

MINUTES FROM CHSWC PUBLIC MEETING

Friday, July 14, 2023

Elihu M. Harris State Building

Oakland, California

In Attendance

2023 Chair: Sean McNally

Commissioners: Doug Bloch, Martin Brady, Shelley Kessler, Nick Roxborough, Mitch Steiger, Meagan Subers, and Sid Voorakkara

Absent: None

Chair McNally indicated that he was calling the meeting to order. He began the meeting with an invitation to remember some people, particularly the passing of Mark Webb, a person he described as an institution in the workers' compensation community and people on both sides. Chair McNally expressed the desire to publicly remember and acknowledge Mr. Webb's superior memory and comprehensive understanding of the (workers' compensation) system and its technical aspects. Mark Webb was described as a dear friend of the professional community, and it was noted that he would be sorely missed. Chair McNally opened the meeting up for any comments or remembrances of Mr. Webb.

Commissioner Roxborough said that Mr. Webb was an iconic legend. He said that even though they were on the opposite sides of an issue, Mr. Webb was respected and thoughtful beyond words, and was a knowledge resource to every stakeholder. Commissioner Roxborough said that they all received his newsletter and Mr. Webb always offered to speak about issues. He said that Mr. Webb's interests were not political and that he had a tremendous institutional memory. Commissioner Roxborough described anecdotally that they could meet for lunch that included wine and espresso and, despite differences, spin stories with historical perspective about the system and yield important insights. Commissioner Roxborough said that Mr. Webb would attend fundraisers for him, counsel him on a trial against a carrier, and could "call balls and strikes," and so on. He said that Mr. Webb was well-respected and that everyone will miss him. Commissioner Roxborough said that Mr. Webb would contribute to the trade journals and never stopped working. Chair McNally agreed and recalled that Mr. Webb did enjoy the finer things in life and would always suggest a nice restaurant to meet at or would simply have a recommendation as a resource when passing through Pasadena.

Chair McNally continued by recognizing also that Julie Broyles and Jeremy Mertz had also recently passed away, and that they too were a big part of the workers' compensation world for many years and that they too would be missed.

Commissioner Brady added a recollection that just before walking into a meeting together that Mr. Webb took him aside and said to him to remember that two monologues do not make a dialogue (as an example of "reading the room"). Chair McNally picked up on that comment and described a recollection during SB 899 reform legislation in the distant past that, after Chair McNally's self-described blunt demeanor during negotiations, Mr. Webb cautioned him that "we" do not talk like that up here (in Sacramento), and Chair McNally replied to him that "we" do from where he comes from

(in Bakersfield).

Chair McNally stated that it was now time to move on and address the agenda items.

I. Approval of Minutes from the December 16, 2022 CHSWC meeting

Chair McNally asked for a motion to approve the minutes of December 16, 2022. Commissioner Steiger moved the motion and Commissioner Brady seconded the motion. Commissioner Kessler commented that the minutes had typos and that she had already advised Mr. Enz and that they were subsequently corrected. The minutes were approved unanimously.

II. Stakeholder Presentation

Sean Cooper,

Executive Vice President and Chief Actuary, WCIRB

Sean Cooper, Executive Vice President and Chief Actuary at the Workers' Compensation Insurance Rating Bureau (WCIRB) stated that Dave Bellusci, the former Chief Actuary at WCIRB for 33 years had retired. Mr. Cooper said that before joining WCIRB he spent almost 25 years at the National Council on Compensation Insurance (NCCI), so he had a very extensive background in workers' compensation, and he worked with Mr. Bellusci for approximately seven months. His agenda for this presentation was to give an update on the California workers' compensation market, discuss the WCIRB watch list, and answer questions. He stated that the WCIRB is a private nonprofit company, and it focuses solely on the California workers' compensation system. The members of WCIRB are the insurance companies licensed to write workers' compensation in California and their funding comes primarily through assessments on those members. WCIRB conducts many different activities, all focused on the California workers' compensation system. WCIRB was a licensed rating organization and a designated statistical agent by the Insurance Commissioner. It collects data and promulgates or calculates the advisory premium rates. WCIRB conducts class inspections and provides a lot of analytics, research, and tools to inform and facilitate decision making. He gave a quick update on the insurance marketplace and indicated that the top line on the slide is written premium. Workers' compensation systems are regulated by the state, not the federal government, and California is the largest workers' compensation system in the United States, probably in the world.

Mr. Cooper said what has happened in recent years, starting in about 2016, was that Written Premium has been declining. The economy has been growing, but there have been savings from Senate Bill (SB) 863 and because of that, there has been a decline in the rates that are charged by insurers; and that was the significant driver. COVID-19 started in 2020 and so that helped to slightly suppress premiums along with the economic shutdowns. Then in 2022, there was a slight rebound in the Written Premium level, not quite at the pre-pandemic level, but certainly the economy was starting to recover. He discussed charged rates because that was one of the drivers of Written Premium and the average charged rate per 100 dollars of payroll has been declining since approximately 2015 and it was about 1.68 dollars in 2022. Mr. Cooper had spoken to Dave Bellusci about this, and he said this was the lowest industry average charged rate in over 50 years and it was half what it was in around 2006. The rates charged by insurers have come down quite a bit. The other driver was payroll, and this was changes in employees' wages but also more workers or changes in the economy; all those things drive payroll. Payrolls have been increasing year over year and they have been offset almost fully by the declines in the charged

rates. In 2022, Written Premium rebounded a little bit because payroll growth was larger than the declines in charged rates. Those declines are starting to slow down just a little bit. Looking at combined ratios out of the premium dollar, what percentage of that goes to cover losses, loss adjustment expenses and other underwriting expenses. When a number was lower than 100, that means that the insurance industry is earning an underwriting profit, and this is before Federal taxes and other investment income. Since 2016, the trend has been increasing combined ratios and it was not really a surprise, because the charged rates have been coming down as insurance companies use discounts and schedule rating credits to compete to try to get more market share. In 2022, the combined ratio improved about five points. When payroll was increasing, Written Premium increased and frequency was flat as well. Frequency, which was a measure of the volume of claims, and then the medical severity dropped a little bit as well in 2022.

Mr. Cooper said their watch list had four items: the economy, drivers of claim frequency, medical inflation and frictional costs. He asked what has happened with the economy. The COVID-19 pandemic was a big one and the takeaway was that it hit the lower wage workers the hardest. With the recovery, one of the questions always asked was if a recession was likely. A few years ago, there was a possibility because of the COVID-19 related shutdowns as well as the war in Ukraine. A recession has not happened, and he thought it was unlikely to happen in the next couple of years.

