TEMPORARY DISABILITY BENEFITS

BULLETIN NO. 33

Nevada Legislative
Counsel Bureau

DECEMBER 1958
Carson City, Nevada

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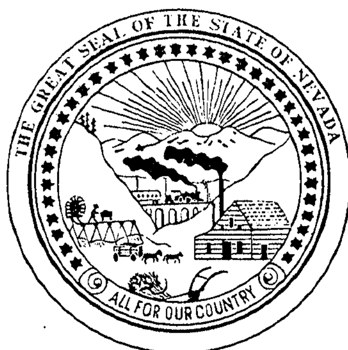

NEVADA LEGISLATIVE COUNSEL BUREAU

DECEMBER 1958

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TEMPORARY DISABILITY BENEFITS

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FOREWORD

The Nevada Legislative Counsel Bureau is a fact-finding organization designed to assist legislators, State officers, and citizens in obtaining the facts concerning the government of the State, proposed legislation, and matters vital to the welfare of the people. The staff will always be non-partisan and non-political; it will not deal in propaganda, take part in any political campaign, nor endorse or oppose any candidates for public office.

The primary purpose of the Counsel Bureau is to assist citizens and officials in obtaining effective State government at a reasonable cost. The plan is to search out facts about government and to render unbiased interpretations of them. Its aim is to cooperate with public officials and to be helpful rather than critical. Your suggestions, comments, and criticisms will greatly aid in accomplishing the object for which we are all working--the promotion of the welfare of the State of Nevada.

PREFACE

During the 1957 Session of the Nevada Legislature, the Senate adopted Senate Resolution No. 18, which memorialized the Legislative Counsel Bureau to study the feasibility and desirability of a disability compensation law for the State of Nevada, and to present a report to the 1959 Session of the Nevada Legislature for study and consideration.

Temporary disability insurance is the term used to describe a statutory program of cash payments for limited periods of unemployment due to nonwork-connected illness or accident. The matter has been controversial in many states for many years. Although bills to create temporary disability insurance systems have been introduced in the legislatures of 32 states and Congress during the past 20 years, only five such programs have been established. In Nevada, the legislation has been introduced eight times, and was passed by both houses on one occasion. This bill was vetoed subsequently by Governor Vail Pittman in 1947.

The study begins with a discussion of the various arguments for and against temporary disability insurance, it discusses the history of such legislation in the various states, including Nevada, a chapter is devoted to coordinating the program with unemployment insurance, and another chapter discusses the basic features of temporary disability insurance programs. The study concludes with a sample bill for the examination of interested persons.

The study was undertaken and completed by Arthur J. Palmer, Jr., Senior Research Assistant for the Nevada Legislative Counsel Bureau. Mr. Palmer and the Legislative Counsel Bureau gratefully acknowledge the valuable assistance and materials provided by the Unemployment Insurance Service of the Bureau of Employment Security, U. S. Department of Labor, the Insurance Economics Society of America, the Nevada State Employment Security Department, and the many others who have contributed factual information.

Copies of this study may be obtained without cost from the Nevada Legislative Counsel Bureau, Carson City, Nevada.

J. E. Springmeyer
Legislative Counsel

SENATE RESOLUTION NO. 18

Memorializing the legislative counsel bureau to study the feasibility and desirability of a disability compensation law for the State of Nevada.

WHEREAS, Several states have already enacted disability insurance laws to compensate for wage losses sustained by individuals unemployed because of illness or injury: and

WHEREAS, Unemployment compensation provides no relief to an unemployed individual who is unavailable for work because of illness or injury; and

WHEREAS, It appears reasonable that if an individual is compensated when he is unemployed, he should be compensated when he is unemployed because of illness or injury that is no fault of his own; and

WHEREAS, Many people are unaware of the problem; and

WHEREAS, It appears desirable that a study be made of the problem of disability insurance in Nevada; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That the legislative counsel bureau be memorialized to study the feasibility and desirability of a disability compensation law for the State of Nevada; and be it further

RESOLVED, That a report relative thereto be presented to the 1959 session of the Nevada Legislature for study and consideration.

CHAPTER I

INTRODUCTION

What is Temporary Disability Insurance?

Temporary disability insurance is the term used to describe a statutory program of cash payments for limited periods of unemployment due to nonwork-connected illness or accident. The risk of wage loss arising from inability to work represents a major risk to workers, but one which there has been little legislative provision to meet. Although bills to create temporary disability insurance systems have been introduced in the legislatures of 32 states and Congress during the past 20 years, only five such programs have been established.

The five existing temporary disability insurance laws cover workers in over one-half million establishments in the states of California, New Jersey, New York, and Rhode Island, and in the railroad industry throughout the country. The Rhode Island law is the oldest, enacted in 1942; the California law and the Federal railroad law followed in 1946, the New Jersey law in 1948, and the New York law in 1949.

Temporary disability insurance systems, like unemployment insurance and workmen's compensation, are instituted by State legislatures and are administered by state agencies. One exception is the Federal railroad law. The three programs have a common purpose although each insures a different risk. Each provides the wage earner with assurance that if his wages are suddenly cut off he will have an income for a limited period, at least. These four states and the railroad industry are unique in that they provide comprehensive protection against the common risks of short-term interruption to wage earnings. Workers in these five jurisdictions are protected against wage loss risk arising from injury and illness on the job by workmen's compensation and that occurring outside the scope of employment by temporary disability insurance; wage loss caused by economic joblessness is protected by unemployment insurance.

Differences in experience under the five temporary disability insurance laws arise partly from variations in statutory provisions. A principal difference is the relationship of the statutory program to private plans. Rhode Island's law and the Federal statute for the railroad industry established exclusive government funds. Under these programs, the government collects the statutory contribtuions and pays benefits without regard to individual or group arrangements. In California and New Jersey, the laws permit the substitution of private arrangements, including self-insurance, for the state fund, if the private plans meet certain statutory requirements. In New York, each subject employer is required to provide his workers with benefits "equivalent" to the statutory schedule, at no greater cost than that to the employee. The benefits may be provided by self-insuring, or by contract with a private carrier, or from the State fund which is, in effect, a State-owned carrier.

Another major difference is that four of the programs--California, New Jersey, Rhode Island, and the railroad program--are coordinated with unemployment insurance and are administered by the same agency which administers unemployment insurance. By contrast, the New York program is administered by the States Workmen's Compensation Board. Other variations are concerned with the benefit formula, the source of funds, the statutory rate, and in other eligibility conditions.

Arguments For and Against Temporary Disability Insurance

The pros and cons considering the program in general are directed to the following issues.

The principal arguments advanced by proponents in favor of the compulsory temporary disability insurance program are:

(a) The need for some form of cash income when the family wage earner is disabled as a result of an accident or sickness not connect with his job.

(b) The coverage of existing private plans, including plans established in particular companies as a result of labor-management negotiations, is not extensive enough. The resultant gap must be filled by some kind of governmental plan which will also cover persons deemed uninsurable by the insurance companies.

(c) Government must provide minimum security in order to buttress the structure of free enterprise, through programs such as Workmen's Compensation, Unemployment Insurance, and Temporary Disability Insurance, which will operate to guarantee continued purchasing power.

The principal arguments of opponents against the scheme are:

(a) It is doubtful, from the point of view of justice, whether disability incident to accident or injury arising from conditions independent of employment should be a matter of legal concern to the employer.

(b) The need for a compulsory state plan has not been proven conclusively, and the government should keep "hands off" this field of insurance until there is conclusive proof that private insurers and labor and management cannot or will not of their own motion work out inclusive private plans.

(c) A state fund would socialize a segment of business and legislate the distribution of the cost of the program to all of society in such a way that those consumers least able to pay would have the burden foisted on them with increased prices.

Arguments for and against the various specific aspects of the program take on a sharper focus and can be outlined as follows. The following material is an extract from a publication entitled "Report on Cash Sickness Compensation Plans", Massachusetts Legislative Research Council, February 10, 1958 .

The Problem of Disability Causing Economic Hardship

Pro.---As one of their strongest points, the proponents of cash sickness plans stress the potentially castastrophic burdens of workers from temporary or permanent disability not connected with their jobs. Workmen's compensation insurance provides benefits as a partial substitute for wages lost when a worker is disabled temporarily or permanently in the course of his employment. The cost of such insurance is considered to be a cost of doing business, and, as such, is passed on to society in the price of the product or service.

Likewise, Old Age and Survivors Insurance (OASI) provides a partial substitute for wages if a worker is disabled because of superannuation. The cost of such insurance, paid at least in part by the employer, is passed on to the consumers in the price of the product or service to the extent that such shifting is competitively possible.

Finally, if an employer cannot supply work, unemployment compensation insurance provides a partial substitute for wages he has lost for a period. While employers in Nevada pay the full tax to support the unemployment compensation insurance fund, the long-run incidence of the tax is passed on to society in the price of goods and services whenever it is competitively possible to do so.

Given these precedents and the logic on which they are based, the proponents strongly urge compulsory non-occupational disability insurance. If a worker is disabled because of injuries or illness arising outside the course of his employment, temporary disability insurance should be provided as a partial substitute for his wage loss. There is not any great concern over the sharing argument, because it is claimed that the resultant insurance cost must ultimately be borne by society if a firm is to remain solvent. Therefore, whether the employer pays the full cost at the outset, as he often does under existing voluntary plans, or shares the insurance premium cost with his employees, in the long run it is immaterial.

Con.---Various opponents of compulsory cash sickness benefit plans concede that a worker's disability is undeniably one of the major hazards which he faces. Temporary disability due to non-occupational accident or illness has produced such catastrophic economic burdens upon individuals that the problem of distributing the incidence must not be dodged.

But legislating a compulsory cash sickness program, insist the opponents, is not the proper solution, since such legislation is not a proper activity of government. The case is very different for workmen's compensation insurance programs, which involve worker hazards for which the employer should accept responsibility.

Loss of income due to non-occupational accident or illness occurs when the employer has no legal or moral right to control the behavior of his employees. Since this type of disability is entirely a personal problem, the employee should be free to join, or not to join, with others facing a similar risk of loss, thereby utilizing the insurance principle to spread the economic burden.

Legally, argue the opponents, no principle of government can properly impose responsibility upon an employer for disability because of circumstances in which he has no legal right to intervene.

Connected with the above is the principle that government should only seek those services which its citizens cannot provide for themselves.

This view is reflected in an editorial in the Boston Pilot which in part declared that---

There has developed in this country in recent years the real danger of over-centralization, of over-dependence upon our government---state and national---in all kinds of matters. Many of us have come to look upon the government as the Great Rich Uncle, always standing by with a hand-out. Meanwhile that old Uncle has become overburdened; top heavy, and in many cases, has been forced to work with a professionalized bureaucracy, not always too careful of the best interest of democracy.....

The Status of Voluntary Plans

Pro.---Those favoring compulsory legislation point out that at present a substantial segment of our workers are undoubtedly denied necessary cash sickness benefits. Those in small firms and in sweated and unorganized industries are the ones who most need the benefits, and yet will not obtain them if voluntary action of employers is relied upon.

Petitioners for the new legislation point out that existing plans negotiated through collective bargaining provide more protection than could be required by law. Yet these generous plans are strengthened by the security that arises from a minimum

floor under the benefit structure. The existence of more generous plans does not constitute an argument against providing minimum subsistence benefits to all. Moreover, without a law those employees who are enjoying non-negotiated private insurance plans will continue in fear that their employers will eliminate the protection.

Some opponents argue that compulsory cash sickness plans which establish minimum standards tend to reduce more liberal existing plans to the statutory level. Such an argument is questioned by proponents in the very light of the success obtained already by organized labor in obtaining present cash sickness benefits.

It should be remembered, the argument runs, that minimum wage legislation has not dragged existing wage structures down to the minimum subsistence level. Likewise, the benefits of the Federal Old Age and Survivors Insurance has been supplemented by private pension plans, as have workmen's compensation benefits by special private plans.

Con.---The evidence demonstrates that voluntary cash sickness plans are usually providing benefits far in excess of state dictated proposals. The following figures were supplied for 1957 by the Health Insurance Council Survey which is made each year on the number of people covered in each state. Accordingly they report for the State of Nevada

138,000 persons with hospital expense insurance

136,000 persons with surgical expense insurance

90,000 persons with regular medical expense insurance

42,000 persons with loss of wage coverage.

In the figures on hospital, surgical and medical expense dependents are also included. In Nevada as of the same year we had about 65,000 workers covered under Unemployment Compensation. It would appear from these figures that we had close to 65% of our workers covered who are also under UC which is a rather high percentage for the Country as a whole. The fact that 65% of workers in Nevada have cash sickness benefits indicates that workers do work out satisfactory plans without the compulsion of a law. Even the minority of workers not now covered is being reduced daily as consciousness spreads of the flexibility of private plans and of the reasonableness of their cost.

Effect on the Economy

Pro.---It is axiomatic that compulsory cash sickness benefits provide income continuation, which otherwise would not be present for workers. To the extent that continued purchasing power enables a continuance of sales, profits and opportunity for investment, our economy as a whole is benefited.

Moreover, the introduction of cash sickness benefits should be neither inflationary nor deflationary, since reserves would be invested and the income to any fund would equal the outgo. Thus, conclude the proponents, greater stability is built into our economic system by such legislation.

Advocates of the legislation also say that cash sickness plans provide for a kind of forced savings for employees to be used as purchasing power when income is stopped. Whether the employee contributes the premium or not, the benefits are considered to be a fringe part of his income. Since the premium is a cost, the worker may consider it as monies which he could have had in hand, but which were siphoned off for future income at a time when he becomes disabled.

Con.---Opponents to any such law reason that all salutary effects upon the economy of a cash sickness plan can be accomplished more effectively by voluntary agreement than by a law. They say that aside from the nature of the cash sickness proposals, the motivating philosophy behind them is inimical to sound administration of private business. More important than the effect of the cost of compulsory cash sickness compensation is the impression which the advocates of such legislation make upon employers. How could an employer enjoy doing business in a State, they ask, where social planners had "hoodwinked" a Legislature into dictating the choice of how he must compensate his employees? They declare that it seems inconsistent for an administration to encourage new and better industries to locate within the State while, at the same time, it goes so far as to consider legislation which would harass future industries.

New Tax Issue

Pro.---Proponents categorically deny that compulsory "cash sickness" plans would impose another new tax on employers; that some existing industries will be driven from the State; that new industries will be discouraged from coming to Nevada. They contend that employers of large groups already have such programs at a cost higher than under either proposed bill.

For the vast majority of employers, the bill would impose no additional burden. If desirable firms seek to locate with good local labor forces they will be cognizant that progressive social legislation keeps a competent work force healthy and productive. Such firms will not, contend the proponents, let a few dollars per worker per year deter their plant location, since they would have planned to expend more than a minimum statutory amount on private cash sickness benefits.

Con.---Insurance company executives who oppose compulsory cash sickness point out that Nevada residents paid $6,500,000 in accident and health premiums in 1957 which accounted for $130,000 in premium taxes. State funds in Nevada would pay no premium tax. Moreover, it would be necessary for the legislature to raise another $130,000 in new taxes to offset the premium tax loss.

Role of Insurance Industry

Pro.---Proponents point to the recent growth of accident and health insurance sales as evidence that mere discussion of cash sickness benefits the insurance industry. They feel that a compulsory law will force more attention to income replacement insurance and result in even greater increased sales.

Con.---Opponents of compulsory cash sickness declare that anything which harms the insurance industry in any state works to the disadvantage of all of its citizens. Evidence in other states convinces opponents that compulsory cash sickness would harm the accident and health business.

Health and Welfare

Pro.---Proponents point out that workers who are assured of partial replacement of income are prone to seek earlier diagnosis and treatment of their ills, thereby speeding their return to complete health, and productivity is enhanced. While the increase in productivity is difficult to measure, it is undoubtedly present and benefits the employer.

Moreover, they argue a spread to unprotected workers of income continuance plans would lessen the drain on welfare funds.

To the extent that general taxes are reduced by lower welfare spending, employers and other taxpayers benefit. To the extent that insurance benefits replace the need for public charity, society benefits. The preservation of the dignity of the individual is a laudable goal of any legislative proposal.

