

# Wagner Rehab, LLC

## Medical Case Management & Vocational Rehabilitation

*Offices located in:*

Springfield, MA

Hartford, CT

New Haven, CT

Bedford, NH

Burlington, VT

Brattleboro, VT

**February 16, 2016**

### **H. 332 Sec. 2. STUDY; REPORT**

The Commissioner of Labor, in consultation with the Commissioner of Disabilities, Aging, and Independent Living, shall study the effectiveness and costs of the screening process required pursuant to 21 V.S.A. § 641 that is used to determine the eligibility of injured workers for vocational rehabilitation benefits. The Commissioner of Labor shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs on the results of the study on or before November 15, 2015. The report shall include recommendations for statutory, regulatory, and administrative changes to improve the effectiveness and reduce the costs of the screening process for vocational rehabilitation benefits.

### **Background**

Governor James Douglas instigated the development of the screening process in 2003. Soon after he became governor he met with business owners in most major towns to hear their concerns. After that process he announced that he had been told that Vocational Rehabilitation was a cost driver in Workers Compensation premiums and that he would reform the process. Actually, benefits and medical costs are the primary cost drivers in WC. The Governor's assertion was taken as marching orders by the WC Director at the time. The WC Director surveyed regional VR systems and came to conclusion that money could be saved in the Entitlement Assessment process by "screening" claimants.

What we know in hindsight is at that time premiums were increasing in every insurance product as a result of the events of 9/11 since the industry anticipated unprecedented payouts.

### **VR Expenses**

The annual expense for WC related VR in VT is in the range of \$1.6 million to \$3.1 million which includes the cost of services; training, supplies, etc., which is actually a benefit provided to claimants. It also includes the income and expenses of c. 40 VR service providers. Undoubtedly, there are savings to be found in that amount of money but as a percent of the total premium paid in VT it is in the range of .7% to 1.7% during 2005 – 2010 (see below). The cost of Entitlement Assessment is a small percentage of a small percentage. In other words, you could eliminate VR altogether and a \$1000 monthly premium would only go down \$10 to \$20.

The screening process involves the same data as the Entitlement Assessment; review of medical records, contact with the employer, contact with the claimant. They differ only that the screening

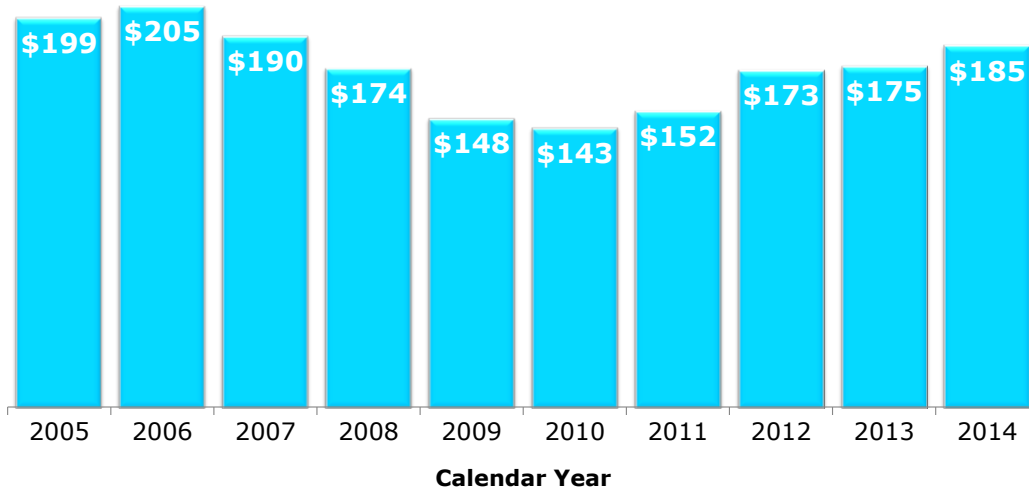
allows phone contact with the claimant while the EA requires a face to face meeting. The screening process poses three questions and if any of them are answered negatively Entitlement is indicated. In practice, it doesn't work very well. We know this because initially the private VR Counselors performed the screening while the legislature approved the mechanics of VT DVR involvement. I performed one screening that indicated Entitlement should proceed. The injured worker had obtained employment with the State of VT, Vocational Rehabilitation Division as a job developer.

Essentially the screening process has diverted insurance monies to the Division of Vocational Rehabilitation with no significant savings effect ever being proven. If you consider the perspective of a State VR Counselor the screening task is a burden than detracts from their caseload. Their incentive is to do the screening work as quickly as possible.