Mr. Cooper said three spikes to the unemployment rate occurred and they were all different. So, the dotcom bust primarily affected the technology sectors and the Great Recession impacted more sectors, but the hardest hit was construction. When there was a COVID-19 slowdown, it was an enormous shock to the system, and there was a huge spike in the unemployment rate, and it all occurred almost overnight, it was rapid. When there are shocks to the system, Mr. Cooper said they were always different.

Mr. Cooper said the statewide average wage in the past dozen years or so, by and large, the average wage did increase year over year. But 2020 really stands out because of the large increase in the average wage. The data are driven by the low wage workers. Many of them were the ones hit the hardest during the pandemic, and so without their data in the system, those lower wages come out and then it makes the average look like it has gone up even more. Continuing into 2021, there were some continued job losses that were probably more prevalent among the lower wage workers and the ones that were starting to return to the system were returning at a higher rate. WCIRB has adjusted wage changes for the artificial impacts that were caused by the pandemic. In 2022, the wage change looked low, but again, that was when the low wage workers started to come back and then that dragged down that average. They adjusted data to reflect what was happening in the marketplace.

Mr. Cooper discussed claim frequency. The long-term pattern has changed significantly. Indemnity claims per thousand employees are used as WCIRB's measure of frequency. In his opinion there were two stories. For approximately the first 15 years from 1991 to 2007, frequency was declining about 7 percent a year and that was driven by more automation and mechanization. There was a shift to a service-based economy, and they were seeing its benefits. In economics, we learned about diminishing marginal returns and over the last 15 years from 2008 to 2022, frequency was relatively flat. The indemnity claims per thousand employees declined by a total of 13 percent or 1 percent annually.

Mr. Cooper stated that for non-COVID-19 claims, when the pandemic started in 2020, they saw fewer non-COVID-19 claims and he thought that was driven by the slowdown as many employees who were working were working from home. When employees are doing clerical work at home, they tend to not

have as many claims as in the office. They saw fewer automobile accidents. That was not limited to workers' compensation because many auto insurers also gave rebates reflecting fewer automobile claims. There was a big frequency increase in 2021 that was artificial, because the claim frequency dropped in 2020. The 2021 increase got back to where they were previously. In 2022 the claim frequency change was flat at minus 0.2 percent.

Mr. Cooper said that during the pandemic there was an increase in cumulative trauma claims, but it tended to vary by industry. The industries that had the higher employment loss tended to see a higher increase in cumulative trauma (CT) claims.

Mr. Cooper also discussed the clerical telecommuter class. This was a new classification introduced in California about three years ago. The clerical telecommuter employee works more than 50 percent at home or away from that home office, and they were eligible to be classified as 8871 as opposed to 8810. For frequency, they analyzed if there were more claims or fewer claims. 8810 was a historical clerical classification that had been around for decades, and they saw that the frequency was three to four times higher than for the clerical telecommuters. When WCIRB reviewed these data, it adjusted and lowered the pure premium rate for the clerical telecommuters. Their typical process usually required five years of data, but this case was compelling enough that they did not want to wait for five years of data. WCIRB lowered the pure premium slightly in the September 1, 2023, pure premium rate filing.

Mr. Cooper discussed medical inflation: medical prices have been increasing over the long term. The average medical cost per claim in 2022 was only four percent higher than it was in 2001. The medical Consumer Price Index (CPI) as a measure of price inflation showed medical prices were increasing, but in the California workers' compensation system, the average medical cost per claim was four percent higher than it was 20 years ago. Paid per transaction data from the WCIRB's medical transaction database shows that the year over year paid per transaction increased. Over a 10-year period prices paid increased by 27 percent yet the transaction per claim decreased by 34 percent. The transaction data in the medical CPI showed real prices were increasing, but there was lower utilization and that was helping to keep medical costs in check in the California system.

Mr. Cooper said that the WCIRB published an updated study about a month ago that showed it was going to take a long time to understand long COVID and what it will look like five to ten years from now, but it was something that the WCIRB is monitoring over time. In their recent study, they defined four months after the initial COVID-19 infection as the acute period. There were three categories. The mild claims were those who had a COVID-19 infection but did not need to be hospitalized. The severe claims meant that they were hospitalized, but they were not in the Intensive Care Unit (ICU). The critical claims were those who were hospitalized and needed some care in the intensive care unit. The results were that four months after that initial infection, 11 percent of those mild claims were experiencing and being treated for long COVID symptoms. Looking at the claimants who were hospitalized, whether they were in the ICU or not, about 40 percent were experiencing long COVID-19 symptoms. Long COVID-19 is on WCIRB's watch list.

Mr. Cooper also discussed frictional costs. Frictional costs were defined in the workers' compensation system as costs that do not go directly towards the injured workers' benefits. Lost wages, medical care, vocational rehabilitation, all go directly towards the injured worker's benefit but other costs in the system were called frictional costs. WCIRB compared frictional costs to other insurance systems and showed that it cost about 0.02 dollars to deliver 1.00 dollar in Medicare benefits. Looking at Group

Health it was approximately 0.18 dollars. Looking at the typical workers' compensation state, it was approximately 0.25 dollars. But in the California workers' compensation system, it costs 0.47 dollars to deliver a dollar in benefits. For frictional costs, the WCIRB compared Allocated Loss Adjustment Expense (ALAE) as a ratio to losses and California to other workers' compensation systems across the country and on average it was about 10 percent in the median state. He said 10 percent meant if there were 100 dollars in loss benefits for the injured worker, there was another 10 dollars for ALAE; in California's workers' compensation that would be 20 dollars. WCIRB has it on their watch list.

Commissioner Questions or Comments

Commissioner Steiger asked why the loss ratio was so volatile and it went up and down far more so than charged rate or pure premium rate. He said the market follows cycles where insurers tend to reduce prices at the same time to compete for market share, which then puts upward pressure on the loss ratios. The charged rate seems close. The \$1.68 was the average charged rate. He said historically the charged rate was always significantly higher. He asked why suddenly, now that they were so close, what could that mean. Mr. Cooper replied the charged rate is the net charge after discounts and schedule rating credits. The filed rates would be higher, probably around 20 to 30% higher. The pure premium rates have been declining aggressively over the last ten years. For the filed rates, typically the insurance organizations might adopt the advisory pure premium rates and then they add on an expense multiplier. Many companies might keep that multiplier constant, so if the approved pure premium rate declines by 10%, then the filed rate will also decline by 10 percent. There was a very strong correlation between the pure premium rates coming down, the filed rates coming down, and then of course the charged rate after discounts following the same pattern.