Con.---The argument that a compulsory state fund dispensing benefits would enhance the economic lot of doctors leaves the medical profession cold. Doctors seem to fear a state fund as a first step toward "socialized medicine," and the subsequent breakdown of the privileged relationship between doctor and patient.

The opponents deny the above argument of a lessening of welfare costs. They claim there could be only a shifting in the burden of payment for public welfare from those best able to those least able to pay. The shift, they say, would promote injustices in present tax arrangements.

The Issue of Compulsion

Pro.---If the basic assumption is made that government should provide minimum standards of economic decency and security, then the conclusion is forced that a compulsory plan is necessary if all workers are to have minimum protection.

Insurance companies present an "official, united-front" in opposition to any form of compulsory "cash sickness" legislation. The fact is that some insurance voices murmur that compulsion per se is not anti-social so long as all-private plans are instituted.

All organized labor supports the compulsory aspects of the bill. Moreover, a splinter group of insurance company executives and producers can be discovered who support cash sickness as the only means of forcing a hard core of marginal employers to accept their responsibility to society and to their employees.

No one compels an employer to go into business. If he does, cash sickness laws force him to do what he ought to do voluntarily. Compulsory automobile liability insurance is in effect in some states, but no one compels a person to buy an automobile. If a vehicle is bought, however, the compulsory law compels action which ought to be voluntary, that is, provide insurance to indemnify the disabled.

Con.---Any compulsion in the field of cash sickness will prevent the growth of more comprehensive voluntary plans, argue the opponents. They state that the income of all workers is limited and all are forced to choose among alternative choices in using that income. If workers prefer to group together to purchase Blue Cross and Blue Shield, or some other medical benefit rather than partial wage replacement, the state has no right to say they err or are unwise. It would be no less objectionable for the state to dictate the minimum amount of dollars to be spent for bread or rent.

CHAPTER II

HISTORY OF LEGISLATION

History of Legislation Enacted and Proposed in other States and Nations.

The following material relating to other states was extracted from the following bulletins and communications: Temporary Disability Insurance-Problems in Formulating a Program Administered by a State Employment Security Agency (U.S. Dept. of Labor), The Massachusetts Report and Insurance Economics Society of America.

History of Legislation

In other countries, where temporary disability insurance legislation has preceded that for unemployment insurance, programs of temporary disability insurance have generally been related to permanent disability insurance and health insurance. The first compulsory sickness insurance law with broad coverage was enacted in Germany in 1883. It provided both medical services and cash benefits related to wage loss. By 1900, three countries had adopted compulsory health insurance programs. A few more were added before 1914, including Great Britain. After the first world war, there was rapid expansion, particularly in the new countries. During the 1930's, a few South American countries added programs, and more did so in the 1940's. Since the end of World War II, the countries of Western Elrope--England, France, Belgium, Sweden, Denmark, and the Netherlands--have enacted legislation to increase protection against risks of income loss from disability, and to remove or reduce financial obstacles to medical care.

The American Association for Labor Legislation prepared a model bill in 1916 which had been introduced in the Legislature of 20 States by 1920. Special Commissions studied the proposal in 11 States, but all of them recommended against the proposal. It was not until World War II that Rhode Island became the first State to adopt compulsory insurance and establish an exclusive state fund to administer the program. In 1946 California was the second State to enact such coverage followed by New Jersey in 1948 and New York in 1949.

There were two controlling factors responsible for such action in Rhode Island, California and New Jersey: (1) These three states had been taxing their workers for unemployment insurance since 1937 when the Unemployment Compensation Act became effective. At that time, 1937, nine states believed that sufficient taxes could not be raised through employers only to adequately provide the payment of unemployment compensation benefits to their workers. All but four of these nine states subsequently discontinued the unemployment compensation tax on their workers - Indiana, Kentucky, Louisiana, Massachusetts and New Hampshire.

in 1942 the Country was at war. We were experiencing full employment and high wages. The unemployment compensation fund in Rhode Island appeared sufficient to provide unemployment benefits. It was a simple procedure to continue the worker's tax and give the additional benefits. The same situation existed and was followed by California and New Jersey. New York was the only State to adopt a compulsory plan of sickness compensation where a tax did not already exist on the worker for unemployment compensation.

In considering this subject much weight must be given to the fact that in the 79th Congress, July 31, 1946, a legislative proposal, an amendment to the Social Security Act,

was passed and signed into law by the President (August 10, 1946) providing "that an amount equal to the amount of employee payments into the unemployment fund of a state may be used in the payment of cash benefits to the individuals with respect to their disability, exclusive of expenses of administration."

Through the enactment of this amendment to the Social Security Act Rhode Island was able to immediately transfer $28 million to the disability compensation fund. California had collected from employee contributions to the unemployment compensation fund from 1936 up to and including 1945 the sum of $306 million. California immediately authorized the withdrawal of $104 million of their total reserve of $306 million. New Jersey enacted their law in 1948 and immediately withdrew $50 million of their $230 million of employee unemployment compensation taxes.

It is a recognized fact that the reserve accumulated in the unemployment compensation fund (workers taxes) played an important part in bringing about this legislation in California and New Jersey. It is also true that the remaining six states having such a reserve fund of unemployment compensation worker's taxes, with the exception of Massachusetts, have made no worthwhile effort to enact such a law and have these funds at their disposal.

For Example:

Alabama, the fourth State that has continued to collect unemployment taxes from their workers, its Legislature considered a bill providing compulsory sickness compensation in 1947 and after a legislative hearing the idea was rejected. Since that time no other legislative proposal has been introduced.

Louisiana has discussed such a proposal on three occasions and each time has rejected it after legislative hearings. No such bill introduced since 1954.

New Hampshire in 1951 after a legislative hearing reported such a bill unfavorably.

Bills introduced in the Indiana Legislature have never been heard before a legislative committee.

Kentucky has never considered such a proposal.

The Massachusetts General Court has had the subject before their Legislature year after year since 1949 without taking favorable action. The 1958 Legislature rejected a cash sickness bill by a House vote of 118 to 81. No such bill has ever reached the Senate.

One would expect that these six states having such reserve funds ranging from approximately $1-1/2 million to $25 million, the trend would have developed into the enactment of compulsory sickness laws. The reverse has been true. These states along with a dozen others have gradually shown less interest as time goes on. What was once considered "must" legislation has gradually been recognized as not needed and not the best system of providing adequate benefits for the workers and their families.

In considering this subject it is well to look at the developments that have taken place in the compulsory systems now in operation in the only four states having such laws. It is evident from history and observation that once such a law is placed on the statute books it becomes a "political football" with undue pressure on the legislators as well as their own desires to enhance their political futures to extend the benefits and at the same time holding down the workers tax and jeopardizing the solvency of the benefit and reserve funds.

The experience in Rhode Island since April 1943, when benefit payments began, shows the system to be anything but a financial success. In a majority of years the benefit payments plus expenses have exceeded the tax collections. In 1945 it was necessary to take the entire worker tax of 1-1/2% and place it in the disability fund to pay sickness bnefits. In 1946 Rhode Island reclaimed its $28 million of workers unemployment compensation taxes and it is the interest on this amount that is invested that has enabled the disability fund to remain in the black each year. (Nevada may well benefit from Rhode Island's experience since both States have a limited number of covered workers.)

On January 1, 1956, the basic taxable wage base was increased to $3600 from $3000 and the weekly benefit amount increased from $25.00 to $30.00. The 1956 experience, even in view of the increase in the taxable wage base shows a sharp rise in benefit payments reaching a new peak of $7,286,463 exceeding the 1955 disbursements by $1,640,031 or more than 29%. The sharp rise in the benefit payments left the cash sickness program with a deficit of $247,746 for 1956. The average cash sickness claimant collected $218.00 per period of disability at $26.41 per week for 8.3 weeks. The year 1957 continued to show no improvement in the financial picture of the Fund. The total receipts amounted to $7,747,741.19 with total disbursements of $7,993,861.34.

The California plan, effective December 1, 1946, unlike the Rhode Island system which is a monopolistic state fund, is competitive between the state fund and private plans - the former being automatic if the latter is not elected by the employer and his employees. Since the plan's inception the weekly benefit has been increased five times in an eleven year period. The latest increase was effective December 31, 1957, and provides a maximum weekly benefit of $50.00 plus $12.00 per day for twenty days of hospital confinement. This latter feature was amended into the Act in 1950 and then provided $8.00 per day for 12 days of hospitalization; was then increased to $10.00 per day for the same duration. During the past 11 years with the increasing benefits the taxable wage base and tax rate has remained at 1% of the first $3000 of annual wages. Effective December 31, 1957, the taxable wage base was increased to $3600.

In 1946 when the California plan became effective and for the following five years the private insurance companies in competition with the state fund wrote approximately 72% of the risks. However, with the increasing benefits over the years (45% of the writing insurance companies experience is in the red) the percentage of private company participation is now less than 45%. The increased taxable wage base effective last December may help to meet the increasing costs of the new benefits for a time but it is recognized that eventually the California plan will, in reality, be a monopolistic state fund operation. This will come about because of the business being unprofitable to be written by private insurance companies. It is further recognized that the state fund can remain solvent for some time to come due to the huge reserve they have to their credit ($306 million) representing the unemployment compensation taxes of 1% collected from their workers from January, 1937 to March, 1946 inclusive.

The New Jersey plan, effective January 1, 1949, is similar to the system in vogue in California being competitive between the state fund and private insurance plans. The workers tax is 1/2% of the first $3000 of annual wages; the employer tax 1/4% of the first $3000 of wages if the plan is in the state fund, otherwise, the balance of cost, if any, to be paid by the employer, if same is a private plan. The New Jersey Act has been amended three times since its inception (9 years) and now provides a maximum weekly benefit of $35.00 for 26 weeks, approximately 60% above the maximum benefit in 1949 when benefits were first paid.

In 1956 slightly more than 1/3 of the 1,500,000 covered workers were insured under the state plan, while the balance 956,000 workers were protected under 16,211

private plans. A significant point now evident in the New Jersey plan is that benefit levels have reached the point where the outgo of the State Fund is beginning to exceed tax collections. Thus the State Fund is tending to become non-self-supporting in prosperous times without having been subjected to a real test of recessionary cycles. Taxes collected from employers and employees in the year (1956) brought $10,447,243, into the State Fund, a return $757,426 lower than the $11,222,669 (net after refunds) paid out in benefits. Administrative costs totaled $1,333,941 bringing the minus items to $2,091,367. It was the interest on the Fund's reserve ($94,991,769) which amounted to $2,849,365 which helped to counterbalance the net expenditures. We must not lose sight of the fact that the State Fund has as its backbone the $50 million in employee contributions from Unemployment Compensation which amount was withdrawn in 1948 to start off the disability plan. Last year, 1957, the State Plan paid disability benefits amounting to $11,378,825.00 and collected taxes on wages of $8,921,910.79 (pages 60 and 61 of 1957 report).

As usual with state compulsory disability plans the New Jersey Legislature has many bills before its present session for expanded benefits. At a hearing before the New Jersey Advisory Council on disability benefits on March 20, 1957, Frank J. Walsh, Director of Groups Insurance Relations of the Prudential Insurance Company stated:

> "A further increase in benefits without a compensating increase in the contribution rate would result in an annual deficit for the State Fund. The Insurance companies underwriting the private plans, with premium taxes and commissions to pay, likewise could not provide greater benefits without additional revenue. We stress, therefore, that in the interest of maintaining a sound and workable program, it must be recognized that any increase in benefits must necessarily be accompanied by a proportionate increase in the contributions to support the program."

It is a foregone conclusion that benefits will be expanded in time without a worthwhile compensating increase in the tax rate. Such action will result in the New Jersey plan becoming, in reality, a monopolistic state plan as will develop, in time, in California. When a state steps in and sets uniform prices without regard to quality of risk, as has in effect been done in California and New Jersey for mandatory Group accident and sickness insurance, it is apt to squeeze out the developed experience and skill represented by the insurance companies, replacing that experience with legislative action determined by the political desires arising from pressure groups which usually will govern rather than economic facts.

We must not lose sight of the fact that both California and New Jersey have large amounts in the Federal Unemployment Trust Fund representing unemployment compensation taxes collected from the workers since 1937 to the dates of enactment of the compulsory disability plans, funds that will be sufficient to finance the state systems that may soon pay out each year more than the taxes collected (California $306 million - New Jersey $230 million). Nevada has no such fund to assist in financing a temporary disability insurance program.

The New York plan began the payment of benefits on July 1, 1950. It is competitive between the state fund and private insurance plans - the employer making the choice. The worker tax is limited to 1/2% of the first $60.00 of weekly wages (30¢) per week, with the employer paying the balance of the cost. The political pressure for wider benefits has also been evident in this plan. The maximum benefit scale has been increased four times in eight years of operation. On July 1, 1957 the weekly benefits were increased - minimum from $10.00 to $20.00; maximum $40.00 to $45.00; maximum duration 26 weeks effective June 1, 1958. As the benefits are increased so is the cost which increase is assumed by the employer. Just how

long industry can take these increasing costs along with all the other taxes is a moot question. By the same token it is well to consider the economic well being of a state with expanding social activities and the cost on business to sustain such programs.

On June 22, 1957, the New York Times, reporting on a hearing before the Joint Legislative Committee on the State's economy convened to examine the cause for the loss of industry in the State reported: "In fact, one specialist said, more big plants are moving out, particularly from the New York City area, than are moving in." Mahlon Z. Eubank, a witness and counsel of the Social Security Department of the Commerce and Industry Association of New York said "Labor costs and compensation laws appeared to be driving heavy industry out. Manufacturing jobs dropped nearly 32,000 in the State this March, after a 28,000 decrease in 1956."

Federal tax legislation enacted in 1954 now provides that income payments under a disability insurance or wage continuance program exempts up to $100 per week from taxations and that premiums paid by an employer for such insurance, whether on an individual or group basis, are deductible as a business expense. It is noteworthy that the growth of hospital, surgical and medical expense insurance has been relatively greater in those states not having compulsory cash sickness laws than in the four states where such plans have been enacted.

Insurance companies, to an increasing extent, are now providing protection to the small employers, group insurance being available to cover as few as five lives, and of course, individual insurance being obtainable for the smaller cases.

When you are considering legislation of this kind, it is important, since these plans call for a weekly contribution by the employee, to give careful thought to the tremendous tax burden now being carried by the worker. The worker is now paying a Social Security tax of 2-1/4% on a taxable wage base of $4200. This tax rate is scheduled to go to 2-1/2% on a taxable wage base of $4800 on January 1, 1959. On January 1, 1960, the tax rate increases to 3% and each three years thereafter at 1/2% increase until 1969 when it will reach 4-1/2% on $4800 of annual wages. The worker has his withholding taxes, in many cases union dues and other deductions which heavily affect the paycheck. It appears the worker is fed-up with the number of holes now punched in his paycheck and desires no more. This was amply proven in the Washington State Referendum of 1950, it being recognized as a chief factor in the result which was the workers determined stand for no more paycheck deductions. This Referendum for a state cash sickness plan was defeated by a vote of 74% against its adoption.

Five States which are frequently cited as supporting progressive, social legislation--Illinois, Wisconsin, Ohio, Connecticut and Minnesota--have studied the question of cash sickness plans without taking favorable action.

In Illinois, the report by a Joint Legislative Committee on disability unemployment compensation in 1947 expressed its negative opinion as follows:

"At this particular time, however, when the average worker is experiencing great difficulty in stretching his income to meet extraordinary high costs and taxes, this Commission is unwilling to recommend that a new tax should be taken out of his already depleted wages or salary. It is the consensus of the Commission that further study of this problem is justified and desirable to the end that establishment of such a program might well be considered at a time when prices and the national debt have been reduced to normal levels."

Since 1947, similar bills have been introduced at each legislative session in Illinois, but there have been no favorable legislative committee reports.

In Wisconsin the Employment Security Department reported to the Legislature in 1948. Since then only two bills have been introduced, one in 1951 and another in 1955, but neither received legislative committee approval.

In Massachusetts disability insurance bills have been introduced at every session since 1939 without success. There has been a declining interest in this type of legislation since 1951 in the Commonwealth. Legislative committees have studied such legislation on two separate occasions.

In Ohio and Connecticut special commissions in 1950 and 1952, respectively, cited the extent of existing voluntary protection without recommending compulsory cash sickness plans.

