things right? I believe that we do not need a third party involved in these cases. The only thing this bill will do as it is now proposed is to help line the pockets of the loss management service providers. If this bill is intended to help businesses that have a strong management support for safety, then the division should help them and not the loss managements firms that will surely see an increase in their bottom line. As stated before, I believe we do not need a third party to tell us we are doing things right, and that having an in-house safety professional(s) would better benefit the businesses of West Virginia.

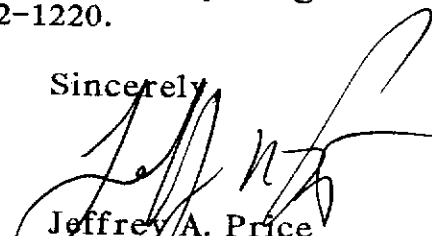
My next suggestion is that the division should consider a group program. A group program would help small businesses see some benefits to this program. For example, if the division approved a group program for loggers, then they could have a uniform loss control program for their businesses. I think that this would greatly help these small businesses, especially since they are all very similar. An association or the division safety professional(s) could help and monitor these groups. I believe using a group program would be very beneficial for both the division and the small businesses in West Virginia.

As for my second concern, it is stated in 7.1.1. "a client employer must participate in an approved loss management program for at least one year period before being entitled to claim a premium tax credit." Once again, for a business to be eligible they must have a experience modification factor of below .993. Premiums are based on the three previous years, as is the experience modification factor, so if businesses are below .993, then they have been working on safety and health concerns in the workplace for at least three years. In considering this, the division should make the premium tax credit available sooner than one year. My suggestion would be that if businesses have an experience modification factor of .90 or lower for the past three years, then these businesses should have the premium tax credit in four or six months, and should not have to wait one year.

I was asked by Chris Jarrett how much money we spend on safety for each employee. We spend approximately \$531.00 on each employee per year. This is not including Workers' Compensation costs or down time due to safety training. As you can see, we are committed to safety.

If you have any questions or if there is anything that I can clarify, please feel free to call me at (304)-572-1220.

Sincerely,



Jeffrey A. Price
Safety & Environmental Director

JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLEY TOWER

P. O. BOX 553

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340-1301

March 11, 1996

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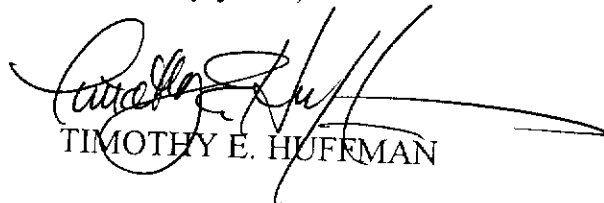
Randall B. Suter, Esquire
Legal Services Division
Workers' Compensation Division
Bureau of Employment Programs
Post Office Box 3922
Charleston, West Virginia 25339-3922

RE: Written Comments to Qualified Loss Management Programs Rules

Dear Mr. Suter:

Please find enclosed herewith, which I am filing on behalf of the West Virginia Coal Association, comments to the proposed rules governing Qualified Loss Management Programs.

Very truly yours,


TIMOTHY E. HUFFMAN

TEH:tsn
Enclosure
cc: Bill Raney

**COMMENTS TO QUALIFIED LOSS MANAGEMENT PROGRAMS RULES
TITLE 85, SERIES 24**

Section 85-24-5.7.6

This section allows for the termination of the service agreement between a qualified loss management service provider and the client/employer where the provider determines that the employer is not committed to work place safety. Subsection (a) specifically notes that disputes under this provision between the service provider and the client/employer are not subject to resolution under this rule. There must be a mechanism for the client/employer, to dispute such a decision by the provider where necessary. Since an employer may only receive premium credit for a three-year period, an arbitrary decision to terminate such program by the provider would have a detrimental effect on the employer's ability to participate in the premium credit program. The best solution would be to provide that any termination decision made by a service provider, is subject to review and hearings pursuant to West Virginia Code §23-2-17, as if such decision were made by the Division.

Section 85-24-11

This section deals primarily with the loss management service providers' ability to protest any decision made by the Division under this rule. The three subsections under this particular section should be amended to allow the client/employer an opportunity to protest any order, decision, or redesignation of its provider, with hearings being held pursuant to West Virginia Code §23-2-17. The client/employer should be a party to any such

decision and hearing process since ultimately, the employer's ability to participate in the premium rate credit program could be effected by any such decision of the Division.