Commissioner Steiger asked how the loss ratio changed so much, it was 55 then 150 and then 107. Mr. Cooper replied that this is the combined ratio with losses and expenses and the big driver of that is the loss ratio. Mr. Cooper said when he compared what the National Council on Compensation Insurance (NCCI) was showing nationally from approximately 2015 through 2022, the loss ratio has increased about 30 points in California and over the same time in the United States the average increased four points. It was more volatile in California, and it seemed the common denominator was the charged rates. If frequency (average number of claims) stayed flat, the average cost for lost wages and medical expenses were also flat. If those were flat and you lower the premium, the charged rate, then that puts upward pressure on that loss ratio. He saw that the expenses also went up, but not as much as the losses. All were impacted by less redundancy, less adequacy. However, if you include it in the charged rates, it all goes in tandem and agreed in terms of the cyclical nature because they go through hard market cycles and soft market cycles where insurance companies are a little bit more aggressive in terms of pricing to get more market share. It has always been in the industry and the cycles were looking a little milder. If you look at the peaks and valleys more towards the right versus what you see on the left, that volatility is coming down slightly but there is volatility. It has always been there in the insurance market, and they do not just see it in workers' compensation, we see it in all lines of business.

Commissioner Bloch stated the actors and writers were out on strike and he asked about the significant increase in Cumulative Trauma (CT) claims for Arts and Entertainment. Mr. Cooper replied that there were more employment losses and what seemed to be the driver was the post termination CT claims, which were still new in the California system. He added those court cases go back about ten or twelve years. They were seeing more job losses. When employees' situations were such that they felt more

comfortable filing a claim it was not just with CT claims. He also mentioned that during the pandemic, especially early in the pandemic, injured workers were nervous to get treated. They might have just dealt with a nagging injury, maybe there may have been a cumulative trauma injury, knee or back, but they were afraid of COVID-19, and they had jobs. When there were more layoffs it all came to a head. Many of those claims may have been filed previously, but they were afraid to and now they were filing those claims.

Commissioner Bloch asked if the drop in charged rates was related to Senate Bill 863 reforms. Mr. Cooper replied that it was related to the SB 863 reforms, particularly the medical costs per indemnity claim indexed to 2001. The average medical cost was increasing, and the medical cost index increased from approximately 88 in 2004 to 123 in 2009. It was on January 1, 2013, when SB 863 became effective, but you can start to see the effects on the Accident year even in 2011 and 2012. The reason why is because SB 863 is for services that occurred on or after that date. So even an accident that happened in 2011 or 2012, many had not fully made it through the system, and you can start to see the decline even before the true effective date of 2013.

Commissioner Bloch stated that Mr. Cooper showed a change in medical cost per indemnity claim paid and the amount paid per transaction also dropped. Mr. Cooper replied that that was correct. Commissioner Bloch if he was right in understanding the rates have gone down but the payouts have also gone down? Mr. Cooper replied yes, and they were seeing the lower payouts. He added that they were seeing that in their data when they file the pure premium rates with the insurance Commissioner, they're seeing the medical staying steady. Wages were going up, payrolls going up, frequency flattened out. Even though medical prices have been going up, lower utilization constrained those price increases. Commissioner Bloch asked who was getting all these cost savings: lower rates, lower payouts, lower utilization. Mr. Cooper replied that when rates are lower and employers pay less, employers were benefiting. When a medical provider provides treatment, the prices are higher, so to the extent that they were providing those services, they were still getting a higher fee for each service, but there were fewer services taking place and fewer transactions taking place. Sometimes it was a substitution as well; for example, in California back surgeries, which were more expensive, but instead if an injured worker received physical therapy and they were able to get better and get back to work, that costs less. It was not just fewer transactions but different transactions that may be less costly, and hopefully, more beneficial for the injured worker.

Commissioner Bloch said he frequently heard from the attorneys in the workers' compensation system who say that post SB 863 reforms it was harder to get payouts. This presentation showed lower rates, lower utilization, lower payouts, and higher costs on the attorneys' side. He asked if one cause of the higher attorney costs in the California workers' compensation system was the correlation between the lower payouts and the cost savings that have happened post SB 863. Mr. Cooper replied there may be, but it could be correlated with the perception that it was harder to get a payout; due to that perception attorneys may be filing more or being more involved. It was conjecture on his part.

Chair McNally asked if Mr. Cooper had any return-to-work information. Mr. Cooper answered not at this time. Chair McNally said the return-to-work data would be illustrative because he believed there were fewer transactions because of the process changing with IMR and getting timely decisions and getting pre-approved treatment in a timely manner. People were having better outcomes but that could be proven if they had access to return delivery post-863. Mr. Cooper said he agreed. He added that the opioid crisis was not as big a factor as it once was. With opioid usage decreasing it manifested not only

in lower medical costs; getting those injured workers off opioids improves the outlook. Insurance companies always tell Mr. Cooper that it was tough to provide return-to-work data. They often say they do not know if the worker is back to work. They asked for proxies like release from the doctor that the injured worker was released to return to work. One tricky piece of data that insurance companies told him was it was tough for them to provide. They do not have it in their systems to know when workers were back to work.

Commissioner Roxborough asked about who was getting medical savings. He said there was a point in time that Medical Bill Review (MBR) was charged to medical and then the WCIRB and Department of Insurance (DOI) moved it into the expense column as Allocated Loss Adjustment Expense (ALAE). He asked if WCIRB had controlled for MBR in the Medical Cost per Indemnity Claims Indexed to 2001. He stated that there looked like there was a similarity where the MBR is in the expense column, and he would be interested to see if you get the WCIRB to control for that because then to the other question that was staggering that was shared with us that 47 percent of a dollar was a deliverable expense. Medical Bill (MBR) went into the expense column. When he looked at clients who pay for MBR, the MBR expense line is equal to or greater than the claims expense. He was wondering if the WCIRB would be capable of looking at and isolating MBR because he thinks that addresses the Commissioner question about who's getting the money. MBR is from the carriers where the third-party administrators, who have separate companies, process the medical bills or service. He wondered if he could quantify these charts for that very large expense line. Mr. Cooper said he did have some exhibits that he didn't bring with him where they do isolate that, so he can. Commissioner Roxborough asked a question on CT claims and why were they increasing. Mr. Cooper replied that was not in the data in terms of why and again that was just what we saw during the COVID-19 time and there seemed to be a correlation. His suspicion was that it was probably post termination. If they're correlating with higher employment loss, the CT claims that are driving it up are the post termination. But they don't have the reasons.

Commissioner Brady asked about Cumulative Trauma (CT) claims comparisons with other states. Mr. Cooper replied that in his years working at NCCI, he did not see many CT claims. The one exception was working for the residual market. There was one instance when a sports team in another state had CT claims to the time when players played or practiced in California, but it was not a significant driver of costs. Commissioner Steiger said they should revisit this issue after the janitorial study and many of the answers could be suggested by that. They had a high percentage of workers, or most workers were in significant pain the entire time and a very high percentage of them feared retaliation from their employers.

Commissioner Kessler added that one of the issues that was important to recognize in that analysis is that you must be aware of what's going on in California. For the labor side and perceptions, our leadership in our state is advocating for worker health and safety. There are other states where people do not have the rights, do not have the wages, do not have access to attorney involvement, especially in an organized environment where they have collective bargaining agreements or have abilities to have attorneys assist them. So, when you're talking about the perceptions, she wanted to have that be part of the analysis that those perceptions are also relevant for the geographical relationships. Additionally, I take pride in our state fighting to have workers not get injured on the job and providing care and access to compensation. She was concerned about when you talk about this and we're talking about what's happening in other states that we don't think that what's going on in California isn't happening. All on the employer side and the labor side agree that we do not want workers to be injured. She wanted to

ensure when people were injured that they got the compensation that they deserved. She added that they were lucky on the union side at CHSWC to be able to have access to attorneys who will help injured workers, especially immigrant workers, people who do not trust that the system will allow them to pursue their injuries without the threat or intimidation that they face. Mr. Cooper replied by thanking Commissioner Kessler. Chair McNally added it was important that they not waste money to stay competitive with other states.

III. Cal/OSHA Update **Jeff Killip, JD, MPH,** **Chief, Cal/OSHA**

Chief Killip expressed his respect and appreciation for what Mr. Cooper does as an actuary at WCIRB, and then began his introduction and presentation.

Chief Killip said that he would review highlights since the last CHSWC meeting in December. He said that he was thrilled to be back before the Commission – the first time in person since taking his current position. He said that there was no substitution for in person communication and that most communication is nonverbal. He said that these relationships are absolutely critical for them (DIR and stakeholders) to collaborate and move things forward.

He outlined the areas of focus of the presentation as:

- Hiring – first half of 2023 (Jan-June)
- Enforcement
 - Automation Project
 - Silica Special Emphasis Program (SEP)
 - Workplace Violence (WPV) Citations for Half Moon Bay shootings
 - Reorg
- Consultation
- Outreach
- Rulemaking
- AB 1643 – Heat Advisory Committee (enabled by AB 1643)
- Agriculture
- Heat & Wildfire Smoke Season/Heat Special Emphasis Program (SEP)/Caravans
- Farmworker meetings
- Cal Farm Bureau Board Meeting

Hiring

Chief Killip said that hiring was their biggest challenge – getting good people hired quickly. He said that they are making progress but that it is not fast enough.

- No Meetings / Hiring Mondays! (Chief Killip said that his Cal/OSHA team does not schedule meetings on Monday to prioritize hiring. He said this demonstrates how much a priority hiring is for him, his team, and Human Resources)
- In Year 2020 - 31 hired; Year 2021 - 72 hired; Year 2022 - 113 hired; to date in Year 2023 - 21 positions filled (these are not promotions, but external hires)

- 41 accepted offers
 - 81 job postings
 - 132 positions to fill
- Vacancy rate: ~ 37% (Chief Killip said that this was the same rate as when he entered his position, but that since then they had added about 100 new positions, so the rate is not comparatively equivalent, i.e. the vacancy would be lower if they had not added the new positions.)
 - Note: 21 recent retirements/separations + 19 added BCP positions increased vacancy rate [= 40 more positions to fill]
- Chief Killip also noted a wave of retirements and transfers to other agencies, especially due to the experience (“frontline effect”) during the pandemic when, he said, enforcement was subject to hostile work environments in the field regarding compliance (with COVID-19 rules).
- Chief Killip said that “headwinds” are making it difficult to reach “positive groundspeed” regarding hiring, but that they are making progress and he is encouraged; he just wishes it were faster.
- Jan 1 – June 30, 2023
 - Hired several critical positions in Enforcement, Research & Standards (Health, Eric Berg’s team), Elevator, Administrative, and Legal Units.
 - Actively recruiting for Enforcement, Research & Standards, Amusement Rides & Tramway (Bobby Parks’ team) and Crane Units
- Another priority is recruiting for the recently approved 19 Extreme Heat Budget Change Proposal (BCP) positions (legal, enforcement, consultation, outreach, research, and standards).
- A high priority is to recruit bilingual Associate Safety Engineers and will target the following languages: Punjabi, Spanish, Mandarin, Vietnamese, and Indigenous (Mixtec).
 - 42 Certified bilingual positions (39 Spanish, 1 Mandarin, 1 Cantonese, 1 Vietnamese)
 - Chief Killip said that they would like more bilingual staff, but the number is somewhat understated in that they have staff that are bilingual but not certified as such, but that they help to an extent. He said that they want to incentivize more certified staff. He gave as an example the Outreach team headed by Brandon Hart which has community based bilingual community-based liaisons and they are trying to add another four more onto his team.
 - These positions are critical to reach out and connect with especially vulnerable workers so that they are aware of their rights to a safe workplace as well as know that they can call the Call Center or talk if they have questions about any concerns with workplace safety and health.

Enforcement

- Automation Project (Status = Phase 3) - moving away from a written data entry system (antiquated data entry system) so that they can have data available in real time that can be shared across the board with their team. Expect to begin to see results in the beginning of the next year (2024).
- Silica Special Emphasis Initiative - emergency rule making effort with respect to

silica; some very disturbing silicosis workplace events, especially in the Los Angeles area.

- Heat enforcement – heat sweeps are front and center now – about 100 unannounced heat inspections conducted so far this heat season to make sure that employers are providing workers with adequate water, rest, and shade; and that employers have a written plan in place to deal with extreme heat. The plan needs to include training so that workers are able to recognize the symptoms of extreme heat and they are able to respond appropriately if one of their coworkers is succumbing to some sort of heat illness.
- Cal/OSHA cited two employers in Half Moon Bay for health and safety violations following investigation into workplace violence that killed seven (7) people (farm workers).
 - Combined penalties totaled over \$165,000.
- Reorganization, Expansion, and Restructuring of Enforcement Branch (to address among other things the problem of up to 3-hour travel time to respond to needs in the field)
 - New Fresno Regional Office
 - New Fresno High Hazard Office
 - New District Office in the Central Coastal area: Santa Barbara County
 - New District Office in Southern California: Riverside County area

Agriculture

- Heat & Wildfire Smoke / Heat Special Emphasis Program (SEP) / Caravans

Chief Killip described this as the classic public health approach of a “full-court press” of outreach to workers, outreach to employers through consultation and then applying the hammer of enforcement; and also, media/social campaigns.

Consultation (May-June 2023)

- 138 onsite consultations (49 in Spanish)
 - 53 Construction
 - 51 High Hazard employers
 - 26 Agriculture
- 28 Formal Trainings (4 in Spanish) with >3,000 attendees
 - Partnering with the Labor Occupational Health Program (LOHP – funded by CHSWC) for numerous seminars/webinars. Chief Killip said he wanted to credit and make special mention of this LOHP/CHSWC partnership with words of appreciation.
- Partnership Programs –
 - 72 Golden Gate
 - 70 Volunteer Protection Program (VPP) with 9 pending applications (exemplary health and safety “Eagle Scout” employers who jump through hoops to obtain the workplace safety designation)
 - 16 VPP-Construction
 - 15 SHARP

- Addressed “emphasis” hazards during consultation
- Heat
- COVID-19

Chief Killip said he values these programs because they promote prevention, and he wants Cal/OSHA to do a better job of selling the business case for why businesses should make workplace safety and health a priority. He said that one of his projects on his “offense list” (as opposed to his “defense list”) is to dig into a campaign where business can be an influencer, where businesses say, “Hey, you know what, we didn't pay attention to workplace safety and health – (‘or whatever their story is’) - and then once we started to do so our bottom line increased and we had all these other benefits with our brand and attracting and keeping really good employees, and we've never looked back.” He said that stories like that can help because it is messaged from them (businesses) and not Cal/OSHA.

Cal/OSHA Outreach

Publications & Educational Resources (May - June) – on the web

- May - Warehouse Workers Safety Fact Sheets ([English](#) & [Spanish](#))
 - https://www.dir.ca.gov/dosh/dosh_publications/warehouse-worker-safety-fs.pdf
 - https://www.dir.ca.gov/dosh/dosh_publications/Spanish/Warehouse-worker-safety-SPANISH-fs.pdf
- June - Construction Pocket Guide in [Spanish](#)
 - https://www.dir.ca.gov/dosh/dosh_publications/ConstGuideOnlineSp.pdf
- June - New Training Video - Voluntary Use of Filtering Face-piece Respirators - [Spanish](#)
 - <https://www.youtube.com/watch?v=FRZ5IuRMBpc>

Workers' Memorial Day (April 28)

- DOSH participated in events throughout the state to remember those who lost their lives on the job and share important information about Cal/OSHA worker safety and health resources & workers' rights at caravan events.
- Mentioned higher profile Workers’ Memorial Day celebration at his former job in WA-state and his desire to grow a similar one in CA.
- Participated in an [event](#) that was hosted by WorkSafe
 - <https://www.eventbrite.com/e/workers-memorial-day-2023-tickets-594925366787?aff=oddtcreator>
- DOSH Outreach hosted booth and shared Cal/OSHA resources with attendees and Chief Killip presented along with Senator Dave Cortese & Fed/OSHA.

Central Valley Regional Relationship Building with Farm Worker Organizations

- UC Merced Labor Center hosted event in Fresno on June 6, involving several community-based organizations, UC Merced Labor Center, Enforcement Managers, Outreach Manager, and Bilingual Community Engagement Liaisons.
- Purpose - Build & strengthen relationships in the Central Valley between

Cal/OSHA regional and district managers, workers, and worker organizations to improve working conditions and enforcement activities in the Central Valley region.

- Noted interest and need in learning how to file a farmworker complaint, but also noted the need to build more trust between the organizations.

Rulemaking

Silica (title 8 section 5204)

- CDPH (CA Department of Public Health) notified Cal/OSHA of over 70 cases of silicosis in artificial stone countertop workers at just one California hospital with a 17 to 20 percent fatality rate.
- There is no cure for silicosis and the disease progresses even after all exposures are eliminated.
- DOSH is working on draft language for an emergency regulation to eliminate silicosis in the countertop industry in response to Petition 597 to the Occupational Safety and Health Standards Board.
- The Standards Board is expected to vote on Petition 597 at its July 20, 2023 meeting.

Lead (title 8 sections 1532.1, 5155, 1598)

- Public Hearing on proposed regulation to prevent lead poisoning was held on April 20, 2023.
- Changes to the proposal to address public comments are expected to be posted soon on the Standards Board website. These changes will have an additional 15-day comment period.
- Vote on the proposal by the Standards Board is expected in Q1 2024.

Indoor Heat (title 8 section 3396)

- Public Hearing on proposed regulation to prevent indoor heat illness was held on May 18, 2023.
- Changes to the proposal to address public comments are expected to be posted soon on the Standards Board website. These changes will have an additional 15-day comment period.
- Vote on the proposal by the Standards Board is expected in Q1 2024.

Workplace Violence in General Industry

- Cal/OSHA continues to work on the development of the workplace violence prevention standard for general industry.
- Cal/OSHA will notify the public once there is a new draft available for public review and hold an advisory meeting accordingly.

Aerosol Transmissible Diseases (ATD) (title 8 section 5199)

- Cal/OSHA is finalizing proposal to clarify requirements in the Aerosol Transmissible Diseases regulation for COVID-19, recognize COVID-19 as an airborne infectious disease.
- (And include) COVID-19 vaccinations in the list of vaccinations offered to workers.

Infectious Diseases

- Cal/OSHA is working on a discussion draft to protect employees not protected by section 5199 from aerosol transmissible diseases.

Trichloroethylene (title 8 section 5155)

- Cal/OSHA is finalizing proposal to lower the Permissible Exposure Limit for trichloroethylene.

First Aid Kits (title 8 section 1512 and 3400)

- Cal/OSHA is finalizing proposal to updated first aid kit requirements.
- The Standards Board staff terminated the previous proposal in January 2023.

Respiratory Protection for Wildland Firefighters

- Chief Killip said that exposure to these firefighters is horrendous.
- Cal/OSHA is meeting biweekly with CalFire, LA County Fire Dept., respirator manufacturers, and other experts on developing, studying, testing, and implementing new technologies to protect wildland and wildland-urban interface firefighters.
- The new technologies will be the basis for the new regulations.
- On August 30, 2023, Cal/OSHA and LA County Fire will be co-hosting a study with about 20 frontline firefighters from LA County Fire Dept. and Cal/Fire to field test (without smoke or flames) four different prototype powered air purifying respirators (PAPRs).

AB 1643 - California Heat Study Advisory Committee (June 27)

- June 27, 2023 - Cal/OSHA hosted its first Advisory Committee Meeting
 - [webpage](https://www.dir.ca.gov/dosh/doshreg/Heat-Advisory-Committee/) with agenda and recording of meeting <https://www.dir.ca.gov/dosh/doshreg/Heat-Advisory-Committee/>
 - Background:
 - Per AB 1643 (Rivas, Chapter 263, Statutes of 2022)
 - Advisory Committee shall study and evaluate the effects of heat on California's workers, businesses, and the economy.
 - The committee is composed of a diverse group of representatives from labor, management, government, and academia, who are tasked with the responsibility of discussing and recommending the scope of the study to the Labor and Workforce Development Agency.
 - Chief Killip said that they believe the effects of heat are under-reported and the data is building about the effects of heat to get a better handle on how to protect workers in the workplace from heat.

Commissioner Questions or Comments

Commissioner Bloch thanked Chief Killip for his presentation. He said that he has seen that hiring is difficult throughout state government. He said that he wanted to share that he had been working with the boilermaker's union on some organizing things and they have one group with about 50 workers in the rail industry who are trying to organize a union and they filed some claims with Cal/OSHA. He said in his almost 30 years of doing this work, he has never seen his agency (Cal/OSHA) so quick to respond. He said inspectors showed up with warrants in anticipation that they were not going to have access. He said they (Cal/OSHA) got in the door, they did an aggressive audit, they issued correctives and just like that the employer made the changes, and so the system worked. He said the workers saw that they joined together, and if they go to their state agency and ask them (the agency) to fix these problems, their government will be responsive, and they will have safer workplaces.

Commissioner Steiger thanked Chief Killip for his presentation. He said he wanted to mention that AB 800, related to Workers' Memorial Day, is proposed legislation that would create Workplace Memorial Week in high schools across the state. He said that the week would coincide with the week of Workers' Memorial Day. He said that it would be great if Cal/OSHA could send some staff, despite recognizing how busy they were, and to fan out to schools to help with that effort about worker safety – assuming the bill passes and becomes law.

Commissioner Steiger said he wanted to also pause on the issue of silicosis. He said there is going to be this hearing next week (in July) at the Standard Board to consider the emergency petition and he said he thinks it is difficult to over-emphasize the seriousness of that hazard in the fabricated stone industry. He said that for those who have been around for a while, they remember that there has been a lot of attention paid to the silica issue in recent years. There were standards at the state level. He said that there was some controversy with the standard at the federal level when Trump was elected. He said that this is a fairly new thing, and that this is a new industry dealing with a new product: fabricated stone. This is not quartz brought out of the ground. He said that this is something that has been invented by people and that it has a sky-high silica content of 95%. He said that he thinks their position would be that it is entirely possible that there is no safe way for human beings to work with this substance, and that they very much need an emergency regulation, but it may turn out very quickly to be an inadequate step – that this rises to the level of asbestos or diacetyl, and thus one of the substances that human beings were not designed to be near in the concentrations that they are in this industry. He said that he urged people to pay attention to these issues and pay particular attention to this fabricated stone. He said that when one reads the articles about what is happening to these workers, it is heartbreaking. A really high percentage of these workers are going to die from these exposures, and they (the government and stakeholders) should take action to help protect them.

Commissioner Steiger said that the question he wanted to ask about was the Special Emphasis Programs related to heat. He said that he realized that he knew very little about the Special Emphasis Program and asked how Cal/OSHA decides which employers to go to, whether there is advance notice, and if there is a violation whether they can be cited. Chief Killip said that the best person to answer that question was Deborah Lee and that she was not in the audience but that he would get back to Commissioner Steiger with answers. He did say that when they go out, they do it unannounced. He said that they do not tip anybody off that they are coming, so there's no notice to the employer. He said that if they see violations of the code for workplace safety and health, they will issue citations. He said that last summer he did a tag-along with the enforcement team in Bakersfield for unannounced heat sweeps

in agriculture. He said that is exactly what happened: they showed up at a farm in Bakersfield and citations were issued after the inspector spoke with the supervisor and few of the workers in Spanish.

Chief Killip said that they do not have enough staff in the state so that when they do go out, it is a full-court press. He said it gets the attention of that community and he is sure that the word must have gotten out with a reaction like, “Whoa, Cal/OSHA was there, and the employer got cited.” Chief Killip said that was an initial answer and that he would get back to the Commission with more specifics.

Commissioner Bloch said that the presentation mentioned the automation project, but Chief Killip did not report on it, and he asked for a quick report on such an important topic. Chief Killip said that it was now at Phase Three; he said he had another slide that he didn't include because he only recently received it yesterday or the day before from Deborah Lee, who heads up their enforcement program. He explained that Ms. Lee is the Deputy Chief of Enforcement for Cal/OSHA, and that the slide has a wonderful summary of the status of the automation project and exactly where they are with Phase Three. He said it was his intention to just kind of keep it high level, but that he can follow up and share that slide with everyone. He said that the problem he had was dealing with a lot of heat-related matters this week, including a lot of media and he did not have time to add it to the presentation and burdening Eduardo with another change to his slide set. He said that he would share that with Commissioner Bloch and the other Commissioners.

Commissioner Kessler thanked Chief Killip for the bilingual effort. She said she knows of someone who is applying for a job at Cal/OSHA, but he is not bilingual; he is skilled. She asked what the possibilities were to have people who are bilingual to be matched with people who are skilled in health and safety matters and be teamed, say, at Call Centers or what have you. She said that she and Chief Killip had on other occasions spoken about on-the-job-training (OJT) and apprenticeship-type ideas. She asked if such opportunities for OJT exposure were a possibility. Chief Killip said that his understanding was that those types of activities were already happening at some level. But he added that he thought they should do more out-of-the-box thinking on that. He said that they have many people who are not certified bilingual but who can still be handy. Commissioner Kessler clarified that she was thinking about people in other community-based organizations or formal business organizations in jobs that are not health and safety-related, but they are bilingual certified. She said they could perhaps be set up with a health and safety person who is competent in heat or asbestos or another area, and asked if there is a way to find those people in community-based organizations who could recruit out of those pools and backfill some of those openings. Chief Killip said that he thinks they could do that, and that he would pass that idea along. Commissioner Kessler said that she might have some suggestions. He said he appreciated the suggestion and that he will pass that along to the hiring team.

Commissioner Roxborough asked if there was anything CHSWC could do to help him; he said that he asked the same thing back in December as well. He observed that Chief Killip is laser-focused and passionate and has pressing activities with heat and the Central Valley. He asked if there were anything CHSWC could do. Chief Killip said that it was a good question and that he would take that back to his team. He said the first thing that comes to mind is somehow promoting the job advertisements that they already have, or suggesting maybe an organization that is some community-based organization that they may want to direct their recruitment efforts towards. He said that beyond that, he could not think of anything. Commissioner Roxborough asked if they go to colleges. Chief Killip answered yes.

Chair McNally said that they appreciated the presentation.

IV. The California Janitor Workload Study

Carisa Harris, PhD., Associate Professor at UCSF and Director COEH

Carisa Harris is an Associate Professor in the Department of Medicine at University of California San Francisco (UCSF), and the Director of the Northern California Center of Occupational Environmental Health (COEH) at the University of California (UC), Berkeley. Dr. Harris was also the Director of the Human Factors and Ergonomics program at UC Berkeley and UCSF. Dr. Harris stated they had made good progress on The California Janitor Workload study. The two other faculty members for this study were Laura Stock, MPH and Fadi Fathallah PhD Director, Agricultural Safety & Health Program. UC Human Factors Research team included Max Blumberg, Javier Freire and Dominic Pina, all trainees of COEH and the NIOSH (National Institute for Occupational Safety and Health); and Melissa Afterman and Alan Barr along with Dr. Harris are part of the UC Human Factors Research team.

Dr. Harris provided an update on all three aspects to this project: a survey, focus groups (conducted by the Labor Occupational Health Program (LOHP), and a time motion study; she gave an update on all three. However, she focused on the survey, which has largely been completed. Survey questions included a relationship between workload, work, climate, organizational policies, and the outcome of mental and physical health among janitors. Previously she has presented information on the impact of COVID-19.

Dr. Harris said there were three types of exposures: physical workload, job strain and precarious work. She will share how the results were associated with adverse mental and physical health outcomes. It was a cross-sectional survey and was administered in both English and Spanish. It was distributed to union and nonunion members of labor organizations. Survey eligibility was being 18 years or older and working as a California janitor. They did not ask for detailed personally identifiable information. They wanted the participants to feel secure about responding to the survey, but they did ask for their age, sex, and ethnicity. There were approximately 75 questions, and it took between 30 to 45 minutes to complete. They sent the survey by email, text, and social media. However, the responses were few and many surveys were incomplete. Therefore, they started focusing their efforts on collecting data one-on-one with the interview approach for some janitors. Currently they were collecting survey data from individuals who were part of the time motion study using a one-on-one interview. They were also collecting how many people did not want to participate in the survey which was the denominator. They will be doing a sensitivity analysis and when they complete it, they can identify selection bias that happened due to low participation rates or response rates from sending the survey via email.

Dr. Harris stated the survey was sent to over 40,000 California janitors in the Services Employees International Union (SEIU) and Maintenance Corporation Trust Fund (MCTF) organizations, in two different languages. They asked about 16 common tasks associated with janitorial work including vacuuming, dusting, mopping and disinfection. They had three ways to quantify their workload. One was an arbitrary unit that included intensity, frequency, and duration. Tasks were self-reported. Then they multiplied the intensity, frequency, and duration to get an arbitrary unit – the workload index. They looked at the typical intensity of the task done most frequently and peak intensity, which is the intensity of the task that they found the hardest. The workload index is a number that includes those three factors. If someone was to perform dusting, mopping, vacuuming, and trash collection tasks they would calculate a workload index. For example, dusting task (Intensity of six times frequency of 5; Duration = 3 would have a workload index of 90. Of the four tasks, the highest intensity was vacuuming, which

was 8, therefore it would represent the peak intensity. Because they do trash collection the most (meaning the multiplication of frequency times duration is the highest for trash collection) the intensity of trash collection would represent the typical intensity of their exposure.

Dr. Harris stated that for job strain, they used a modified job content questionnaire, and this was the Karasek survey where they took a few questions from the decision latitude survey as well as the psychological demands. Decision latitude was the control that they have over their job; and the psychological demands asked about how much time they had to complete their job, how fast they work and how excessive they felt their work was. There were a variety of questions around precarious work. The questionnaire also asked about job insecurity, wage theft, and underreporting of injuries. They also asked about working extended hours, which required more than one job and working more than 40 hours per week. They asked about concerns with physical, sexual, or verbal bullying and harassment, and then also asked them about their experience with bullying or harassment in the workplace.

Dr. Harris described the physical outcomes. There were four: one was severe pain measured on a zero-to-10-point numeric scale. The study asked about four body regions: neck/shoulder; elbow/hand/wrist; back and the hip; and knee and ankle. They took an average across these four body regions and any score of five or more was considered severe pain. They also asked about medication use. This was defined as regularly taking pain or over the counter medicine for at least one week per month. Next, the study asked about missed work due to pain, that would be missing one day or more of work every other month and then having one or more work related injury in the past year. For mental health, they used the General Anxiety Depression Scale and the Personal Health Questionnaire to evaluate anxiety and depression and used common thresholds to identify someone who was likely to have anxiety or depression.

Dr. Harris said that they conducted statistical analysis. They evaluated associations between exposures and outcomes using a logistic regression. The study reported the odds ratio and the 95% confidence intervals, and these models were adjusted for sex and age. They evaluated co-variables for confounding effects but did not find them to adjust the effect estimates more than 10%.

Dr. Harris said the demographics of the respondents were: the majority, 95%, were Hispanic, 73% were female and roughly half were between the ages of 50 to 65 years of age. The mean number of years worked as a janitor showed the total years worked as a janitor ranged from zero to 40. The average was 12.5 years with the standard deviation of 8.8 based on 457 respondents. Approximately 77% of the respondents worked in office buildings. The remainder worked in different types of venues listed such as manufacturing, malls, technology, event centers, airports, and schools. About 66% were part of a union and 34% were not part of a union.

Dr. Harris said the peak intensity had a mean of 8.3; the typical intensity had a mean of 7.4 and the workload index had a mean of 609.1. The peak and typical intensity was based on a zero to 10 on a perceived exertion scale.

Dr. Harris showed that 56% of the workers reported being in severe pain, 58% used medication on a regular basis, 20% regularly missed work due to pain. Also, 33% reported having one or more injuries related to work in the past year, and 17% had anxiety or depression. Dr. Harris said for cases and peak intensity, they had to split those exposures on a median split, so there were two groups. Otherwise, you'll see that the exposure groups and what you see in this far right corner are the odds ratios with the

95% confidence interval. If the odds ratio is greater than one, then there's increased risk, and if it was less than one then there was reduced risk. The 95% confidence intervals were statistically significant if the confidence interval does not include one. There was a 2 to 9 increase in odds of someone having severe pain with higher levels of workload index. Measuring their common exposure or their highest exposure there was an increase in the odds of severe pain with increasing exposure.

Dr. Harris shared additional results. For medication use, there was a 50 percent-to-4-fold increase in the odds of medication use based on increasing exposure, regardless of using a workload index or the most typical intensity of exposure. Dr. Harris said that the results for missed work were another physical health outcome but one that is more severe than just having severe pain. What they saw was that the odds ratios were lower, but there was statistically significant meaning. An increase in exposure, whether measured by workload index or typical intensity or even peak intensity, although that one is not statistically significant, leads to an increase in odds of missing work due to pain. Another result was: having an injury in the past year. There was a twofold to two-and-a-half-fold increase in the odds of having one or more work related injuries with increasing exposure at work.

Dr. Harris discussed workload and anxiety and depression. There was a two-fold increase between workload and anxiety and depression, regardless of whether they use the Workload Index as the exposure of interest or the Typical Intensity for that high exposure group. Either way, there was a twofold increase in the presence of the increased likelihood of having anxiety or depression.

Dr. Harris said they also looked at stratifying these results by sex and age to understand the relationship that might be different, and so the age cut off that they used was 50 years old for both men and women. There tends to be a higher association among women and higher association for those less than 50 years old. So, what they inferred was a healthy worker survivor effect, meaning those workers who are older and have been janitors longer have just survived more, and the ones that are not represented are the ones who have already left this career of being a janitor. Usually, it was because they had been injured or they did not feel they could continue with that type of work. They see this relationship with missed work, so an increased association among those who are less than 50 years of age also supporting this healthy worker survivor effect.

Dr. Harris said she will discuss the relationship between job strain and some of these health outcomes. What they saw was higher psychological demands associated with severe pain and higher decision latitude was preventive. The job strain ratio, which considered both psychological demand and decision latitude increased the odds of severe pain. They saw a similar relationship for both anxiety and depression. They looked at precarious work and saw similar patterns in some of these outcomes particularly those with job insecurity, wage theft, and harassment. They saw a twofold increase in the odds of having severe pain. Dr. Harris said that for injury prevalence, the significant factor was harassment. When they looked at anxiety or depression as the health outcome, they saw that wage theft and harassment were the two variables that were associated with increased odds of anxiety or depression.

Dr. Harris stated that in conclusion, the study found a high burden of workload and negative health outcomes in this cohort of California janitors. For each of the three ways of characterizing exposure, the study found that higher exposure significantly increased the odds of negative health outcomes and those negative health outcomes included severe pain, regular use of pain medication, regularly missing work due to pain, work related injuries, and the presence of anxiety or depression. Women had higher

odds of these adverse health outcomes than men, and they did see a consistent presence of healthy worker survivor effect, meaning that it was the younger workers, not the older workers, who were at increased risk. There were small differences in the means of job strain measures between these groups, but trends did show higher decision latitude among men than women.

Dr. Harris said that exposure-response relations were found for job strain and negative physical and mental outcomes. They found that high psychological demands were associated with increased prevalence of both severe pain and anxiety or depression, as well as some of the other outcomes that she did not have time to review at this meeting. High job strain ratio was associated with increased odds of anxiety or depression. High decision latitude led to a lower prevalence of these negative health outcomes.

Dr. Harris said she wanted to focus on the number of individuals that reported precarious work outcomes. 51% felt insecure in their ability to find another job if they were laid off, 37% of janitors were concerned about being harassed at work, 33% under-report injuries for fear of retaliation, 23% reported experiencing wage theft and 22% worked more than a full-time job schedule. That meant they worked more than one job and more than 40 hours per week. They felt that these work conditions may lead to tolerating harassment and tolerating the high levels of exposure and of workload and might be one reason for an incredibly high prevalence of pain and reported injuries in this cohort. They also found that relationships between precarious work and negative health outcomes were there, meaning those that were concerned with any type of bullying or harassment, had higher odds of both severe pain as well as anxiety or depression.

Dr. Harris gave an update about the Time Motion study. The study used four venues (mall, airport, event/convention center, and office buildings) and their goal is to get 16 workers from each of these to do a detailed Time Motion study. They were analyzing the data for the individuals that they had collected data on. The study had 23 of 64 workers that they had collected data on at this point. Dr. Harris said they had extreme challenges in getting participation as well as getting access to sites. They had been working for three to six months or longer on getting access to some of these sites. Sometimes they planned to start and then for various reasons they could not. Therefore, it had been challenging both for her and LOHP, but they were getting good data. For detailed data collection, there were direct measurements, videos, and wearable sensors. The wearable sensors have not been very popular. There was fear about what the wearable sensors would do and if they're being tracked and how it impacts them. They were researching other wearable sensors that look more like a watch that can still collect some of the physiological parameters and movement parameters that they were looking at. They may be able to collect data from other wearable sensors in the next two thirds of subjects that they collect data from.

Dr. Harris said they had two interns this summer who were eagerly working on the Time Motion Study project. They are analyzing the video in a frame-by-frame analysis. This allows us to compare the actual time that they were spending performing each task with ISSA rates, and it allows them to quantify the risk associated with performing these different tasks. Hopefully that will allow for better guidance on both time allocations per type of task as well as how to organize tasks to reduce the overall risk of injuries.

Dr. Harris acknowledged CHSWC, SEIU and MCTF for their support of this work.

Commissioner Questions or Comments

Commissioner Roxborough asked if Dr. Harris sent out 40,000 emails. Doctor Harris replied that they did not, and the emails went out in general emails that the SEIU and MCTF sent to their cohorts. Commissioner Roxborough also asked if the data were based on union janitors or non-union janitors. Dr. Harris replied that about two-thirds were union members and about a third were non-union janitors. Commissioner Roxborough added if the analysis indicated that non-union janitors were feeling worse than those in the union. Dr. Harris replied yes, but she did not have enough time to include all the data in this presentation. However, they did perform some of that analysis. Dr. Harris said she will send those slides to CHSWC Commissioners. She added there were some measures that were higher in the non-unionized group and then there were some that were higher in the union group. She could not remember the specifics. However, the precarious work measures were more prevalent in the non-unionized workforce and some other measures were prevalent in the unionized ones. Overall, associations were slightly lower among the unionized workforce than the non-unionized, and she will follow up.

Commissioner Roxborough asked of the emails that were sent out, how many people responded. Dr. Harris said approximately 729 responded, and about 457 of those had enough exposure and health outcome data to be included in that analysis. