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EDUCATION & LABOR COMMITTEE

Congressman George Miller, Chairman

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Chairwoman Woolsey Statement at Subcommittee Hearing on "Developments in State Workers' Compensation Systems"

WASHINGTON, D.C. – *Below are the prepared remarks of U.S. Rep. Lynn Woolsey (D-CA), chairwoman of the Workforce Protections Subcommittee, for a subcommittee hearing on "Developments in State Workers' Compensation Systems"*

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Thank you all for attending this hearing on "*Developments in State Workers' Compensation Systems.*"

Here in Congress, we don't examine these state compensation programs very often because they are generally under the purview of state legislatures.

However, there have been some disturbing national trends that may compel a comprehensive re-examination of these state programs and their impact on injured workers.

As most of you are aware, workers' compensation statutes were passed beginning in the early 20th century to establish a no fault system for providing efficient redress for injured workers.

Workers' compensation was called the 'grand bargain.'

Workers waived their rights to bring individual suits against their employers and in return receive compensation for work-related injuries regardless of fault.

Every state and the District of Columbia have workers' compensation programs in place.

Most employers purchase private workers compensation policies, but others self-insure or purchase insurance from a state managed compensation fund.

Beginning in the 1990s, changes in state workers' compensation laws--brought about by the lobbying efforts of employers and insurance companies---have resulted in stricter eligibility requirements and the reduction in both the amount and duration of benefits—particularly for those workers with permanent partial disabilities.

Unfortunately this 'grand bargain' of the 20th century is not so 'grand' any more, especially for injured workers.

In addition, there are two other recent developments that merit our attention

The first has to do with the American Medical Association's (AMA) *Guides to Permanent Impairment.*

And the second concerns a cost-shifting trend away from state workers compensation programs, where the employer is responsible for an employee's injury, to the federal government's medical and disability programs.

The AMA *Guides* have been in effect since 1971 and are now in widespread use.

Some states even require workers' compensation programs to use the latest edition of the *Guides.*

These *Guides* were originally designed to be used by physicians in making a scientific assessment of a worker's level of impairment---or loss of function---due to a work-related injury.

The determination of whether a worker is permanently disabled and entitled to workers compensation is based upon his or her impairment rating, which is then applied to the specific case of a given worker.

For example, a worker who loses a hand may not suffer permanent disability if he or she is a teacher, but that same worker would be permanently disabled if he or she works in construction.

In 2007, the AMA published the 6th edition of the *Guides,* and witnesses today will describe how this new edition has dramatically reduced impairment ratings for many types of conditions, without apparent medical evidence, and transparency.

The 6th edition has become so controversial that many states, including Iowa, Kentucky and Vermont have decided not to adopt them.

It also appears that the 6th edition was developed in near secrecy, without the transparency and consensus which should necessarily accompany the development of standards that will have widespread use by state governments.

In addition, it appears that the physicians who developed this latest edition may have ties to insurance companies, and are making a profit training doctors on the use of the 6th edition, which is complicated and very difficult to apply.

The National Technology Transfer Advancement Act of 1996 sets forth minimum criteria for the development of voluntary consensus standards: openness; balance of interests; due process protections; and consensus.

The process used for developing the 6th edition appears to significantly deviate from these standards and is a focus of testimony before us today.

Workers who are wholly dependent on this 'grand bargain' when they are injured on the job, are the ones paying the price.

The subcommittee invited the AMA to testify today, but unfortunately, it declined.

Another troubling policy issue is that as eligibility for workers' compensation benefits have become more restrictive, there has been a cost shift to Medicare and Social Security Disability (SSDI), placing an additional burden on the taxpayer.

In addition, costs are being shifted to private health insurance that should be borne by workers' compensation policies and employers.

This is particularly worrisome, especially during a time of record deficits.

Chairman Miller and I believe that this cost-shifting trend warrants further study.

Therefore, we will be asking the Government Accountability Office (GAO) to do a study and issue recommendations.

The testimony today will illuminate these problems facing injured workers and taxpayers, and I look forward to hearing from our witnesses.

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