CHASFS4:16965

PITTSTON

March 08, 1996

Pittston Coal Management Company
448 N.E. Main Street
P. O. Box 5100
Lebanon, Virginia 24266
540-889-6000

Mr. Andrew Richardson
Commissioner
Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

✓ Mr. Randall B. Suter, Esq.
Bureau of Employment Programs
Legal Services Division
4700 McCorkle Avenue, S.E.
Charleston, WV 25304 - 1964

Re: Proposed Exempt Legislative Rule
Title 85, Series 24, " Qualified Loss Management Programs "


Dear Messrs. Richardson and Suter :

I met you both and briefly discussed the above legislative rule at a Public Hearing on the same in Charleston, West Virginia on February 15, 1996. On behalf of Meadow River Coal Company, Appalachian Mining, Vandalia Resources, and Molloy Mining please accept our comments regarding proposed rule, Title 85, Series 24.

Proposed Exempt Legislative Rule, Title 85, Series 24 which details procedures for the implementation of Qualified Loss Management Programs, should be amended to provide a review process whereby employers may submit existing loss management programs for qualification by the Division.

As is the case with the proposed rule, the Division would require that an employer's loss management program contain those elements critical to increasing employer and employee commitment to safety and injury prevention, as well as providing post-injury assistance to the worker. Any employer's loss management program, once approved, would be subject to the same standards of on-going review as are required of loss management service providers under the proposed rule.

Amending the rule in this manner would encourage employers to continue (or enhance) the use of their loss management programs rather than abandoning an effective program simply to replace it with that of a third party in order to receive the premium tax credit. By permitting employer's programs to become qualified, the Division would continue to satisfy the stated objectives of the proposed rule, yet in a manner which rewards those employers which have already recognized the effectiveness of loss management programs.

Sincerely,

Randi Preston Dick
Supervisor of Statutory Benefits

RESPONSE TO COMMENTS
85CSR24, "QUALIFIED LOSS MANAGEMENT PROGRAMS"

Written and oral comments regarding proposed rule 85CSR24, "Qualified Loss Management Programs," and responses thereto are as follows:

1. Pittston Coal Management Company
Randi Preston Dick, Supervisor of Statutory Benefits
Letter dated March 8, 1996

Ms. Dick requested that the proposed rule be amended to provide a review process whereby employers may submit existing loss management programs for qualification by the Division. Ms. Dick indicates that an approved employer's qualified loss management program would be subject to the same standards of ongoing review as are required of loss management service providers under the proposed rule. Ms. Dick notes that such amendments to the rule would encourage employers to continue the use of their loss management programs rather than abandoning effective programs simply to replace it with that of a third party in order to receive a premium tax credit.

Response: The statute requiring the implementation of the Qualified Loss Management Program, West Virginia Code, §23-2B-3, does not contemplate the recognition of individual employers as qualified loss management service providers. It is noted that employers who implement or who have implemented effective loss management programs will reap the rewards of such programs through a reduced experience modification factor. The reduction of experience modification factors is a long term goal contemplated by the implementation of the program. The credit provision as contained in the Qualified Loss Management Rule is for the purpose of underwriting the cost that an employer will face in implementing such a program. The credit is not a reward for currently maintaining an effective safety program.

2. West Virginia Coal Association
Timothy E. Huffman, Esquire
Jackson and Kelly
Letter dated March 11, 1996

Mr. Huffman expresses concern with the provisions of 5.7.6 (now 6.7.6) which allows for the termination of a service agreement between a qualified loss management service provider and the employer where the provider determines that the employer is not committed to work place safety. Mr. Huffman notes that the provisions of "paragraph a" indicates that disputes between qualified loss management service providers and client employers are not subject to resolution under the provisions of the rule. Mr. Huffman suggests a review of any such termination by the Division under the provisions of West Virginia Code, §23-2-17.

Response: It was anticipated that contract disputes between qualified loss management service providers and employers under the provisions of the rule would be dealt with in much the same manner as other contract disputes are handled. In other words, as contracts are generally resolved through the court system, it was anticipated that disputes between employers and service providers would be handled in the same manner. The Division has limited resources to referee such disputes, in particular, as another method of resolving disputes exists.

Mr. Huffman expresses concern with the provisions of Section 11 (now Section 12) of the Rule. Mr. Huffman suggests an amendment to the Section to allow employers an opportunity to protest any order, decision, or redesignation of its loss management service provider. Mr. Huffman suggests that such hearings be held pursuant to W. Va. Code, §23-2-17 and that employers should be made a part of the hearing process.

Response: The provision was changed in response to the comments.

3. Alan M. Ducatman, M.D.
Oral Comments February 27, 1996
Morgantown, WV

Dr. Ducatman expressed concern and offered comments regarding the need of the Workers' Compensation Division to gauge its own internal data analysis competency and to develop a mechanism to engage vertically-integrated expertise on behalf of employers. Dr. Ducatman also expressed the opinion that the Workers' Compensation Division was in need of its own physician.

Response: Dr. Ducatman's concerns appear to be more directly related to the management of the Workers' Compensation Division and not to the specific content of the rule. No suggestions or analysis regarding the specific content of the rule was presented by Dr. Ducatman.

4. Jeffrey A. Price, Safety & Environmental Director
Beckwith Lumber Company, Inc.
Oral Comments February 27, 1996
Written Comments March 6, 1996

Mr. Price prefaces his comments by stating that a business must have an experience modification factor of .993 or less to be eligible for the program. Mr. Price makes further comments regarding resolution of this difficulty.

Response: It appears that Mr. Price's comments are directed to the numbers contained in Table 85-24A. This table has been deleted from the rule in light of the rewrite of §§ seven and eight.

Mr. Price's comments indicate concern with paying a qualified loss management service provider when an employer has experienced a good safety program and a reduced experience

modification factor. Mr. Price states "If this bill is intended to help businesses to have a strong management support for safety, then the Division should help them and not the loss management firms that will surely see an increase in that bottom line."

Response: Again, Mr. Price's comments are prefaced by his understanding that for a business to be eligible for the program they must have an experience modification factor of below .993. Mr. Price's assumption is incorrect. The intent of the rule is to help businesses underwrite the cost of a safety program and encourage the implementation of such a program among those employers who have not experienced good safety performance. A threshold experience modification factor of 1.5 was added to the rule for eligibility purposes.

Mr. Price suggests that the Division consider groups of employers for participation in a qualified loss management program.

Response: The Division has added a section regarding the participation of small businesses in a group program for purposes of participation under this rule. (See §5).

Mr. Price notes the Division should make the premium tax credit available sooner than after one year of participation.

Response: The enabling statute, West Virginia Code, §23-2B-3, indicates that credits provided under this rule shall be prospective. As such, the rule was structured so that participation for a full three year period was required prior to receipt of a credit.

5. Dr. Curt Hassler, Joe Stopha and Tim Pahl
Appalachian Hardwood Center, Division of Forestry
West Virginia University
Letter dated March 11, 1996

The commentators expressed concern that the rule is structured to exclude organizations that are focused exclusively on either pre-injury safety elements or on claims management. The commentators expressed concern that this artificially and unnecessarily restricts competition among service providers. Further, the commentators note that the proposed rule will not provide West Virginia employers with the highest quality and least costly program.

Response: The provisions of West Virginia Code, §23-2B-3 indicate, "A loss management firm shall be recognized if it has demonstrated an ability to significantly reduce workers' compensation losses for its client employers by implementing a loss control management program." A loss control management program, as defined by the rule, contains provisions for pre-injury safety concerns as well as post-injury claims management concerns. The Division believes that concentration on either element to the exclusion of the other does not constitute a loss management program as anticipated by the rule. The rule was designed to afford comprehensive programs to eligible employers. By opening up participation to paid service providers that provide only a portion of a comprehensive program, the Division was concerned that a cottage industry of such service providers would spring forth as has been

experienced in other states. The overnight creation of numerous service providers would not provide quality services to West Virginia employers.

Commentor wonders whether a loss management service provider must have a pre-injury safety and post-injury claims management experience.

Response: See previous paragraph.

The commentor expresses concerns that provisions within 5.2 are contradictory and ambiguous.

Response: Subsection 5.2 (now 6.2) has been substantially changed. The division will rely upon the provisions of 6.1 to qualify loss management firms through purchasing division procedures.

The commentors expressed concern with the provisions of 5.2.3.b. The commentors question who is responsible for collecting and reporting the appropriate data and notes that it is unlikely that most potential service providers would have maintained such extensive data.

Response: The enabling statutory provisions require the loss management firm to demonstrate an ability to significantly reduce workers' compensation losses for its clients and employers in order to be recognized as a qualified loss management firm. The collection of data regarding past experiences seems an appropriate request from a loss management firm.

The commentors expressed concern over the provisions of 5.3.2 which requires each loss management service provider to have a safety specialist on staff.

Response: The personnel requirements of the rule require a loss management service provider to evidence its ability to perform services. It is anticipated by the provisions of the rule that the loss management service providers' ability is a current assessment.

The commentor expresses concern regarding the provisions of 5.4.1 and asked "How does a loss management service provider measure employers' commitment?"

Response: Commitment is measured by the performance of the employer.

The commentor expresses concerns with the provisions of 5.4.2 regarding a joint labor and management safety committee. The commentor believes that a joint labor and management safety committee requirement for companies with less than ten employees is unrealistic.

Response: The Division believes that cooperation between the employer and the employees by the formation of such a committee will result in an increased focus on safety issues and a decrease in workers' compensation losses. Such a committee can be structured for any employer.

The commentor expresses some concern with the provisions of 5.5 as some injuries are not required to be reported on an OSHA Form 200. The commentor states that a more precise definition of a reportable occupational illness or injury is needed.

Response: A definition of "injury" is contained in the provisions of 3.9. Under this provision, an injury means a compensable injury or illness for which costs are incurred by the Division within the meaning of West Virginia Code, §23-4-1 et seq. The rule clearly states that the materials required are not limited by the OSHA Form 200.

The commentor expresses concern with the provisions of 5.6.2. the commentor states that the provision puts claims control responsibility on the loss management service provider. The commentor indicates their interpretation that claims control is the responsibility of Workers' Compensation. The commentor expresses concern that this eliminates potential loss management service providers who provide safety services but do not provide claims management services.

Response: Loss control is the responsibility of employers, employees and the Workers' Compensation Division. Loss management services are not merely safety services nor are they claims management services. Loss management services is a comprehensive responsibility to prevent claims from occurring and to provide follow-up services after a claim occurs.

The commentor expresses concern with the provisions of 5.7.6.a. The commentor indicates that disputes between loss management service providers and employers need to be handled by the Workers' Compensation Division.

Response: A contractual relationship will exist between the employer and the loss management service provider under the terms of this rule. As such, contractual disputes will be handled in the same manner as contractual disputes are handled under normal circumstances. It is anticipated that such contractual disputes will be handled by the court system.

The commentor expresses concerns with the provisions of 7.6.

Response: The provision of 7.6 was eliminated from the rule. Note the provisions of W. Va. Code §23-2b-3.

The commentor expresses concern with the provisions of 7.7. The commentor questions circumstances where a loss management service provider discontinues doing business. The commentor questions whether its appropriate to assign a new start date for an employer under such circumstances.

Response: This section (now 8.7.) was substantially changed to reflect the rewrite of §§ seven and eight.

The commentors request that small firms be specifically identified in provisions made for them within this program.

Response: A new section has been added to the provisions of the rule that consider small employers and group participation in a qualified loss management program. (See §5).

6. Dr. S. Ed Zakrzewski, Professor
Safety Technology Program
Marshall University

The commentor expresses concerns regarding the resources of small businesses to fund safety and loss reduction activities.

Response: A new section has been added to the rule which provides for group participation for small employers in the qualified loss management program. (See §5).

The commentor expresses some concern regarding the qualification of providers. The commentor expresses concern that small legitimate safety consultant businesses will be unable to qualify to do business as a qualified loss management service provider. The commentor notes that perhaps a pilot program involving innovative techniques and approaches in reducing experience rates and in improving safety performance be considered when qualifying a loss management service provider.

Response: Regardless of the size of the loss management service provider, pre-injury safety elements and post-injury claims management services must be provided to qualify as a loss management service provider.

Other comments from the commentor appear to relate to 85CSR23, "Loss Prevention". As such, no response is indicated.

A number of comments were received at the February 15, 1996, public hearing in Charleston, West Virginia, and at the February 27, 1996, public hearing in Morgantown, West Virginia. Many of the comments contained herein have been responded to in prior paragraphs.

7. Beverly Jarret
Regulatory Training Center
Public Hearing February 15, 1996, Pages 12-14

Ms. Jarret made no specific comments regarding the substance of the rule. As such, a response is not required.

8. Herschel Reveal, Supervalu
Milton Division
Public Hearing February 15, 1996, Pages 15-17

Mr. Reveal commented regarding his concern that committee members that helped prepare the rule may gain from the proposals contained therein. Mr. Reveal commented that he did not understand why his company's own program could not qualify as a qualified loss management program. Mr. Reveal indicated that his firm should be eligible for the credit as it is currently paying fees for outside safety audits and claims management services and should not have to enter into a qualified safety audits and claims management services and should not have to enter into a qualified loss management program under the terms of this rule prior to obtaining a credit.

Response: The rule and the underlying statutory provisions indicate that loss management services need to be provided by a qualified loss management firm in order to qualify for a credit. The rule and the underlying statutory provisions do not anticipate the provision of qualified loss management services by the subject employer. The credit is utilized by the Division to assist the employer by underwriting the cost of the program. The credit is not to be considered a reward for good performance. The committee that assisted the Division in drafting these rules included third party administrators, members of the employer community, and members of organized labor. Third party administrators that lent their expertise to the formulation of this rule were necessary to the process. The interplay of ideas between varied interests resulted in a broad based approach to addressing the statutory provisions on the form of a rule.

9. Morris Alderman
Eastern Electronics Company, Inc.
Mineral Wells, WV
Public Hearing February 15, 1996, Pages 17-18

Mr. Alderman presents concerns as to whether small business is considered in the proposed rule.

Response: A new section has been added to the rule addressing the pooling of small employers into groups for purposes of being an eligible employer under the qualified loss management program.

10. Dr. Alan Ducatman
Institute for Occupational & Environmental Health
WVU School of Medicine
Public Hearing February 17, 1996, Pages 11-22

Note: Dr. Ducatman's comments were addressed previously in response to his written comments.

11. Dick Waybright, Executive Director
West Virginia Forestry Association
Public Hearing February 27, 1996, Pages 22-32

The commentor suggests pooling small companies. The commentor suggests that participants receive a premium credit prior to one year participation in the program.

Response: A new section has been added which allows pooling of small companies. The statutory provisions enabling the creation of this rule anticipates a prospective premium credit. As such, a one year period was established to require participation by an employer prior to receiving a credit.

12. Jeff Price
Beckwith Lumber
Public Hearing February 17, 1996, Pages 33-42

Notation: Mr. Price's comments on behalf of Beckwith Lumber have been previously addressed in the response to written comments.

13. Jim Kelly
Pittsburgh, Pennsylvania
Public Hearing February 27, 1996, Pages 42-46

Mr. Kelly's questions were primarily regarding requests for proposals forms for applications and determinations concerning qualified loss management service providers. Such comments were not specifically directed to the provisions of the rule. No changes to the rule resulted from Mr. Kelly's comments.

General Response to Comments:

Changes were made to the rule as a result of the tenor of the overall comments and comments made by the Compensation Programs Performance Council.

- 1.2. additional authority cites added.

Section two. Purpose of rule was clarified to include the "rendering of higher quality health care to the employee."

3.7. The definition of "experience modification factor" was clarified to show individual nature of the calculation.

3.9. Definition of "Incurred losses" added to comport with new ratemaking methodologies.

3.11. Definition of "joint labor and management safety committee" clarified to include employee representation each segment of a tiered safety organization.

Definition was clarified to prohibit employer retaliation against safety committee members. Note also: Section 13 was added to the rule to provide a mechanism for retaliation matters.

3.12. Definition of “loss costs” added to comport with new ratemaking methodologies.

Subsection 4.2 amended to require an experience modification factor equal to or greater than 1.5 prior to participation in the program. Provision 4.2.1 added.

Section 5 regarding small group employers was added.

Former provision 5.2.2 was eliminated.

6.1. Clarified to allow for qualifications and criteria to be set out in a manner consistent with the purchasing division’s rules and regulations.

6.2. Complete revision; coincides with new requirements of 6.1.

6.5.1 and 6.5.2 “or successor” form added for clarification.

6.7.1. Addition to prohibit service providers from discriminating against client employers in the offering of services.

6.7.2. Addition of word “factor” included for clarification purposes.

6.7.4. Participation period for credit eligibility changed to three years.

Provision 6.7.6 amended to include employer groups.

Section §7 (former §6) rewritten in entirety regarding assignment of credit factors. Chart at end of rule eliminated in favor of a scale for determining credit factors.

Section §8 (for §7) rewritten in entirety regarding the earning of credits and the amount of credits earned by a client employer.

10.2. notes change in period of participation. No credit granted if employer does not participate full three years.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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PENNEY BARKER
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(Plus all the volunteer
help we can get)

RECEIVED
FEB 21 1997
ADMINISTRATIVE LAW DIVISION
FEB 24 PM 2:04

TO: JOHN KOZAK

AGENCY: WORKERS' COMPENSATION

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: February 20, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 24 TITLE: 85 WORKERS' COMPENSATION

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Randall B. Suter

TITLE OF PERSON SIGNING: Counsel, Legal Services Division, Bureau of Employment Programs

DATE: February 25, 1997

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.