In Minnesota, a comprehensive report by an Advisory Council was filed on this subject in 1955. The majority of the Council recommended that the Legislature should not pass an unemployment sickness disability law. The Legislature concurred, and the two cash sickness bills filed that year failed to progress. Since then, no bill has been filed in Minnesota.

A state compulsory law will only hamper labor in its continued development of employee welfare plans and weaken labor's position around the collective bargaining table. For a state to adopt a compulsory plan would place sickness benefits in the same category as Workmen's Compensation, requiring the Legislature to amend the law and the benefits from time to time. This would remove the issue from the bargaining table since no bargaining issue would be at stake and consequently the workers themselves would be at a disadvantage and not in position as they are today to obtain proper coverage at less cost over the bargaining table.

Many voluntary plans provide benefits more liberal than those proposed in a state plan. It is generallynot practical to super-impose additional voluntary benefits on compulsory statutory benefits. It can be expected that the enactment of compulsory benefits will result in benefit reductions under many existing plans and will impede the liberalization of plans through voluntary action on the part of the employer and/or through collective bargaining.

Since 1946 approximately 279 such bills have been introduced in 28 state legislatures as follows:

Alabama	Florida	Minnesota	Ohio
Arizona	Illinois	Montana	Pennsylvania
Arkansas	Indiana	Nevada	Rhode Island
California	Louisiana	New Hampshire	Tennessee
Colorado	Maryland	New Jersey	Washington
Connecticut	Massachusetts	New Mexico	West Virginia
Delaware	Michigan	New York	Wisconsin

No bill of this kind has been enacted in any State since the action in New York in 1949. In 1957, 19 bills were introduced in nine states. In 1958 only five bills were introduced - four in Massachusetts and one in Michigan. All were defeated by legislative action or died in committees.

The idea of a state plan of compulsory off-the-job accident and sickness compensation is losing its appeal. Each legislative year, throughout the country, less bills are being introduced and lesser interest is evidenced for their adoption.

A review of the number of cash sickness bills introduced in 1947, 1949, 1951, 1953, 1955 and 1957 legislative sessions will substantiate this opinion: We have selected

the odd years as comparable since 45 state legislatures met during these years. Only 12 to 16 states held sessions in the even years.

Year	NO. OF BILLS	NO. STATE LEGISLATURES WHERE INTRODUCED	DISPOSITION
1947	53	16	No enactments
1949	71	16	1 bill adopted in New York
1951	36	14	No enactments
1953	31	11	No enactments
1955	19	10	No enactments
1957	19	9	No enactments

California adopted its plan in 1946 and New Jersey in 1948.

The lessening of the pressure and desire for state plans of compulsory sickness insurance is due to the tremendous sale of voluntary group off-the-job coverage as well as individual protection during the past ten years, and particularly since 1950. At the end of 1957 the group accident and health premiums written reached a total of over two and one-third billion dollars. It is estimated that today two-thirds of our employed population are protected for loss of wages due to disability caused by accident and sickness.

The pressure for such legislation usually emanates from the leaders of labor organizations. This action, however, is difficult to follow since it is a matter of record, in the various states that a large number of workers are already protected under voluntary group accident and sickness plans. A state compulsory law will not give these workers broader coverage or greater protection than they now enjoy at little or no cost since the employers in many instances are paying 50% or more of the cost.

The proponents of state compulsory sickness plans usually voice the argument that it is more logical to pay unemployment disability benefits if the worker is physically unable to work than unemployment compensation, but such a statement is misleading because it plays on an emotional rather than a factual approach to the question. Lack of employment is an economic problem where the worker may contemplate loss of income for indefinite periods, whereas the sick worker still has a job and contemplates a re-sumption of earnings upon recovery. The economic loss in the two situations is not comparable.

It is evident that the worker is not interested in securing his sickness protection through any form of a compulsory state law. This was demonstrated, as pointed out previously, in the State of Washington where a referendum on the ballot calling for a state plan of non-occupational accident and sickness insurance was defeated by the voters with 74% against the adoption of the plan. This is the only State to date where the people were given the opportunity to vote on the issue and they defeated it in no uncertain terms.

Voluntary disability benefit programs for employees, whether insured or self-insured and whether unilateral or collectively bargained, possess distinct advantages over compulsory statutory programs. Voluntary programs can be tailored to fit the

needs of the employees and the resources of the employer, whereas statutes tend to establish a rigid benefit and contribution level that may be high for some groups and low for others. Statutory programs not only involve more elaborate and expensive regulation by Government but require employers and employees to submit controversial issues to the legislature rather than settle them by direct negotiation. On the other hand, voluntary programs encourage employers and employees to provide for their own security rather than to look to government for protection against every hazard.

No one has devised a sufficiently flexible employer contribution to a state fund to make employers as vitally interested in a sound program as they are when the premium they pay is directly related to the cost of their benefit program. The basic difference is the incompatibility of competition between benefits financed by taxes and benefits financed by premiums. The tax is fixed at a definite rate, initially on conservative assumptions, and as a result the income of a state fund during the earlier years exceeds outgo and a surplus is accumulated. On the other hand, the private or voluntary plans accumulate no such surplus because the amount of the premium is adjusted to cover the cost of benefits and expenses. Ultimately the availability of the state fund's surplus is used to justify benefits that cost more than the tax income of the fund. When this occurs more and more private or voluntary plans are terminated because the provision of comparable benefits cost more than the taxes currently imposed under the state plan.

There is no moral or logical reason why an employer should be compelled, by law, to provide cash benefits for workers when incapacitated by reason of accident and sickness disassociated from their employment. There is no more logical, moral or legal reason than if the state were to require, by law, that the employer defray part of the worker's rent or his grocery bills.

Employers now finance 3/4 of the cost of all compulsory insurances (Social Security, Unemployment Compensation, Workmen's Compensation, etc.). To subject employers to another unnecessary tax by the passage of such legislation "are we saying legally that because insurance is available to the public and its institutions, employers should be libel?"

Most workmen's compensation statutes were enacted some forty or more years ago at a time when the prevalence of industrial accidents and the inadequacies of the employer liability remedy combined to create a critical situation. Unemployment compensation benefit legislation developed during the great depression when the facilities and resources of private enterprise seemed to be inadequate to solve the problem of unemployment. Today there is no comparable justification for the enactment of temporary off-the-job disability benefits legislation. Voluntary benefit plans now cover approximately two-thirds of the employed population and are growing at a rapid rate. Protection against accident and sickness can be purchased or provided by employers and unions for no more, and frequently for less, than the cost of statutory programs now in operation in Rhode Island, California, New Jersey and New York. The flexibility and adaptability of voluntary programs without the regulatory and political complications of statutory compulsion makes them better suited to the needs of the employer, the employees, the unions and all parties concerned.

History of Legislation in Nevada

Temporary Disability Insurance bills have been introduced eight times in the Nevada legislature, seven times in the Assembly and once in the Senate. The introductions have been as follows: Assembly Bill No. 172 (1945); Assembly Bill No. 222 (1947); Assembly Bill No. 245 (1949); Assembly Bill No. 214 (1951); Assembly Bill No. 39 (1953); Assembly Bill No. 116 (1955); Assembly Bill No. 200 and Senate Bill No. 184 (1957). All but two of these bills died in committee. Assembly Bill No. 39,

introduced at the 1953 Session failed to pass the Assembly by one vote. This bill provided for an unemployment compensation disability fund to be administered by the executive director of the Employment Security Department with contributions to be made to the fund by employees. Assembly Bill No. 222, introduced at the 1947 Session was passed by the Legislature but vetoed by Governor Vail Pittman. The Governor's Veto Message and final action taken by the Assembly were as follows:

Vetoed Assembly Bill No. 222 of the Forty-third Session.

THE STATE OF NEVADA
EXECUTIVE CHAMBER
Carson City, Nevada, March 26, 1947

HON. JOHN KOONTZ, Secretary of State, Carson City, Nevada.

DEAR SIR: Herewith there is deposited in your office for filing, within the constitutional time limit, and without my approval, Assembly Bill No. 222, introduced February 28, 1947, by Messrs. Ryan, Carlson, Englestead, and Jepson, and entitled "An Act to amend an act entitled 'An act relating to unemployment compensation and administration funds and providing for the administration thereof; making an appropriation therefor; defining unemployment and providing compensation therefor; requiring contributions by employers to the unemployment compensation fund, creating the office of the director, a board of review, and providing for the levy of assessments and other matters relating thereto.' " The bill would amend the present Unemployment Insurance Act by inserting therein certain provisions relating to the payment of disability benefits due to sickness, a form of insurance not within the scope of our present Act.

I am of the opinion that the enactment of this bill into law would seriously endanger, if not destroy, the entire unemployment compensation plan as now administered in this State. This grave possibility compels me to deposit this bill in your office without my signature.

At several conferences the legal complications which might arise in the event this bill became law were discussed at length. At the last conference immediately preceding the adjournment of the Legislature, at which were present the sponsors of the bill, as well as representatives of the Unemployment Insurance Division and of the various labor organizations, it was unanimously agreed:

1. That the beneficent purpose sought to be accomplished by the bill is far outweighed by the dangers inherent in the bill itself.

2. That due to the technical form and wording of the bill there are serious doubts as to its constitutionality; doubts which could only be resolved by lengthy litigation and court action.

3. That the bill is anticipatory in nature and the benefits sought to be secured would only become a reality "if and when" Congress enacted proper enabling legislation.

4. That all of the faults, doubts, and uncertainties of the proposed amendments would, if they were to become law, subject the present Unemployment Insurance Act to the same weaknesses.

5. That it would be obviously foolhardy to endanger the present Unemployment Insurance Act and threaten the payments of benefits now being made under its provisions to thousands of men and women throughout the State by reason of the adoption of questionable amendments when no immediate benefit would arise to anyone.

For the foregoing reasons, I am firmly convinced that the interests of the State, and the people thereof, require that Assembly Bill No. 222 be not approved.

Very respectfully yours,

VAIL PITTMAN,
Governor.

Although Nevada has not acted favorably on Temporary Disability Insurance programs, it is one of six states which does provide for the payment of unemployment benefits during periods of disability and sickness. In 1945, Nevada, Montana and Maryland, modified the unemployment insurance statutory requirement that claimants must be able to work, by a provision that no claimant will be considered ineligible for unemployment benefits by reason of illness or disability occurring, after he has filed a claim and registered for work, if he has not refused work which would have been suitable but for his disability. Similar action was taken by Idaho and Tennessee in 1947 and by Vermont in 1949. Although this modification is not an adequate substitute for temporary disability insurance, it does cover such disability occurring during times of unemployment when such coverage is most critical.

CHAPTER III

COMPULSORY ACTION COORDINATED WITH UNEMPLOYMENT INSURANCE

Why Coordinate with Unemployment Insurance

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance - Why Coordinate with Unemployment Insurance, U. S. Dept. of Labor.

The first four temporary insurance systems established are coordinated with unemployment insurance and administered by the agency administering the employment security program--the Rhode Island Department of Employment Security, the California Department of Employment, the Railroad Retirement Board, and the New Jersey Division of Employment Security of the Department of Labor and Industry. All four laws in their respective jurisdictions have coverage identical with unemployment insurance and use the same or similar benefit formulas and the same wage records. Most of the bills introduced in other States have proposed such coordination.

The most recent temporary disability insurance law is that of New York, which is administered by the State Workmen's Compensation Board. The temporary disability insurance and workmen's compensation laws, however, have different coverage provisions and different benefit formulas.

The Department of Labor believes that a State temporary disability insurance program should be coordinated with the State unemployment insurance program, whether the temporary disability insurance law provides for an exclusive State fund or permits contracting out. Naturally, since the unemployment insurance program provides an exclusive State fund, the maximum advantages of coordination will be obtained if temporary disability insurance also provides an exclusive State fund. Experience in California and New Jersey, however, has demonstrated that coordination of the two programs also has advantages when private plans are provided for in the law.

In 1947, the Committee on Related Programs of the Interstate Conference of Employment Security Agencies stated:

> "There is good logic--and real economy--in integrating the administration of these two closely related social-insurance programs, and in using simiiar substantive provisions at some points--even though cash sickness legislation has its own special problems and will at many points require different provisions, different procedures, and different staff."

Coordination of unemployment insurance and temporary disability insurance in administration and in many substantive provisions has both administrative and program advantages. On the State level, today, other alternatives considered are coordination of temporary disability insurance with workmen's compensation, and administration of each as a completely separate program. The following discussion compares the three programs of temporary disability insurance, unemployment insurance, and workmen's compensation in respect to: purpose, coverage, benefit formula, concept of unemployment, weekly eligibility, and administration.

(1) Purpose of the Programs

The purpose of both unemployment insurance and temporary disability insurance is to protect normally employed workers against complete wage loss for relatively

short periods during which they are prevented from working on one case by lack of work, in the other by inability to work. Workmen's compensation provides protection against hazards of work-connected accidents and diseases. In addition to compensation for complete wage loss due to total disability both temporary and permanent, workmen's compensation includes benefits for permanently decreased earning power due to disability, for loss of income because of the death of the breadwinner, and for the costs of medical care.

Because of the nature of the risk of work-connected disability, workmen's compensation laws protect workers against that risk from the beginning of the employment relationship and only during the existence of such relationship. Consequently, the problem of identifying workers attached to the labor market, so important for unemployment and disability insurance programs, has no relevance for workmen's compensation.

(2) Coverage

"The wage earners for whom sick benefits should be provided by law are the same wage earners who are already covered by unemployment compensation laws. The use of identical coverage under the two wage-loss compensation programs will obviously save considerable administrative effort and expense."

For the most part, unemployment insurance laws cover, on a compulsory basis, all wage and salary workers except those in agriculture, or in the employ of government, or of nonprofit organizations, and, in some States, those in small firms. The chief reason for many of these exclusions has been the expected administrative problems of collecting contributions and of obtaining the records needed to pay benefits. Whatever the reason for exclusion of any group from unemployment insurance coverage, the reason would be equally valid in relation to temporary disability insurance.

With coordinated coverage, the same administrative machinery can be used in collecting contributions for both programs. Employers need make only one contribution and wage report. The state government need not maintain duplicate records of covered employers, duplicate records of payments or delinquency, duplicate auditing staffs, or duplicate collection-enforcement procedures. These advantages apply even when some employers have contracted out of the State temporary disability insurance fund.

The same advantages and economies of joint coverage determinations, joint collections, and the like could not be gained by coordination with workmen's compensation programs, except in a very few States. Only four States, Nevada, North Dakota, Ohio, and Washington, have workmen's compensation laws which are compulsory, are not restricted to "hazardous" employments, and operate with an exclusive State fund; one of the three, Ohio, permits self-insurance as an alternative to coverage under the State fund. However, even in these States, benefit formulas, duration provisions, eligibility requirements, etc., would not be applicable to temporary disability insurance.

In several additional States with compulsory workmen's compensation laws and without the "hazardous" limitation, the employer may choose whether to insure with a private company or with the competing State fund. In these States, co-ordination of temporary disability insurance and workmen's compensation would not provide the administrative advantages of coordination with unemployment insurance; because of differences between the risk of occupational disability and that of non-occupational disability, some employers would choose the State fund for one risk and private insurance for the other.

Some compulsory laws apply mainly to "hazardous" or "extra hazardous" employments, a distinction which is irrelevant for temporary disability insurance. In other

States with compulsory laws, while workmen's compensation is compulsory, the entire risk is carried by private insurance or by the employer as a self-insurer. The workmen's compensation agencies in these States do not have the functions of collecting contributions, adjudicating claims, or paying benefits.

The majority of the States have elective laws, under which an employer may reject coverage under workmen's compensation, though in so doing he loses the customary common-law defenses--assumed risk of the employment, negligence of fellow servants, and contributory negligence. Regardless of the extent of coverage under elective laws, the basis for coverage is not applicable to temporary disability insurance.

New York experience bears out the need of the temporary disability insurance program for administrative coordination with unemployment insurance on coverage. Even though the New York temporary disability insurance law is to be administered completely independently of the unemployment insurance program, the unemployment insurance agency has been requested to inform the Workmen's Compensation Board of the employers subject to the unemployment insurance law. In addition, the Workmen's Compensation Board is using some facilities of the unemployment insurance agency to administer the temporary disability insurance program, such as having the addressograph unit address forms and reports to employers. If the two programs were jointly administered, no such exchange of information or separate addressing and mailing of reports would be needed. One list of employers and one contribution and wage record report would serve both purposes.

(3) Benefit Formula

In a coordinated program of unemployment insurance and temporary disability insurance, the same benefit formula can be used, since the purpose of the formula is the same. Under both programs, the intent of the benefit formula is to identify normally employed persons, measure the amount of wage loss experienced, and replace a legislatively determined proportion of that wage loss. The criteria used to achieve the desired result should be as objective as possible, equitable, and easy to administer.

While there are many variations in present unemployment insurance benefit formulas, and even more in those which have been used and abandoned, all formulas follow a generally similar pattern. A minimum amount of employment or earnings within a specified recent past period is required as one test of recent attachment to the labor force. The amount of wage loss to be replaced is determined from earnings during some or all of this base period, by application of a formula in the law.

From the beginning of the unemployment insurance program in this country, there has been a strong interest in basing each individual's right to benefits, and the weekly amount of those benefits, on his own experience, using as recent experience as it was administratively feasible to obtain. Because of this interest, the early benefit formulas provided for determining benefit rights in terms of past employment with respect to each week of unemployment. Weekly benefits were to be 50 percent of the individual's full-time weekly wages preceding his unemployment, determined from individual reports from the employer. These formulas required information which was difficult to obtain promptly.

The present wide variations in base period, benefit year, qualifying requirement, and weekly amount represent differences in State legislative answers to the same questions. There is room for difference of opinion as to the best methods of determining who is normally employed, or what proportion of wage loss should be replaced by social insurance. There seems to be no reason, however, why any State legislature should decide those questions one way for temporary disability insurance and another way for unemployment insurance.

Much of the objection to coordination of temporary disability insurance with unemployment insurance has centered around the benefit formula. Many of the arguments against a coordinated formula are actually arguments against any statutory formula. Others are based on a misconception of the unemployment insurance law and of the reason for various unemployment insurance provisions.

For example, it has been said that when the unemployment insurance benefit formula is used for temporary disability insurance "it will in some cases produce benefits so high in relation to current income as to encourage malingering, and in others too low to serve the need the plan is intended to meet." An unemployment insurance benefit formula which produces that result in anything but fringe cases would be even more unsatisfactory for unemployment insurance than for temporary disability insurance. (Not particularly applicable to Nevada with its individual base period and high quarter formula for computing weekly benefits.) The dangers of a disproportionately high weekly benefit amount are greater in unemployment insurance, since the tests of an unemployed worker's desire to work are frequently less objective than the medical examination which can be given to disability insurance claimants.

Other criticisms of coordinated formulas question the volume of wage records required under unemployment insurance formulas. Similar questions have been raised in the unemployment insurance program, and efforts have been made to develop a satisfactory formula not involving an accumulation of wage records. So long as employers are required to report wages for unemployment insurance purposes, and the State maintains base-period wage records, no administrative economies or reporting advantages are gained by ignoring the existence of those unemployment insurance records, and requiring different reports under temporary disability insurance. On the contrary, the administrative cost would be increased for both employers and the State.

An additional reason for the same benefit formula is the undesirability of giving a financial incentive to claim benefits under one program as against the other program.

(4) Disadvantages of coordination with workmen's compensation benefit formula.

The workmen's compensation program provides medical care, cash benefits in case of death, and compensation in case of permanent total disability, permanent partial disability, and temporary total disability. Presumably, if the disability insurance program were to be coordinated with workmen's compensation, it would be with the provisions for temporary total disability.

The rights to benefits for temporary total disability resulting from a work-connected injury or illness begins immediately upon employment, and the duration of payments is in no way limited by the extent of the worker's past employment. Maximum potential duration is much longer than any potential duration contemplated by a system of non-occupational temporary disability insurance. For example, several State laws provide that the workmen's compensation benefits are payable for the entire period of disability, with no statutory time limit. In most of the States in which a time limit is set, by the law, that limit is at least 210 weeks--5 years. (In Nevada it is 433 weeks.)

When the disability is caused by the employment, there is every reason for beginning eligibility immediately. In non-occupational disability, however, the situation is different. It does not seem advisable to begin protection for non-occupational disability immediately upon employment. With such a requirement, persons not normally employed could get jobs in order to qualify for benefits--for example, in anticipation of a scheduled operation. It is true that most private group health and accident insurance plans begin shortly after eligibility employment; frequently 30 days. Their experience, however, is not relevant for a statutory system with State-wide application.

Thus, the workmen's compensation eligibility requirement and duration provisions do not seem applicable to temporary disability insurance.

(5) Concept of Unemployment

Most State unemployment insurance laws (including Nevada) contain a definition of "week of unemployment" with substantially the following content:

> "Week of unemployment with respect to an individual means any week during which he performs less than full-time work for any employing unit if the wages payable to him with respect to such week are less than his weekly benefit amount."

Consequently, as the unemployment insurance laws now read, a week of disability of an employed worker is a week of unemployment, as defined. Other provisions of unemployment insurance laws set up requirements which an individual must meet in order to receive benefits for a week of unemployment, and thus prevent payment to workers whose unemployment is due to disability. Those who oppose coordination of temporary disability insurance and unemployment insurance frequently base their opposition on the grounds that the temporary disability insurance claimant differs from the unemployment insurance claimant in that he is not "unemployed" because he has a job to return to upon recovery. This current and continuing attachment of the claimant to a particular employer is supposed to contrast with the situation of unemployment insurance claimants, who are said to have no such attachments. This position ignores the fact that the unemployment insurance definition of "week of unemployment" does not require any separation of the employment relationship, for a very definite reason. Substantial amounts of unemployment insurance benefits are paid for the loss of wages caused by temporary lay-offs, such as those due to bad weather, inventory, material shortages, or plant retooling. In many such cases, as well as when the unemployment is due to lack of orders, or to seasonal factors as in the garment industry, the unemployment insurance claimant continues to regard himself as an employee of the particular company--and is similarily regarded by the employer.

The question whether or not temporary disability insurance benefits should be paid to workers who are not currently in covered employment at the time their disabilities begin is related to the concept of unemployment.

Commercial group health and accident insurance generally protects individuals only while they are working. It is sometimes claimed that a statutory system should similarly restrict benefits. However, a temporary disability insurance program which protects workers only so long as they are in covered employment would exclude a considerable part of the covered labor force. Even in good times, many workers experience involuntary unemployment; in some occupations, such as construction work, intermittent employment is the normal pattern. The need for protection against disability is no greater for the employed worker who breaks his leg than it is for the unemployed worker who suffers a similar accident--and in consequence is prevented from looking for work, and is denied unemployment insurance benefits. While some of the enacted temporary disability insurance laws distinguish between employed and unemployed workers, with erratic and inequitable effects, none of these laws limits payments to workers who become disabled while they are employed in covered employment.

In a temporary disability insurance law, some "special restrictions" are needed with respect to individuals who claim disability benefits some time after their most recent day of covered employment. These restrictions should ensure that benefits are paid only for periods when the individual's disability can be presumed to have prevented him from earning wages. Such restrictions are needed whether the temporary disability insurance law provides for coordination with unemployment insurance or with workmen's compensation, or for a completely separate program. It would not be difficult to apply tests to unemployed workers who become disabled which are similar to those used in unemployment insurance to eliminate individuals who are not currently in the labor force.

The first test, which has already been discussed, is not really a special condition for unemployed workers; it is the requirement of a minimum amount of earnings in the reasonably recent past. This minimum should be high enough so that it cannot be met by inconsequential work, or by employment taken solely in order to qualify for benefits. (Nevada unemployment compensation law requires the worker to have earned at least thirty times his weekly benefit amount and at least $240 in a year.)

The second test is a requirement of current attachment to the labor force. While the temporary disability insurance law cannot use exactly the same terms as the unemployment insurance law, it can use a similar test, such as that which California and New Jersey are successfully applying.

(6) Weekly Eligibility

Unemployment insurance and temporary disability insurance differ as to the determination of weekly eligibility--whether the claimant is or is not able to do his regular work during a given week. Temporary disability insurance determinations, however, are also different in many cases from those required in workmen's compensation, although both deal with matters involving disability. Moreover, the volume of temporary disability insurance claims is very much larger than that of workmen's compensation claims--particularly, of workmen's compensation claims for temporary total disability.

As the Interstate Conference Committee's report pointed out, "unemployment compensation laws already deal with millions of covered workers--on a weekly basis. Disability benefit legislation would have to deal with the same covered workers, probably also on a weekly basis. No other established program pays weekly benefits on a comparable scale, and determines eligibility from week to week in accordance with changing circumstances."

Coordination with workmen's compensation is sometimes advocated on the grounds that the decisions on weekly eligibility are comparable under the two programs, since both deal with disability. Frequently, however, the problems presented differ greately. Workmen's compensation is largely concerned with injuries; the issue in disputed cases of temporary total disability is more likely to be whether the disability was work-connected or not than over the fact of disability. In nonoccupational disability, disputes will be concerned with whether or not the individual actually is unable to do his usual work, not with the cause of the disability. Moreover, diseases rather than accidents are the principal causes of nonoccupational disabilities.

(7) Administrative Considerations

Certain administrative advantages of coordination of temporary disability insurance and unemployment insurance have already been mentioned--those connected with determinations of coverage, collection of contributions, and maintenance of the records needed for benefit payments. Coordination also permits a joint staff to handle over-all administrative functions, research and statistics, and personnel and business management functions.

Where coordinated programs exist, administrative and staff functions can be handled by a single group of personnel with considerable savings to the disability insurance program. The present policy regarding the use of title III funds (Title III of the Social Security Act provides for Federal grants to States of the funds needed for administration of the State unemployment insurance law) by States with joint programs is to require the disability insurance program to pay only the additional costs attributable to disability activities, plus a small payment for certain services rendered to the

disability insurance program which are not easily measurable, such as top administrative staff time, Determination of status, and establishment of the wage record file are now free to coordinated disability insurance programs. If disability insurance were separate from unemployment insurance, its administrative costs to a State would be substantially greater.

One of the basic problems in administering each of these programs is to avoid duplication of payments for the same period. In a coordinated programs, controls against duplication can be by-products of necessary administrative steps--i.e., an "out card" in the wage record files, and use of a single central office ledger for benefit payments. When the programs are administered by different agencies, additional steps are needed to prevent paying two benefits for the same week. In New York, for example, the unemployment insurance agency is receiving currently, a special notification of disability insurance claims filed against the State.

While it is also necessary to prevent duplication of disability insurance and workmen's compensation, coordination of the two programs would not facilitate that process. As has been mentioned, most workmen's compensation claims are handled by private insurance companies. (Nevada, however, has an exclusive State fund for workmen's compensation.) Moreover, indications of possible duplication with workmen's compensation will be revealed from the information necessary to process a disability insurance claim. The volume of workmen's compensation claims for temporary total disability is very much smaller than the volume of either temporary disability insurance or unemployment insurance claims.

Administratively, coordination of temporary disability insurance with workmen's compensation would not have all these advantages. The problems connected with coverage and contributions were indicated earlier. Most State workmen's compensation agencies could not take the temporary disability functions in their stride, as the employment security agencies could, because most State workmen's compensation agencies do not handle claims and payments directly. Even in the few States with exclusive State funds, the workmen's compensation agency would not be equipped to handle the volume of claims for non-work-connected disability, because work-connected disabilities represent only about 5 percent of all disabilities.

If temporary disability insurance followed the workmen's compensation pattern in most States and had no State fund, several new problems would be presented. Either benefits would be paid only to workers whose disabilities began while there were working for a covered employer, or some method for paying unemployed workers would have to be devised. With no State fund, methods would have to be established for assigning the poorer risks to the various carriers and for regulating rates.

(8) Summary

In developing a temporary disability insurance program to fill one gap in social insurance protection, it is desirable to coordinate the new program with the existing ones. By such coordination, it is easier to prevent conflicts and inconsistencies between the several programs.

Since the purpose of temporary disability insurance is so similar to the purpose of unemployment insurance, coordination between the two State programs provides a logical way of fitting them together as a consistent insurance system.

Temporary disability insurance and unemployment insurance aim at protecting normally employed workers from complete loss of income, in the former, when they are unable to work, and the latter when they cannot find work. In each program, formulas

must be developed to determine who is a normally employed worker, how much wages he is losing, what proportion of that wage loss should be replaced by insurance benefits, and for how long a period. Many alternative methods for answering each of these questions exist and can be supported. Depending upon various factors, different methods may be desirable in different States. In any State, however, it seems preferable to select one method for both programs.

From a substantive viewpoint, the above questions should get the same answers in both programs. Administratively, there is even more reason for using the same formulas and criteria. Both the employer and the State government are thus saved the time and trouble of maintaining two sets of records aimed at the same goal. The overall cost of administering the two programs is substantially less under a coordinated program than under separate programs.

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance-Problems in Formulating a Program Administered by a State Employment Security Agency.

Even in a coordinated system, however, each program has features which need separate treatment. The unemployment insurance claimant must be able to work, while the temporary disability insurance claimant must be unable to do his current or customary work. A temporary disability insurance law obviously should not require claimants to file claims in person, nor to register for a job with the Employment Service, as does the unemployment insurance law. On the other hand, a temporary disability insurance law should require claims to be supported by medical evidence, and should provide for independent medical examinations in selected cases.

Present Federal statutes relating to financing of unemployment insurance require other differences between unemployment insurance and temporary disability insurance. Unemployment insurance benefits are financed by employer taxes offset against the Federal roll tax imposed by the Federal Unemployment Tax Act; the costs of unemployment insurance administration are met by Federal grants under title III of the Social Security Act. The requirements of the Federal Unemployment Tax Act preclude a State from using that tax to finance disability benefits and employment security grants cannot be used to meet State administrative costs added by a temporary disability insurance program.

Type of Law - Treatment of Private Plans

A major policy question to be decided in planning a temporary disability insurance program is whether any provision is to be made for participation in the program by private insurance interests. Of the five existing laws, two--Rhode Island and the railroad program--provide for exclusively government-operated programs; two--California and New Jersey--permit coverage under a private plan approved by the State to be substituted for coverage under the State plan; and one--New York--provides for the insurance to be carried by private insurance companies or by a State-operated insurance carrier competing with the private carriers. Another type of system, under which all covered employers would be required to arrange private insurance for their workers, has been proposed, but no such program has been enacted in temporary disability insurance; some workmen's compensation laws are of this type.

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance-Experience Under Existing Laws reprinted from the Monthly Labor Review, June 1956.

Statutory provisions relating to private plans importantly affect other aspects of the laws. Where a State fund which does not permit private arrangements is coordinated

with unemployment insurance, the same set of provisions applies to all workers, and no special problems arise concerning workers who change employers or who become disabled while unemployed. However, when the required protection may be provided by substitute private plans, the laws must prescribe the standards and the method of authorization for such coverage, as well as provide for the treatment of existing plans which do not meet statutory standards. Moreover, if workers are to receive as much protection from private plans as from a public system, provision is needed for continuity of protection, particularly for workers who move to noncovered employment or become unemployed.

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance-Problems in Formulating a Program Administered by a State Employment Security Agency.

(1) Exclusive State fund.--

Under an exclusive State fund system administered in coordination with unemployment insurance, all workers covered by the unemployment insurance law are covered by the State plan for temporary disability insurance. Just as in unemployment insurance, all contributions are paid to the State fund and all benefits are paid from the State fund. Wage information for claim purposes is obtained in the same way for both programs. Workers covered by the law are free to purchase individual policies for private health and accident insurance without affecting their rights to benefits under the law. Similarly, employers may arrange group health and accident insurance for their workers to supplement the statutory benefits, without State interference. The Rhode Island program is the only State plan of this type.

(2) State program, with contracting out to private plans.--

Under a State program which permits contracting out, a State program of temporary disability insurance coordinated with unemployment insurance is established, with all workers covered by the unemployment insurance law also covered by the State temporary disability insurance plan unless and until some affirmative action is taken to substitute private plan coverage. Workers or their employer must take the initiative to develop a group plan, insured or self-insured, which must be submitted to the agency for approval as a substitute for the State plan. The conditions which a plan must meet before it can be approved as a substitute for the State plan are contained in the law. If the plan meets the necessary conditions, it is approved. From the effective date of the approval, the employers and workers covered under the plan are not required to contribute to the State. The State maintains a continuing review of private plans, and hears appeals from private plan determinations.

The two existing laws permiting contracting out contain somewhat different requirements which private plans must meet. Under the California law, the rights afforded to employees covered by private plans must be greater than those provided by the State fund; the plan must not cost any worker more than he would have paid under the State fund; the plan must be available to all employees--present and future--employed in the State (or in a particular establishment) by the employer concerned; each worker must be left free to choose either the private plan or the State plan, and to change his mind; a majority of the employees must consent to the establishment of the plan; at any time, a majority of the employees must belong to it; and the approval of the plan or plans must not result in a substantial selection of risks adverse to the State fund. (The prohibition against adverse selection has been suspended since 1954 by legislative action.) There are additional requirements designed to assure that benefits promised by the private plans will actually be paid. Approval can be withdrawn if the plan fails to meet any of these conditions.

The standards in the New Jersey law differ from those of California; they require private plans to provide rights at least equal those under the State plan; majority consent to the establishment of a plan is required only if workers are required to pay towards the cost of the plan; workers do not have individual freedom of choice, but must all accept the private plan if the majority want it. Moreover, the law does not contain provisions against adverse selection, except with respect to classes of employees within an establishment.

Under both laws, a worker whose disability begins while he is employed in covered employment receives his benefits from the plan, State or private, under which he is covered at the time he becomes disabled. Coverage under a private plan continues for two weeks after the last day of employment. For workers whose disabilities begin while they are unemployed or in noncovered employment, benefits are paid by the State, and are charged to a special account. Initial credit to this account is the imputed interest on employee contributions for specified periods prior to the effective date of private plan provisions. If this imputed interest is not adequate, the deficit will be charged against private plans and the State fund in proportion to the wages covered by each, with a limit on the percent of taxable wages which can be assessed. (In California, the imputed interest and the maximum assessment on wages have together been substantially less than the benefits to disabled unemployed workers. As a consequence, workers covered by the State fund are paying a disproportionately large share of the benefits to unemployed workers. Since Nevada, unlike California and New Jersey, has not required employee contributions for unemployment insurance, there are not reserves that can be used to finance benefits to unemployed disabled workers by the method used in the other two States.)

(3) Competitive State plan and private plans.

Under a system in which the State and private insurance compete, the law specifies the employers and workers covered, limits the amount which workers can be required to contribute towards the program, prescribes the minimum amounts of benefits and the conditions under which they must be paid, establishes a State Insurance fund to sell policies providing the statutory benefits, and provides the necessary administrative and supervisory arrangements. While employers are required to provides the benefits, with penalties provided for violations, workers are not entitled to benefits under a plan unless their employer has purchased a policy either from a private carrier or from the State, or has set himself up as a self-insurer. Provisions may or may not be made for benefits to workers who become disabled while unemployed or in noncovered employment, while they still have a record of recent covered employment. In New York, a special contribution was collected for six months before the law became fully operative to pay benefits to workers who have been unemployed for less than 26 weeks, and who are ineligible for unemployment insurance for any week solely because of disability.

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance-Experience Under Existing Laws reprinted from the Monthly Labor Review, June 1956.

In New York, private insurance benefits must be at least "actuarially equivalent" to the statutory schedule and the worker's contribution for such benefits may not be higher than the statutory rate. Where the plan is not negotiated with a union, workers' consent to the type of plan established is not required. Sub-standard plans may be continued indefinitely if collectively bargained; otherwise, they were accepted only up to the earliest date, after the law became effective, on which they could be changed.

Under the New York law, private plan coverage must continue for the first 4 weeks of unemployment. Unemployed workers who become disabled after that period may draw benefits from a special State fund, subject to certain restrictions; they must have been receiving unemployment compensation but must be currently ineligible for unemployment benefits because of inability to work; they must have been out of covered employment less than 26 weeks; and they must not have had more than 5 days of noncovered work since their last covered employment.

The following material is an excerpt from a pamphlet entitled <u>Temporary Disability Insurance-Problems in Formulating a Program Administered by a State Employment Security Agency.</u>

(4) <u>Private plans only.</u>

An all-private plan system is similar to the competitive State and private plan system, except that it does not have a State-operated fund. All covered employers are required to establish private plans assuring specified minimum benefits, by purchasing group insurance policies from commercial carriers, or by setting up self-insurance plans. The State agency administering the law exercises general supervision over the plans, to see that they meet the minimum requirements, and hears appeals. Some legal provisions for assigning risks and regulating rates are needed, so that employers whose workers represent poor disability insurance risks can comply with their legal obligations without incurring excessive costs. (Providing continuity of protection through job shifts is one of the chief reasons for compulsory programs. However, an all-private plan system does not protect workers when they change jobs or become unemployed.)

<u>Relative Advantages of Alternative Methods</u>

(1) <u>Summary of Pros and Cons on Alternatives</u>

Various considerations have been pointed out as advantages or disadvantages of the different types of temporary disability insurance laws. Following is a brief summary of the discussions for and against each alternative, evaluated from the point of view of its appropriateness for a system of temporary disability insurance coordinated with unemployment insurance.

(2) <u>Exclusive State fund</u>

State fund represents the widest pooling of the risk of disability, a risk which is not shared equally by all covered workers. This averaging of the risk over the entire covered work force is an advantage, since it permits a higher standard level of benefits than could be required if each establishment financed the cost of its own program.

Other advantages of an exclusive State fund result in the maximum benefits for a given contribution rate. With an exclusive State fund, a smaller proportion of the contributions are needed for administration. Private plans have various expenses--advertising and commissions, for example-which the State plan does not have. Moreover, an exclusively State-operated unemployment insurance program requires less additional work by the State--or by covered employers--than any other proposal.

Disadvantages cited against an exclusive State fund include the claim that State administration would not police the system as well as private plans would, so that benefit costs would be higher. (Experience reveals little evidence to support this position.) It is also said that those workers now covered by private plans providing more generous benefits than the State plan would provide would have their level of benefit protection reduced. This objection assumes that if an exclusive State fund law were enacted for

temporary disability insurance, more generous existing private plans would be abandoned, though such an assumption is contrary to experience with old-age and survivors insurance, or with the Rhode Island and railroad temporary disability insurance laws. Plans which are not significantly better than the State plan may be dropped, but those which provide substantially more protection will in most cases be adopted to supplement basic State protection.

(3) State program with contracting out.

A State plan with contracting out is said to assure universal and continuous benefit protection, while at the same time permitting those workers who now have more generous protection to retain it, and permitting other workers to obtain benefits above the statutory level. It is claimed that competition between the State plan and private plans will result in better performance by both.

Experience of the present State systems shows that this is more complicated and costly than an exclusive State fund. Administrative expenses of the State are greater. If the benefit provisions and contribtuion rate are properly related to each other, the only way the private plans, with their necessarily higher administrative costs, can compete with the State is by selecting the better risks. This selection increases State plan benefit costs in terms of percent of the payroll covered by the State plan. Methods for assuring that workers do not lose protection because of shifts in employment, or because of spells of unemployment, involve additional administrative costs, especially if the costs of such benefits are not to be carried solely by the workers covered under the State plan.

(4) Competitive State and private plans.

A system in which the State fund is, in effect, an insurance carrier competing with private companies for business is claimed to provide benefit protection with a minimum of government interference. Each establishment carries its own risk, whether under the State fund or a private plan, thus preserving the private insurance principle. Competition between the State fund and private plans is thus fairer to private interests than if all those under the State fund pay a uniform rate.

With this system, however, continuity of protection through job changes or periods of unemployment can be assured only by adding complications and expense. Provision of benefits is not automatic, so some workers will fail to receive benefits because their employer did not comply with the law. Even more important is the fact that, if each firm must carry its own cost, the required level of protection must be set low enough so that every establishment can afford the cost of the premiums, no matter how great a risk of disability its workers represent.

(5) Private plans only.

A system with private plans only, and no State fund, is said to be the most flexible, with the most emphasis on personal relationships between an employer and his workers, and better service to particular needs. Since there is no State fund, adverse selection against the State is not a factor.

If all employers are to be required to purchase insurance, however, they must be able to get it at a reasonable rate. Workmen's compensation experience indicates that rate regulation and assignment of undesirable risks would thus be necessary. The end result might well be greater government regulation of private insurance than under any other system. Flexibility is no greater than under any system which includes private plans. The problems of universal and continuous protection would be greatest under an all-private plan system.

(6) Limitations on Feasibility of Various Alternatives

Unquestionably, any system which provides for participation by private carriers involves additional complexities and higher administrative costs. These increased costs become more significant as the size of the group to be covered by a law decreases. In a State with a small covered work force, such as Nevada, the additional expenses of the State fund may be too heavy to be carried by a premium rate which would finance an exclusive State fund.

Another feature of contracting out arrangements which is a particular problem to a small state results from the natural tendency of private carriers to insure the better risks. The state fund is left with the establishments where the benefit costs are higher than average. A small state, with a limited work force as the base, is particularly vulnerable as to costs and will feel a much greater proportionate increase in benefit costs as a result of adverse selection.

The arguments for and against an exclusive State fund or the various kinds of contracting-out arrangements in temporary disability insurance are the same arguments that apply to workmen's compensation laws. The Nevada legislature adopted an exclusive state fund system for workmen's compensation.

CHAPTER IV

BASIC FEATURES OF TEMPORARY DISABILITY INSURANCE PROGRAMS

Coverage

The coverage provisions determine which workers are within the scope of the system; benefit rights are established only on the basis of employment or wages covered by the program. Preferably, programs insuring against the risks of wage loss should cover all wage and salary workers, irrespective of the size of their employing unit or the type of service they perform.

The following material is an excerpt from a pamphlet entitled Experience and Problems Under Temporary Disability Insurance Laws.

The California law covers firms with quarterly payrolls of $100 or more; New Jersey covers firms with 4 or more employees in 20 weeks, and Rhode Island covers firms with any employment at any time. The railroad law covers all railroad workers.

The New York disability insurance law covers firms with 4 or more workers in 30 days. The 1955 legislature extended coverage under unemployment insurance to employers with 3 workers at any time in 1956, and 2 at any time in 1957 and thereafter, but did not change the disability coverage. The disability insurance law excludes maritime workers and employess of the State government, although these two groups are covered by unemployment insurance. (The Nevada unemployment insurance law covers firms with quarterly payrolls of $225 or more.)

The laws contain the usual unemployment insurance exclusions from covered employment: i.e., agricultural, government employment, domestic service, and certain non-profit and family employment.

All four State laws (but not the railroad) provide that an individual who depends on religious means for healing may elect not to be covered by the disability insurance program. Very few people have taken advantage of this provision.

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance-Problems in Formulating a Program Administered by a State Employment Security Agency.

The objectives of unemployment insurance and temporary disability insurance are sufficiently similar to suggest identical coverage. The arguments used to justify the various unemployment insurance exclusions would be equally applicable to a coordinated temporary disability insurance program. Moreover, there are very definite advantages to both programs in having coverage identical.

(1) Advantages of identical coverage

With identical coverage under coordinated programs of unemployment insurance and temporary disability insurance, the same wage and employment report from the employer, and the same agency wage records, employer liability determinations, records of subject employers, contribution delinquency controls, and field audits can be used. Differences in coverage would require the agency to make two determinations of employer liability, and might require two files of subject employers and of base-period wage records, and separation of other functions. Administration would thus be made more complex, and the potential economy of joint operation would be reduced. Employer

reporting errors would tend to increase, particularly with respect to employers covered under only one of the two programs; these errors would also contribute to administrative problems and costs.

These increased problems and costs would not be confined to the agency. Employers would have more reports to file and more coverage interpretations to keep track of. Workers would have more difficulty in understanding and exercising their benefit rights if some services were covered by both programs while others were covered by only one.

The advantages of identical coverage exist whether the law provides for an exclusive State fund, or permits contracting out. Employers are subject to the law, even though they have approved private plans. Wages which are covered by a private plan when earned may nevertheless be the basis for future payments by the State plan, if, for example, the worker changed jobs or the private plan was discontinued. Thus, the records needed by the agency for unemployment insurance could be used for disability insurance, if necessary, without the need for maintaining special wage records for all workers for temporary disability insurance purposes, many of which might never be used.

In recognition of the obvious advantages of identical coverage, the three existing coordinated laws provide the same coverage for disability and unemployment insurance.

(2) Individual exemption on religious grounds.

Persons whose religious beliefs require them to depend for healing on faith or prayer present something of a problem in equitable treatment under a disability insurance system. Many such individuals would be unwilling to consult a physician; if certification of disability by a physician were required as a condition of eligibility, such individuals would not be able to qualify for benefits. Where employee contributions are required, consideration might be given to permitting such persons to make an affirmative declaration or election not to pay contributions and claim benefits. This arrangement to "elect out" of the program on religious grounds seems preferable to permitting certification under the law by religious healers. If, however, employer contributions are required, exclusive or in addition to employee contributions, the employer contribution should not be affected by such election. It does not seem desirable to give the employer a financial interest in the religious beliefs of his employees, nor any financial advantage in putting pressure on them to "elect out" when they would prefer not to do so.

Exemption of certain individuals from the temporary disability insurance program does not involve the agency in the separate records and other administrative complexities of differences in coverage provisions. It may, however, result in administrative complications for employer's bookkeeping practices.

Benefit Formula

The following material is an excerpt from a pamphlet entitled Experience Under Temporary Disability Insurance Laws.

Encompassed in the "benefit formula" are provisions used to identify normally-employed workers, to measure the amount of wage loss experienced, and to determine the compensable wage loss.

The Rhode Island and railroad programs use the same benefit formula for both temporary disability and unemployment insurance. Rhode Island uses an individual benefit year and base period, with a qualifying earnings requirement of 30 times the weekly

benefit amount. The weekly benefit amount is a variable fraction of high-quarter earnings with a minimum of $10 and a maximum of $30. Duration is determined by total base-period earnings, and ranges from 7 and a fraction weeks to 26 weeks.

The railroad programs use a uniform July-June benefit year and a calendar-year base period, with $400 as the qualifying earnings required. Benefits are paid for days rate-determined from base-period earnings, but not less than one-half daily wages. The rate for a week of disability ranges from $17.50 to $42.50. Duration is 130 times the daily rates, equivalent to 26 weeks but total benefits cannot exceed total base-period wages.

New Jersey uses its unemployment insurance formula for disabled unemployed workers; the formula for disabled employed workers is generally similar. For both groups, an individual base period is used; 17 weeks of employment at $15 or more are needed to qualify for benefits; weekly benefits are two-thirds of the first $45 plus two-fifths of the remainder of average weekly wages, with a $10 minimum and $35 maximum. Duration is determined by base-period weeks of employment ranging from 13 to 26 weeks in a benefit year, or, for employed workers, in any 52 weeks.

California uses the same type of individual base period for both unemployment insurance and temporary disability insurance. But the temporary disability insurance program uses no benefit year; duration is a uniform 26 weeks per period of disability. Weekly benefits for each period of disability are determined from a weighted schedule of high quarter earnings. The benefit schedule, which ranges from $10 to $50, is higher than that used for unemployment insurance. A provision of the law relates the qualifying requirement to the weekly benefit amount and high quarter earnings. In addition, California provides hospital benefits of $12 a day for 20 days in any one period of disability.

No benefit year or base period for either employed or unemployed disabled workers is used in New York. For those in covered employment at the time of disability, the qualifying requirement is 4 consecutive weeks of covered employment with one employer. For the disabled unemployed, the unemployment insurance qualification of $15 a week for 20 weeks in 52 weeks, in employment covered by unemployment insurance, is the effective requirement. For a worker who fails to meet the unemployment insurance qualification, there is the alternative of $13 a week for 20 weeks within 30 weeks, but few who do not meet the unemployment insurance requirement will meet the alternative. For both groups of disabled workers, duration is a uniform 26 weeks in any 52 week period. (Because of statutory limitations, however, it is virtually impossible for an unemployed worker in New York to draw 26 weeks of disability benefits.) Weekly benefits are one-half of average weekly wages in the last 8 weeks, with a maximum of $45 and a minimum of $20, or average weekly wages if less than $20. (The Nevada unemployment insurance law uses an individual benefit year and base period, with a qualifying earnings requirement of 30 times the weekly benefit amount. The weekly benefit amount is 1/25 of earnings in the base period quarter of highest earnings, with a basic minimum of $8 and maximum of $37.50. Additional allowances are provided for dependents; the maximum for an individual with maximum dependents is $57.50. Duration is determined by total base-period earnings and ranges from 10 to 26 weeks.)

Administration

The following material is an excerpt from a pamphlet entitled Experience and Problems under Temporary Disability Insurance Laws.

Under all programs, claims are filed by mail, first claims being filed some time after the end of the first week of disability. This retroactive filing procedure eliminates a substantial volume of claims or notices which would be useless pieces of paper. An estimated 80 percent of all disabilities last less than 8 consecutive days, while no law provides waiting period or benefit credit for a disability of less than 7 or 8 days' duration. The Railroad Act allows the shortest time for retroactive filing. No credit can be allowed for a day of disability more than 10 days prior to the date when the notice was filed; in a substantial number of cases, claimants have lost credit for at least one day of disability because of this rigid requirement. The New York statute requires claims to be filed within 15 days, and proof of disability within 20 days, after commencement of the disability. In practice, New York does not require a claim in advance of the filing of proof of disability. In the other States, the time of filing is not prescribed by statute, but is established by agency regulation. Rhode Island allows 10 days from the first day of disability; California, 28; and New Jersey, 30 days. All permit extensions for good cause.

California and New Jersey do not prescribe rules for the filing of claims against private plans, except to provide that no claim which would have been acceptable under State procedure can be rejected by a private plan. New York, however, requires that private plans use prescribed claim forms, and adhere to State-established rules of claim filing. In all three jurisdictions, provisions are made for transferring claims from the State to private carriers, and vice versa, when they are filed in error.

All the programs permit claims to be filled out and signed by a member of the claimant's family or by another agent, when the claimant is unable to fill out and sign his claim.

All the programs recognize the need for medical verification of disability, and follow, in general, the same procedures and requirements. A worker must be under the care of a physician as an eligibility condition. A certification from the claimant's physician must support the first claim. The physician's certificate may be a part of the first claim form.

The information submitted in support of the claim includes the diagnosis, dates of treatment, physician's opinion as to whether the disability makes the claimant unable to perform his customary work, and his estimate of the earliest date on which the individual could resume work safely. Information on surgery and diagnostic tests is ordinarily included, if applicable.

The information in the certification is generally reviewed by trained lay claims examiners under the direction of an agency medical officer, to whom are referred unusual or questionable cases. Before the claim determination is made, additional information may be requested from the claimant's physician, or the claimant may be referred to another private physician for an independent medical examination.

In New York, all claims by the disabled unemployed are reviewed by a physician. While the New York law provides for agency-ordered medical examinations, New York procedures do not include provisions for medical examinations except by the claimant's own physician.

On the basis of the information on the initial medical certificate, particularly the diagnosis and the physician's estimate of duration, and of agency standards and norms, the agency sets up a potential duration of disability. If the existence of disability due to a specific cause is verified, continued claims are allowed without additional medical verification for a period not to exceed the normal duration of disability for that cause.

A claimant who wishes to continue his claim after the termination date set up at the time of initial determination must submit another medical certification. If the medical information appears adequate, duration is extended. If not, the claimant may be referred to another doctor for an examination. When ever a claimant is referred for such an examination, the agency pays the physician according to a set schedule of fees.

Definition of Disability.

Since the program indemnifies for wage loss due to disability, the definition of what constitutes a disability is of major importance. The definition is not a medical one, because many individuals have diseases for which they get regular medical treatment, but their ability to work is not impaired. Under all the programs, disability is defined as inability, by reason of physical or mental condition, to perform regular or customary work, although some qualifications and restrictions may be included. This definition recognizes that most periods of disability are brief and most workers who experience disability are able to return to their former work in a short time. Under this language, an employed worker who cannot do his current job is disabled; for an unemployed worker, the practices take into account the work that would have been regarded as suitable if he were claiming unemployment insurance, and the permanence of the disability.

For disabled employed workers, New York requires inability to do any work offered by his employer at the worker's regular wages.

(1) Disabilities arising from "fault" of claimant.

New Jersey and New York exclude payment for periods of disability due to willfully self-inflicted injuries, or to injuries sustained in the performance of illegal acts (New Jersey, in perpetration of a high misdemeanor). The other three programs have not found a need for special provisions to protect the fund against self-inflicted disabilities. With respect to illegal acts, if such an act has resulted in the claimant's detention by law-enforcement agencies, the detention is considered as the cause of unemployment, and the claimant consequently is denied benefits. If he has not been detained, the disability may be compensable. The temporary disability insurance staff thus leaves to law-enforcement agencies the decision as to whether an act was illegal.

(2) Disabilities due to nonwork-connected causes.

The New York program is the only one to restrict the definition of disability to injuries or illnesses not arising out of, and in the course of, employment. No program, however, permist unrestricted duplications of benefits under this program and workmen's compensation.

(3) Disabilities due to pregnancy.

While, medically speaking, pregnancy is not an illness but a normal physiological condition, it is a physical condition which sometimes renders a woman unable to perform her most recent, customary, or reasonably similar work.

Rhode Island permits payment of benefits for disabilities due to pregnancy; except for unusual complications, such benefits are limited to 12 consecutive weeks, beginning 6 weeks prior to expected childbirth and ending not more than 6 weeks following date of actual termination of pregnancy. In 1954, 23.9 percent of all benefits, and about 40.0 percent of benefits to women, were paid for disabilities due to pregnancy.

The California, New Jersey, and New York definitions of compensable disability exclude disabilities caused by, or arising in connection with, pregnancy. In California, however, disabilities which continue longer than 28 days after the pergnancy terminates may be compensable. In New York, they may be compensable if they occur after the woman has returned to covered employmen for at least two consecutive weeks following termination of her pregnancy.

The Railroad Act provides special maternity benefits not counted against the normal 26-week potential duration of benefits; these maternity benefits are paid for 116 days (16 - weeks) beginning 57 days (8 weeks) prior to the anticipated date of confinement. In addition, disabilities due to pregnancy are not excluded from the regular benefits. During the uniform benefit year July 1953 - June 1954, maternity benefits represented only 7 percent of total benefits. In the railroad industry, maternity benefits would not be expected to reach sizeable proportions, since women represent only about 7 percent of the workers covered by the Railroad Act.

Other Substantive Provisions.

In addition to the payments in connection with pregnancy, available under the Rhode Island program, California has provided for the following benefit not common to any of the other programs.

(1) Hospital benefits.

An insured disabled individual who is confined in a hospital pursuant to his doctor's orders is entitled to additional cash benefits of $12 a day for each day of hospitalization, up to 20 days in a period of disability. There is no waiting period for hospital or wage loss benefits for hospitalized claimants. An individual may receive hospital benefits even though his wages for the week would bar payment of weekly benefits. Furthermore, the claimant may receive hospital benefits even though his costs are covered by other insurance, such as Blue Cross.

Relationship to Workmen's Compensation and Unemployment Insurance--Effect of Other Income.

In the consideration of temporary disability insurance legislation, there has been general agreement that the eligibility conditions should not include a means test, but that there should be some relation between payment under this program and payments for the same period under other public social insurance programs. There has not been complete agreement, however, on the exact relation, or on the effect, of payments from private insurance or of other types of income from private sources.

(1) Workmen's compensation benefits.

The purpose of temporary disability insurance is to provide benefits for nonwork-connected disabilities. Since, however, not all work-connected disabilities are protected by workmen's compensation, a provision that temporary disability insurance is not to be paid for work-connected disabilities would leave some disabilities outside the scope of both programs. Furthermore, such restriction in the temporary disability insurance law would require the temporary disability insurance administrator to determine if the disability were work-connected, and migh result in duplicate payments for some disabilities, and no payments for others. None of the five programs permits unrestricted duplication of payments from disability insurance and workmen's compensation, but they use different methods to restrict duplication.

In California, an individual receiving, or entitled to receive, workmen's compensation for a temporary disability is not eligible for disability insurance for the same disability and the same week unless the workmen's compensation is less than the weekly disability benefits; in that case, the difference is payable. If the decision concerning eligibility for workmen's compensation has not been made, temporary disability insurance is payable subject to reimbursement from future workmen's compensation benefits for that period. A workmen's compensation claim may be required as a condition of temporary disability insurance eligibility. Workmen's compensation payments for permanent disability are not taken into account, even when they are for the same disability and the same period of time.

The New Jersey law provides that no disability benefits are payable if workmen's compensation is payable; the law also requires reimbursement if workmen's compensation is paid subsequently. Procedurally, the agency tries to deny claims when the disability appears to be covered by workmen's compensation, advising the claimant that he can apply for reconsideration if his workmen's compensation claim is denied.

Rhode Island takes account only of workmen's compensation payments being made currently. If the two benefits are paid currently, they cannot exceed 85 percent of wages, or $58.

Under the Railroad Act, an individual is not eligible for disability insurance if he is receiving, or is entitled to receive, workmen's compensation or payments under an employer liability law, unless such payments for the period are less than his disability benefit, in which case he may receive the difference. Industrial accidents in the railroad industry are covered under an employer liability law, and claims and payments are frequently made retroactively. If disability benefits have been paid, the disability fund is reimbursed from the employer liability payment. The adjustments are substantial.

The New York law provides that a disability is not compensable under the temporary disability insurance program if it is work-connected whether or not it is compensable under the workmen's compensation law. The disability insurance law provides that, if a workmen's compensation claim is contested on the grounds that the disability is not work-connected, disability insurance can be paid pending a determination, subject to reimbursement.

Cases of possible duplication of temporary disability insurance and workmen's compensation are revealed in several ways. The claim forms include a question as to whether the disability is work-connected and whether a workmen's compensation claim has been filed. They include a general question on how the disability arose. The doctor is asked whether he believes the disability is work-connected. The notice of claim filed sent to employers asks whether a workmen's compensation claim has been filed.

(2) Unemployment insurance benefits.

The laws all provide that receipt of unemployment insurance for a week is a disqualification for disability insurance for that week. Such provision is required if duplicate benefits are to be avoided, because the disability insurance definition of inability to work is in terms of most recent or customary work, while the unemployment insurance requirement of ability to work is generally construed in terms of some work for which the individual is reasonable qualified by training or experience. Thus, the two eligibility conditions are not necessarily mutually exclusive.

Under the coordinated programs, prevention of duplicate payments is not difficult. The method used depends on agency wage record and claim determination procedures. In New York, duplicate payments by the State are avoided through a State fiscal control.

(3) Private health and accident payments.

The Rhode Island program and the State plans in California and New Jersey ignore any payments which a covered worker may receive from private health and accident arrangements, whether individual or group plans. In California and New Jersey, of course, most private group plans are substituted for State plan coverage. In some cases, however, group plans, including some financed by the employer, have not been so substituted, and the workers are covered by the State plan. The workers, therefore, may receive both payments for the same week. The approach of disregarding private payments is based on the general policy that social insurance should form the basic protection of insured workers, but should not discourage private individual or group action for supplementary protection.

The railroad law, which does not permit contracting out, takes account of private benefits in determining the benefit rights of a covered worker. Both the railroad and the New York laws provide for repayment of disability benefits from any sums received from damage suits or third party liability actions.

(4) Wages.

If an individual performs services for which he receives remuneration, he would not meet the definition of disability. The question regarding wages arises with respect to payments made by an employer directly to his workers for periods of disability during which they performed no services. These payments are generally made under formal wage-continuation or sick-leave plans, although some may be made at the employer's discretion in individual cases.

Under the Federal Unemployment Tax Act and the Federal income tax law as amended in 1954, such payments are not regarded as wages, but are treated in the same ways as group health and accident premiums and payments.

Only Rhode Island and the railroad programs provide consistent treatment for group insurance and sick pay. Rhode Island ignores them both, and the railroad program considers both disqualifying. Some railroad employers have objected to this disqualification since it prevents them from supplementing benefits.

California and New Jersey ignore payments made from group insurance, even though completely employer-financed, but take account of payments made directly by the employer to the workers. The New Jersey law provides that benefits plus wage payments cannot exceed wages. The agency has had considerable difficulty in deciding whether payments are wages or gratuities and has had to do considerable work in adjusting benefit payments to wage continuation plans where the employer's weekly payment varies with the duration of the disability. California originally limited benefits plus wage payments to the weekly benefit amount; a 1949 amendment increased the combined limit to 70 percent of wages, and a 1955 amendment increased to the amount of full wages. In both California and New Jersey, many approved private plans disregard sick pay from the employer in determining eligibility.

In New York, policies sold by the State Insurance Fund do not provide benefits if the worker is receiving an equal amount as renumeration or maintenance from the employer, or from a fund to which the employer has contributed.

Relationship to Medical Profession.

The following material is an excerpt from a pamphlet entitled Temporary Disability Insurance-Experience Under Existing Laws.

Under all the programs, a worker must be under the care of a physician to receive benefits. Physicians are defined to include not only doctors of medicine but also licensed osteopaths and dentists; California, New Jersey, and Rhode Island also recognize licensed chiropodists and chiropractors. New York restricts "physician," for intrastate claims, to one authorized to render medical care under the New York workmen's compensation law.

Initial claims must be supported by a certification from the attending physician, who is requested to give his diagnosis, dates of treatment, his opinion as to the patient's ability to work, and an estimate of the earliest date on which the individual could resume work safely. This information is reviewed by, or under the supervision of, the administering agency's medical director. Before disposition is made of the claim, additional information may be requested from the claimant's physician, or the claimant may be referred to another private physician for a medical examination at agency expense.

On the basis of the medical information and of agency standards, the claims examiner sets up a potential duration of disability for each case. Within this period, no additional medical verification will be required, but thereafter, a claimant who wishes to continue his claim must submit another medical certification, and may be referred for examination.

Financing.

The following material is an excerpt from a pamphlet entitled Experience Under Temporary Disability Insurance Laws.

The California and Rhode Island programs are financed by an employee tax of 1 percent of taxable wages. In New Jersey, the program is financed by an employee tax of 0.50 percent and an employer tax of 0.25 percent, which may be modified by experience within a range from 0.10 to 0.75 percent. These 3 States had been collecting an employee tax under the unemployment insurance law, but transferred all or part of the current tax to disability funds. In California and Rhode Island, the temporary disability insurance tax applies to the first $3,600 of a worker's wages; in New Jersey, to the first $3,000.

When a private plan is substituted for the State plan, the premium paid by any worker cannot exceed the amount he would have paid in State taxes. Any additional cost of the private plan must be paid by the employer. Private plan employers may be assessed a share of the benefits paid to workers who become disabled while unemployed.

New York permits employers to withhold from workers, toward the cost of the statutory benefits, up to 0.50 percent of wages, but no more than 30 cents a week. Any additional cost of statutory benefits must be paid by the employer. Higher employee deductions are permitted if the benefits are greater than statutory benefits and the rate of premiums is determined to be commensurate with the benefits.

The railroad program is financed by an employer tax which covers both unemployment insurance and disability insurance. The tax base is the first $350 a month paid to a worker. Since 1947, the rate has been determined by the fund balance.

Administrative costs of all the State programs are met from the payroll taxes and special assessments collected under the laws, and not from general State revenue or from Federal grants. The proportion of taxable wages which may be spent for administration is limited by statute in Rhode Island, New Jersey, and the railroad program.

New York limits its State carrier, but does not restrict the expenses for the Special Fund for the Unemployed.

CHAPTER V

PROPOSED TEMPORARY DISABILITY BENEFITS LEGISLATION

The final chapter of this report contains a basic act which provides a foundation for legislation relative to temporary disability benefits. In addition to this basic act, alternative provisions are presented, which if considered, can be employed to change the type of temporary disability program.

The provisions set forth in the basic act provide for an exclusive state system with a complete employee contribution. The alternates provide that insurance coverage can be contracted with private carriers and also provide for an employer-employee contribution. Either of these alternatives could be used to change the nature of the basic program.

The basic act sets forth the purpose of the legislation, defines terms employed in the act, and conditions under which an employee may receive benefit payments. The basic act allows for payments from supplementary insurance plans and wage continuation or sick leave plans which may be a policy of employers. The act also provides that benefit payments will consider dependents. Exemption from the provisions of the act is provided for those who are members of groups that adhere to a faith or teaching which is in conflict with the medical aspects of the act.

The incorporation of a basic act, and alternative provisions as a part of this study, in no way reflects a recommendation for or against the establishment of a temporary disability benefit program for the State of Nevada. The act does, however, incorporate these features of temporary disability benefit legislation which are suggested in the event the Legislature would wish to consider such legislation. These suggested provisions which are a part of the act presented here are also parallel to the thinking of State departments which will be most affected by the legislation, and parallel suggestions made by labor groups in the State. It might be further pointed out that the provisions are also parallel suggestions made by the Federal agencies and departments which are familiar with the operation of this type of legislation.

SUMMARY--Establishes a temporary disability benefit system for employees. (BDR 124)

AN ACT to amend title 53 of NRS, relating to labor and industrial relations, by adding a new chapter establishing a temporary disability benefit system for employees; declaring legislative purpose; defining terms; providing for eligibility, payment of benefits, appeals, election of coverage, contributions, limitations on benefits and supplementary plans; creating the temporary disability benefit fund and the temporary disability administration fund; requiring information to be held confidential; making an initial appropriation; to amend NRS section 612.590, relating to accounts and deposits of unemployment compensation funds, by providing for the disposition of disability benefit contributions; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 53 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth in sections 2 to 32, inclusive, of this act.

Sec. 2. The protection of employees from the hardship generally resulting from wage loss due to work-incurred injury or involuntary unemployment of an economic

nature has long been established public policy. The purposes of this protection are to maintain consumer purchasing power, to relieve the serious menace to the health, morals and welfare of the people due to insecurity and loss of earnings, and to reduce the need for public assistance. Loss of earnings results in hardship whether such loss is due to involuntary unemployment, work-incurred injury, or nonoccupational illness or accident. In harmony with this long-established public policy, it is the policy and purpose of this chapter to provide workers in Nevada protection against hardship resulting from wage loss due to the inability to perform the duties of a job because of nonoccupational illness or accident. To effectuate the policy and purpose as herein declared, this chapter shall be liberally construed.

Sec. 3. This chapter shall be known and may be cited as the Nevada Temporary Disability Benefit Law.

Sec. 4. 1. All of the provisions of chapter 612 of NRS shall apply to this chapter except NRS 612.030, 612.035, 612.165, 612.360, subsections 1, 2 and 3 of 612.375, 612.380, to 612.440, inclusive, 612.535 to 612.550, inclusive, 612.585 to 612.600, inclusive, and subsection 2 of 612.615.

2. In case of conflict between the provisions of this chapter and chapter 612 of NRS, the provisions of this chapter shall prevail with respect to disability benefits and the provisions of chapter 612 of NRS shall prevail with respect to unemployment benefits.

Sec. 5. As used in this chapter, unless the context clearly requires otherwise, words shall have the meanings assigned in the definitions hereafter set forth.

Sec. 6. 1. With respect to any individual, "benefit year" means the 52-consecutive-week period beginning with the first day of the week with respect to which a valid claim is filed and, thereafter, the 52-consecutive-week period beginning with the first day of the first week with respect to which a valid claim is filed after the termination of his last-preceding benefit year.

2. Any claim for benefits made in accordance with section 16 of this chapter shall be deemed to be a valid claim for the purposes of this section if the individual has been paid wages for employment by employers as provided in subsection 4 of NRS 612.375.

Sec. 7. "Benefits" means the money payments to an individual with respect to his unemployment due to disability.

Sec. 8. "Disability" means incapacity of an individual, because of physical or mental condition, to perform his most recent, customary or reasonably similar work, as determined in accordance with regulations of the executive director. Incapacity from pregnancy, childbirth, miscarriage or abortion shall not constitute disability as defined in this section unless the incapacity is due to complications arising therefrom, or the incapacity occurs more than 28 days after termination of pregnancy.

Sec. 9. "Disability base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that when one calendar quarter of the base period so established has been used in a previous determination of an individual's entitlement to disability benefits, the base period shall be the first four completed calendar quarters immediately preceding the first day of an individual's benefit year.

Sec. 10. "Disability contributions" means the money contributions required by this chapter exclusive of interest and penalties.

Sec. 11. "Disability fund" means the temporary disability benefit fund established by this chapter.

Sec. 12. "Employee" means an individual engaged in employment for an employer under a contract of hire, either express or implied.

Sec. 13. "Physician" means a practitioner of medicine, surgery, chiropody, dentistry, optometry or osteopathy licensed to practice in Nevada or in any state outside of the state, or in any foreign country, or in a territory or possession of any country, who is practicing within the scope of such license.

Sec. 14. "Week of disability" means any 7 consectuive days of disability.

Sec. 15. An individual shall be eligible to receive benefits for disability with respect to any week or part of a week only if it has been found by by the executive director that:

1. A claim for benefits with respect to such week or part week has been made in accordance with such regulations as the executive director may prescribe.

2. He has during his base period been paid wages for employment by an employer as provided in subsection 4 of NRS 612.375.

3. He has had a disability during the period claimed.

4. Any remuneration he has received from an employing unit during the period claimed is less than the benefit to which he would be entitled had he performed no services for earnings during such period. If a claimant has received remuneration during such period, but is otherwise eligible for benefits, he shall receive the benefit to which he would be entitled less that part of the remuneration which is in excess of $5.

5. He has submitted evidence of his disability by filing a physician's certificate in accordance with regulations of the executive director in connection with his first claim for a period of disability, and thereafter as directed.

6. He has submitted to such reasonable examinations as the executive director may require for the purpose of determining his mental or physical disability.

7. He is not out of the labor force for any reason other than disability, as determined in accordance with regulations of the executive director.

8. He has been unemployed and disabled for a waiting period of 1 week of disability. For each consecutive period of disability within a benefit year, there shall be a new waiting period of 1 week, unless the break between periods has not exceeded 21 days. No week shall be counted as a week of disability for the purposes of constituting a waiting period:

(a) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, except that no insured worker shall be required to serve a waiting week if the first week of his disability occurring within a benefit year is immediately preceded by a week of disability in the preceding benefit year for which benefits were payable.

(b) If benefits have been paid with respect thereto.

(c) Unless the individual would have been eligible for benefits with respect thereto except for the requirements of this subsection.

Sec. 16. 1. Payments under this chapter shall not reduce the maximum amount of benefits payable to an individual under chapter 612 of NRS, nor shall payments under

chapter 612 of NRS reduce the maximum amount of benefits payable to an individual under this chapter.

2. Benefits for a part week of disability shall be payable at the rate of one-seventh of the weekly benefit amount for each day of disability. If such partial benefit amount is not a multiple of $1, such amount shall be raised to the next multiple of $1.

3. Receipt by an individual of any payment not provided for under this chapter, such as payments under a supplementary insurance plan or wage continuation or sick leave plan, shall not affect the individual's right to benefits under this chapter except as otherwise provided in section 17 of this chapter.

4. An individual seeking benefits under this chapter shall, when requested by the executive director, submit himself at intervals, but not more often than once a week, for examination by a physician designated by the executive director. All such examinations by physicians designated by the executive director shall be without cost to the claimant, and shall be held at a reasonable time and place. The cost of such examinations shall be considered as an administrative expense to be charged to the temporary disability administration fund. Refusal to submit to such requested examination shall disqualify the claimant from all benefits for the period of disability in question, except as to benefits already paid or payable.

Sec. 17. 1. No benefits shall be paid and no waiting period credit shall be allowed under this chapter for any period for which the individual is receiving or is seeking benefits under chapter 612 of NRS, or under the unemployment insurance or temporary disability insurance law of any other state or of the Federal Government. If the appropriate agency finally determines that he is not entitled to such other benefits, this subsection shall not apply.

2. No benefits shall be paid and no waiting period credit shall be allowed under this chapter for any period with respect to which the individual has received or is receiving compensation for the same disability under any workmen's compensation law.

3. Benefits shall be paid under this chapter to an individual otherwise entitled thereto who has a right to seek compensation for the same disability under a workmen's compensation law, subject to recoupment to the extent of any amounts subsequently determined to be payable to him for the same period on account of his rights under the workmen's compensation law. The executive director or the insurer, as is appropriate, may require such an individual to take all steps necessary to determine his right to such compensation as a condition for receipt of disability benefits. The State of Nevada or the insurer shall have a lien and right of recovery against such award or payment to the extent of the benefits paid under this chapter for the period covered by such award or payment. The executive director or insurer may recover all or any part of this amount, without interest, by deduction from future benefits payable to the individual within 3 years after an award or payment of such workmen's compensation, or by civil action in the name of the executive director.

Sec. 18. The appeals provisions of NRS 612.490 to 612.530, inclusive, shall apply to appeals under this chapter except that:

1. When hearing a disability benefit appeal, an appeal tribunal or the board of review may call as a witness a physician or any other person. Fees for such witnesses shall be considered as an administrative expense to be charged to the temporary disability administration fund.

2. In proceedings under this chapter, the appeal tribunal or the board of review

hearing an appeal shall order a closed hearing on request of a claimant and may order a closed hearing upon its own motion.

Sec. 19. Every employing unit which files an election of coverage or a notice of termination of coverage as authorized in NRS 612.565 to 612.580, inclusive, shall post and maintain printed notices of such election or notice of termination on his premises, of such design, in such numbers, and at such places as the executive director may determine to be necessary in order to give notice thereof to persons in his service. Individuals in the employ of any employing unit which files an election of coverage shall be given a reasonable opportunity to file objections thereto or be heard thereon prior to the executive director's approval of such election.

Sec. 20. Notwithstanding any other provisions of this chapter, information concerning the disability of an individual obtained from him or any physician or other person pursuant to or as a result of the administration of this chapter shall be held confidential. Such information shall not be disclosed to any person or be open to public inspection in any manner which will reveal the identity of the individual or other person from whom the information was obtained or to whom the information pertains, except to such individual or his authorized representative, or as may be necessary for the proper administration of the disability program established by this chapter.

Sec. 21. 1. Each employee shall pay contributions to the disability fund equal to 1 percent of his wages paid with respect to his employment which occurs after July 1, 1959.

2. Each employer shall be liable for the payment of his employees' contributions and may pay such contributions on behalf of his employees. Notwithstanding any other provisions of law, each employer may withhold from his employees' wages, at the time they are paid, the amount of their contributions in trust for the disability fund, if the employer shows such deduction on his payroll records and furnishes each employee with a statement in writing showing the amount which has been deducted, in such form and at such times as may be prescribed by the executive director. Each employer, pursuant to regulations of the executive director, shall transmit all such contributions to the disability fund.

3. If any employer fails to deduct the disability contributions of any of his employees at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next-succeeding payroll period, the employee shall not thereafter be liable to the disability fund or to his employer for such disability contributions.

4. Adjustments or refunds of disability contributions paid under this section shall be made in accordance with NRS 612.655, except that no refund or adjustment shall be given to an employer for overpayment of his employees' disability contributions unless he presents evidence satisfying the executive director that he has made reimbursement to the employee or employees involved, or has secured written consent of such employee or employees to allowance of the refund or adjustment.

Sec. 22. 1. If an individual does not receive any wages from the employing unit which for the purpose of this chapter is treated as his employer, or receives his wages from some other employing unit, or receives some or all of his wages in the form of gratuities, such employer shall nevertheless be primarily liable for such individual's disability contributions.

2. Such employer may deduct the amount of such disability contributions from any sums payable by him to such individual or employing unit, or may recover the

amount of such disability contributions from such individual or employing unit, in a civil action for debt, if proceedings therefor are instituted within 3 months after the date on which such contributions are payable. Such an employing unit may recover the amount of such contributions from such individuals in the same manner as if the employing unit were the employer.

Sec. 23. Notwithstanding any other provisions of law, the amounts withheld by an employer as disability contributions by his employees shall be exempt from garnishment, attachment, execution or any other remedy for the collection of debts, and in the event of the insolvency or bankruptcy of the employer such contributions shall not be considered any part of the assets of the employer and shall be paid to the executive director prior to the payment of any other claim against such employer.

Sec. 24. Any individual who adheres to the faith or teachings of any church, sect or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer or spiritual means in the practice of religion, shall be exempt from the provisions of this chapter upon filing with the executive director and his employer a statement, in such form as the executive director shall by regulation prescribe, waiving all benefits under this chapter. Such individual shall thereupon be exempt from the provisions of this chapter, including any obligation to make disability contributions thereunder and any right to receive benefits thereunder.

Sec. 25. If, by reason of an employee's receiving wages from more than one employer during a calendar year, the wages received by him during such year exceed the amount which would have been taxable if all his wages had been paid by a single employer, the employee shall be entitled to a refund of his disability contributions with respect to any such excess. No interest shall be allowed or paid with respect to any such refund. Applications for such refunds shall be made not later than 3 years after the date on which the disability contributions were paid.

Sec. 26. 1. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, a temporary disability benefit fund, which shall be administered by the executive director exclusively for the purposes of this chapter.

2. This fund shall consist of:

(a) All contributions collected under this chapter.

(b) All interest, fines and penalties collected under this chapter.

(c) All interest earned on any money in the fund.

(d) Any property or securities acquired through the use of moneys belonging to the fund.

(e) All earnings of such property or securities.

(f) All other moneys received for the fund from any other source.

3. All moneys in the fund shall be mingled and undivided.

Sec. 27. 1. The state treasurer shall:

(a) Be the treasurer and custodian of the disability fund.

(b) Administer the fund in accordance with the directions of the executive director.

(c) Issue his warrants upon the fund in accordance with such regulations as the executive director shall prescribe.

2. All moneys payable to the fund, upon receipt thereof by the executive director, shall be forwarded to the state treasurer, who shall immediately deposit them in the disability fund.

3. Refunds, disability benefit payments, transfers to the temporary disability administration fund, and investments or reinvestments shall be paid from the fund on warrants issued by the state treasurer under the direction of the executive director.

4. All warrants issued by the state treasurer for payments from the fund shall bear the signature of the state treasurer and the countersignature of the executive director or his duly authorized agent for that purpose.

5. Expenditure of moneys from the fund shall not be subject to any provisions of law requiring specific appropriations, or other formal release by state officers of money in their custody.

6. Except as otherwise provided herein, moneys in the disability fund may be deposited by the state treasurer, under the direction of the executive director, in any bank or public depositary in which general funds of the state may be deposited, but no public deposit insurance charge may be paid out of the fund.

7. Moneys in the fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of the depositary. Such moneys shall be secured by the bank or public depositary to the same extent and in the same manner as required by the general depositary laws of the State of Nevada, and collateral pledged shall be maintained in a separate custody account.

8. All surplus moneys, as determined by the executive director, shall be invested and reinvested by the state board of finance, under the same terms and conditions as other funds of the state.

9. The state treasurer shall give a separate bond, conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the executive director and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the fund. All sums recovered on the official bond for losses sustained by the fund shall be deposited in the fund.

Sec. 28. 1. There is hereby created in the state treasury a special fund to be known as the temporary disability administration fund.

2. This fund shall consist of:

(a) All moneys appropriated by the state.

(b) All moneys transferred by the executive director from the disability fund as may be determined necessary for the proper administration of the program.

(c) Any other moneys made available for the fund from any source.

3. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the executive director.

4. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this chapter, and for no other purpose.

5. All moneys in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special administration funds in the state treasury.

6. Any balances in this fund shall not lapse at any time, but shall be continuously available to the executive director for expenditure consistent with this chapter.

7. Moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of the depositary. Such moneys shall be secured by the depositary in which they are held to the same extent and in the same manner as required by the general depositary laws of the state, and collateral pledged shall be maintained in a separate custody account.

8. All sums recovered on any official bond for losses sustained by the temporary disability administration fund shall be deposited in the temporary disability administration fund.

9. Any money credited to this account granted by the United States or any agency thereof shall be expended in accordance with the terms of such grant.

Sec. 29. 1. Benefits provided under this chapter shall be paid periodically and promptly in accordance with regulations of the executive director.

2. When an individual who would be eligible to receive benefits dies before making a claim or receiving full payment therefor, a claim may be filed by and benefits may be paid to or on behalf of the surviving spouse, parent, child or children, brothers or sisters, in the order named and in accordance with such regulation as the executive director may prescribe. If there should be no survivor in any of the classes designated, the executive director shall prescribe by regulation the extent to which the amount may be disbursed for payment of the expenses of burial. Payment hereunder shall be made upon affidavit executed by the person or persons claiming to be entitled to the benefits, and the receipt of the affidavit or affidavits shall fully discharge the executive director and the disability fund from any further liability with reference to the payment.

3. The executive director may provide by regulation for payment of benefits on behalf of an eligible individual who is legally incompetent, or otherwise incapable of filing a claim, either directly to such individual or to a relative, guardian or other person for the use and benefit of such individual.

Sec. 30. 1. Benefits shall be due and payable only to the extent that moneys are available to the credit of the disability fund and neither the state nor the employment security department shall be liable for any amount in excess of such sums.

2. If this chapter is repealed, any unobligated funds in the disability fund and its various accounts shall be held in custody of the state treasurer and under supervision of the employment security department until the legislature provides for the disposition thereof.

Sec. 31. Nothing in this chapter shall be construed to prohibit the establishment by an employer, without approval of the executive director, of a supplementary plan or plans providing for the payment to employees, or to any class or classes thereof, of benefits in addition to the benefits of an approved private plan, or from the disability fund if there is no approved private plan, or to prohibit the collection or receipt of additional voluntary contributions from employees toward the cost of such additional benefits. The rights, duties and responsibilities of all interested parties under such supplementary plans shall be unaffected by any provision of this chapter.

Sec. 32. Benefits under this chapter shall be payable with respect to weeks of disability beginning on and after March 27, 1960.

Sec. 33. 1. There is hereby appropriated from the general fund the sum of $30,000, for the administration of this chapter, payable only on the warrant of the state controller upon a voucher approved by the executive director, as may be necessay pending the receipt of sufficient contributions therefor.

2. This initial appropriation shall be repaid to the general fund in the state treasury as soon as possible, without impairing the disability fund, such total sum to be repaid not later than June 30, 1961.

Sec. 34. NRS 612.590 is hereby amended to read as follows:

612.590 1. The state treasurer shall:

(a) Be the treasurer and custodian of the fund.

(b) Administer such fund in accordance with the directions of the executive director.

(c) Issue his warrants upon it in accordance with such regulations as the executive director shall prescribe.

2. The state treasurer shall maintain within the fund three separate accounts:

(a) A clearing account.

(b) An unemployment trust fund account.

(c) A benefit account.

3. All moneys payable to the fund, upon receipt thereof by the executive director, shall be forwarded to the state treasurer, who shall immediately deposit them in the clearing account.

4. Refunds payable pursuant to NRS 612.655 may be paid from the clearing account or from the benefit account upon warrants issued by the state treasurer under the direction of the executive director.

5. (a) After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to Section 904 of the Social Security Act, as amended, (42 U.S.C.A. S 1104), any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

(b) Moneys in the clearing account collected in payment of temporary disability benefit contributions shall be transferred to the temporary disability benefit fund.

6. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund.

7. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the state treasurer, under the direction of the executive director, in any bank or public depositary in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

8. The state treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the executive director and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the unemployment compensation administration fund. All sums recovered on the official bond for losses sustained by the unemployment compensation fund shall be deposited in the unemployment compensation fund.

9. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in a separate account on the books of the depositary. Such moneys shall be secured by the bank or public depositary to the same extent and in the same manner as required by the general depositary laws of the State of Nevada, and collateral pledged shall be maintained in a separate custody account.

ALTERNATIVES FOR TEMPORARY DISABILITY PROGRAM

Note 1. If the temporary disability program is to include employer contributions, the following section should be added and the employee contribution reduced to 1/2 of 1 percent in section 21. Appropriate additions to title must be made if this material is used.

Sec. 35. Each employer who for any calendar quarter has paid or is liable to pay wages of $225 or more, and during such period has one or more individuals in employment subject to this law, shall pay contributions to the disability fund equal to one-half of 1 percent of wages to such individual with respect to employment beginning July 1, 1959, and for each calendar year thereafter. Such contributions shall become due, and be paid by each employer to the executive director for the disability fund in accordance with such regulations as the executive director may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in employment for such employer. Adjustments or refunds of contributions paid under this section shall be made in accordance with NRS 612.655.

Note 2. If the temporary disability program is to provide for contracting out to private insurers, the following sections should be added and appropriate additions added to the title:

Sec. 36. "Insurer" means any insurance company, employer, trustee, association of employers or of employees, or any person authorized to insure or make payment of disability benefits under this chapter.

Sec. 37. An employer, a majority of his employees employed in the State of Nevada, or both, may apply to the executive director for approval of a private plan for the payment of benefits to his employees, such private plan to be substituted for the temporary disability benefit fund.

Sec. 38. Benefits under such a private plan may be provided by a contract of insurance issued by an insurer duly authorized and admitted to do business in the State of Nevada or by a specific undertaking by the employer as a self-insurer. Subject to the insurance laws of the State of Nevada a contract of insurance for a private plan may be between:

1. The insurer and the employer.

2. The insurer and two or more employers, acting for the purpose through a nominee, designee or trustee.

3. The insurer and the union or association representing his employees with which the employer has an agreement with respect thereto.

Sec. 39. Each such private plan shall be submitted to the executive director in accordance with regulations of the executive director and shall be approved by the executive director to take effect as of the first day of the calendar quarter next following, or as of an earlier date if requested by the employer and approved by the executive director, if such plan meets the conditions set forth in section _______ of this chapter.

Sec. 40. 1. Employers whose employees are participating in an approved private plan, and any insurer of an approved private plan, shall furnish such reports and information and make available to the executive director such records and reports as the executive director may by regulation require for the proper administration of this chapter.

2. Records and reports necessary for the proper administration of this chapter shall include, in addition to such other items as the executive director may prescribe, annual reports from each insurer of an approved private plan and each self-insured employer, containing:

(a) The aggregate amount of benefits paid.

(b) The number of claims allowed and disallowed.

(c) The average benefits and duration of benefit periods.

(d) The amount of payrolls covered and the amount of premiums collected.

(e) Such other information as the executive director may deem necessary for the purpose of administering this chapter.

Sec. 41. After the effective date on which disability benefits become payable under this chapter, neither an employer nor his employees shall be liable for the contributions required by section 21 of this chapter with respect to wages paid while the employee is covered by an approved private plan. An employee covered by an approved private plan shall not be entitled to benefits from the disability fund, except as provided in section 45 of this chapter for a disability which commences while he is covered by the private plan. The executive director shall issue regulations allowing benefits to individuals simultaneously covered by one or more approved private plans and by the disability fund.

Sec. 42. The executive director shall approve any private plan submitted to him for approval as to which he finds that all of the following exist:

1. The payments provided by the plan shall be made only for loss of wages. If the plan is part of a contract or arrangement insuring against risks other than loss of wages due to disability, the provisions covering the benefits provided under this chapter shall be separate from any other provisions.

2. The rights afforded to the covered employees are equal to or greater than those provided by this chapter.

3. An employee is covered by the plan with respect to any period of disability which commences within 2 weeks after the termination of his employment to which the plan relates but not after the employee may become employed by another employer following such termination. A period of disability for purposes of this section shall

be deemed to commence at the time the employee first suffers the disability, notwithstanding the fact that benefits may not be immediately payable under the private plan.

4. No greater amount is required to be paid by any employee toward the cost of the plan than that provided by this chapter.

5. A majority of the employees of the employer employed in the state, or in the establishment to which the plan relates, have consented to the plan.

6. The plan covers all of the employees of the employer employed in the State of Nevada, except that if the employer maintains more than one distinct establishment in the State of Nevada the plan covers all employees of any such establishment, and except that as to individuals in partial or other forms of short-time employment, and not in employment as defined, the plan may exclude such of those individuals or employees as the executive director may prescribe by regulation.

7. The employer has consented to the plan and has agreed to make the payroll deductions required, and transmit the proceeds to the plan insurer, if any.

8. The plan provides for the inclusion of future employees.

9. (a) The plan is to be in effect for a period of not less than 1 year and thereafter continuously unless such plan has been terminated with notice to the executive director in accordance with the provisions of this chapter.

(b) Such notice shall be filed in writing with the executive director and upon such filing shall be effective at the date indicated therein, but not less than 60 days from the time of filing of such notice, and after individual notices are given to the employees, or notices are conspicuously posted in the establishment to which the plan relates so as reasonably to assure their being seen by the employees affected.

10. The approval of the plan or plans will not result in a substantial selection of risks adverse to the disability fund, in accordance with the regulations of the executive director.

11. If the plan provides for insurance, the forms of the insurance policies to be issued shall be approved by the commissioner of insurance for the State of Nevada and the policies must be issued by a disability insurer authorized to do business in the State of Nevada.

12. The approval of a plan shall be evidenced by the issuance by the executive director to the employer of a certificate of acceptance.

13. No employer, and no union or association representing employees, shall derive any profit from the administration of the plan.

Sec. 43. 1. Except where the employer's obligation to his employees is insured by an authorized insurance carrier, the employer shall secure the payment of benefits under this chapter by making a deposit of negotiable securities in a depositary designated by the executive director or by furnishing an indemnity bond to the executive director in an amount which the executive director shall determine, the principal sum of which shall be payable to the State of Nevada for the benefit of the disability fund.

2. The indemnity bonds shall run for the period of 1 year, unless otherwise specifically authorized by the executive director.

3. The executive director shall in his discretion at any time increase or decrease

the amount of securities or the principal sum of any indemnity bond, in order to maintain adequate security for the payment of benefits, and shall prescribe the form of bonds to be used.

4. The deposit of securities shall be accompanied with an agreement and undertaking in the form prescribed by the executive director under which the employer authorizes the executive director or its authorized agent or deputy to sell or otherwise dispose of the securities to cover any default of the employer in the payment of benefits.

Sec. 44. 1. The executive director may withdraw his approval of any private plan if he finds after notice and hearing that:

(a) There is danger that the benefits accrued or to accrue will not be paid.

(b) The security for such payment is insufficient.

(c) Any employer or any union or association representing employees is so administering or applying the provisions of an approved private plan as to derive any profit therefrom.

(d) There is other good cause.

2. Upon receipt of a petition therefor signed by not less than 10 percent of the employees covered by an approved private plan, the executive director shall require the employer upon 30 days' notice to conduct an election by secret ballot in writing to determine whether or not a majority of the employees covered by such private plan favor discontinuance thereof, but such election shall not be required more often than once in any 12-month period.

3. If the executive director is furnished satisfactory evidence that a majority of the employees covered by an approved private plan have made election in writing to discontinue such plan, the executive director shall withdraw his approval of such plan, effective at the end of the calendar quarter next succeeding that in which such evidence is furnished.

4. (a) No termination of an approved private plan shall affect the payment of benefits, in accordance with the provisions of the plan, to employees whose period of disability commenced prior to the date of termination. Nor shall termination of an approved private plan affect the liability of the insurer or employer, or the employer's surety or sureties, for the payment of benefits.

(b) Employees who have ceased to be covered by an approved private plan because of the termination of such plan shall, subject to the limitations and restrictions of this chapter, become immediately covered by the disability fund for disability commencing after such termination, as though there had been no exemption from contributions under section 37 of this chapter, but contributions with respect to their wages shall become payable after such termination.

Sec. 45. 1. The proportionate share, as determined by regulations of the executive director, of benefits paid from the disability fund pursuant to this chapter for a disability which commenced while an employee was wholly or partially covered under an approved private plan shall be assessed against the employer or insurer responsible for benefits under such plan. The provisions of this chapter with respect to the assessment and collection of contributions shall apply to assessments provided by this section, except that interest shall not accrue until 30 days after notice of assessment. The amounts of such assessments collected by the executive director under this section shall be deposited in the disability fund.

2. If an employer or insurer denies liability in whole or in part upon the claim of an individual for benefits under an approved plan, or fails to make full payment of such benefits within a reasonable period of time, the individual may appeal the denial or failure as provided in section 18 of this chapter. In connection with such appeals, the employer or insurer shall be given notice of the time and place of hearing.

3. If the appeal tribunal or the executive director decides that the individual is entitled to receive disability benefits, and the employer or insurer fails to pay the same within 15 days after notice of a decision by an appeal tribunal or the executive director, the executive director shall pay such benefits and assess the amount thereof against the employer or the insurer. The provisions of this chapter with respect to the assessment and collection of contributions shall apply to the recovery of assessment under this subsection. Amounts so collected shall be deposited in the disability fund.

4. (a) Whenever an individual is entitled to benefits under this chapter, but there is a dispute whether such benefits are payable from the disability fund or from a private plan, benefits shall be paid to the individual, pending the determination of the dispute, pursuant to regulations of the executive director, from the plan or fund against which his claim was first filed, in the amount and for the duration provided in NRS 612.335 to 612.360, inclusive.

(b) The executive director may prescribe by regulation the time, manner, method and procedure by which such disputes may be determined by the executive director.

(c) If it is finally determined that the benefits should have been paid from a plan or fund other than the one whch paid the benefits, reimbursement shall be promptly made from the disability fund or the plan, as the case may be, and the claimant shall be promptly paid the accumulated excess, if any, to which he is entitled. In addition, reimbursement shall be made to the extent of actual liability for benefits from the plan or fund, as the case may be, when it is determined that benefits have been paid in error from a plan or fund which should have been paid from another.

Sec. 46. 1. The executive director shall, in accordance with regulations prescribed by him, promptly furnish to employers, employees or insurers such information as may be necessary for the proper administration of any approved private plan.

2. No moneys received or retained by an employer under a plan are the property of the employer. All such moneys shall be separately accounted for by the employer, and may be disbursed only in accordance with regulations of the executive director. If such moneys are unlawfully commingled with the funds of the employer the amount thereof shall be separated and in no event shall be regarded as the property of the employer for any purpose.

3. (a) The executive director shall, in accordance with regulations, determine for each fiscal year the total amount expended for added administrative work arising out of private plans. The total amount so determined shall be prorated among the employers having approved private plans in effect during any part of that fiscal year on the basis of the amount of wages paid by employers to individuals participating in such plans. The limit on such assessments for a fiscal year shall be 0.02 percent of the payrolls on the basis of which the assessment is made.

(b) The executive director shall make assessments of amounts so prorated against the employers or insurers responsible for benefits under such approved plans. The provisions of this chapter with respect to the assessments and collections of contributions shall apply to the assessments provided by this section except that interest shall not accrue until 30 days after notice of assessment. The amounts collected by the executive director under this section shall be added to the amounts otherwise made available

for administration of this chapter.

Sec. 47. 1. The state treasurer shall maintain in the disability fund a separate account, to be known as the extended liability account. The extended liability account shall be charged with all disability benefit payments made on and after March 27, 1960, in respect to uninterrupted periods which commenced 2 weeks or more after termination of employment.

2. The account shall be credited by the state treasurer with:

(a) Ten percent of gross contributions collected from July 1, 1959, to March 31, 1960, inclusive.

(b) All moneys collected from employers as provided in subsection 3 of this section.

(c) All moneys due to this account from the disability fund as provided in subsection 3 of this section.

(d) A proportionate amount of the interest earned upon any money in the fund.

3. Effective March 27, 1960, every insurer shall be liable to the disability fund for credit to this account for an amount of contributions equal to 0.02 percent of the wages of employees in employment who were covered by such insurer and the disability fund shall credit a like percent of the wages of employees in employment covered by it. The insurer shall pay such contributions in quarterly installments and the disability fund shall credit the account with both the insurer's and its own payments at the same intervals. The executive director shall suspend payments of these contributions when the account reaches an amount equal to $_______, or an amount twice the sum of the benefits paid from the account during the preceding year, whichever is greater. At any time that the net assets of the account fall to $_______ or less, the executive director shall reinstate payment of contributions required by this subsection until the account again reaches $_______. If at any time the benefits paid in any one quarter exceed a rate of $_______ a year, the executive director shall determine whether payment of contributions shall be reinstated.