Rather than another study, I would suggest the simpler approach would be to direct the WC Division to survey the Adjusters and ask if they have found the screening process to save the carrier's money. I believe you would find the experienced adjusters, including the State of VT Office of Workers Compensation employees specifically avoid any use of the screening process.

# Vermont Workers Compensation Premium

Direct Written Premium in \$ Millions



Source: NAIC's Annual Statement data

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**Annual Contract Cost of Vocational Rehabilitation Services from VT DOL reports.**

|   |   |
|---|---|
| 2005  |   |
| Entitlements Performed: 351                 |   |
| Contract Costs (Counselor):                 | \$1,608,218.29<br>.0081 of the DWP                          |
| 2006  |   |
| Entitlements Performed: 223                 |   |
| Contract Costs (Counselor):                 | \$1,428,294.48<br>0.007 of the DWP                          |
| 2007  |   |
| Entitlements Performed: 404                 |   |
| Contract Costs (Counselor):                 | \$1,423,454.45<br>0.0075 of the DWP                         |
| 2008  |   |
| Entitlements Performed: 344                 |   |
| Contract Costs (Counselor):                 | \$2,920,716.23<br>0.017 of the DWP                          |
| 2009  |   |
| Entitlements Performed: 387                 |   |
| Screenings Performed by DVR: 136 @ \$160.00 | \$21,760.00   |
| Contract Costs (Counselor):                 | <u>\$1,330,077.42</u><br>\$1,351,837.42<br>0.009 of the DWP |
| 2010  |   |
| Entitlements Performed: 368                 |   |
| Screenings Performed by DVR: 244 @ \$160.00 | \$39,040.00   |
| Contract Costs (Counselor):                 | <u>\$2,180,200.17</u><br>\$2,219,240.17<br>0.015 of the DWP |

## **S.23 An act relating to required disclosures for workers' compensation settlements**

A full disclosure should include a plausible calculation of the **Loss of Wage Earning Capacity** (LWEC) to ensure the claimant is fully informed of the consequences of including VR services in a settlement especially if the claimant is young, the impairment serious and the AWW high.

### New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity, December 2012

<http://www.wcb.ny.gov/content/main/hcpp/ImpairmentGuidelines/2012ImpairmentGuide.pdf>

“Loss of wage-earning capacity (LWEC) is the reduction in an injured worker’s earning capacity due to a work-related injury or disease.”

Case history - RW truck driver with an AWW of \$23.00 per hour incurred a shoulder injury and could not return to work in that occupation. He attempted retraining and completed a High School Diploma but with great difficulty due to a childhood Traumatic Brain Injury. When he failed at self-directed on line training the carrier opposed a Self Employment plan that would have cost c. \$30,000 and eventually the case settled, probably for less than the plan cost. RW found employment as a Security Guard earning \$13.00 per hour. He is 37 years old and has a probable work life of 25 more years to reach the average retirement age of 62. If the circumstances were static, his LWEC would total c. \$520,000.00 over his remaining work life.

## **VR8 Process**

Settlement including VR is typically considered after a lengthy period of TTD and the claimants are financially distressed since TTD never equals their compensation.

The other important factor that comes into play is what the DOL characterized in a 2008 study as attorneys using the VR8 process to change VR providers and “enhance” a settlement when the new VR provider writes an expensive plan to use as a negotiating stance.

The option to change VR Counselors was originally intended to assure VR Counselors were performing their duties professionally. It is now characterized as “client choice” when in fact the process is most frequently used by attorneys. The WC Division will accept a VR8 with only an attorney’s signature.

Case history - LC had a limited work history in retail and manufacturing, never earning much more than the minimum wage. When her case was reaching an end point she engaged an attorney. The attorney used the VR8 to choose a VR Counselor whose sole source of referrals is from attorneys. Instead of writing a reasonable RTWP the new VR Counselor presented the carrier with a plan for two years of CC at a cost of \$30,000.00+. This allowed the attorney to begin negotiating with the inflated cost of an unjustifiable and unreasonable training expense.

The fundamental problem is an attorney has a financial incentive to increase the settlement amount and therefore his percentage but settlement may not be in the client’s best interest if the LWEC greatly exceeds that payout. There are unscrupulous attorneys and compliant VR Counselors. The attorney in the case history above has since been disbarred.

Sincerely,

*Ken Eaton*

Kenneth Eaton

Vermont Certified Rehabilitation Counselor #V0075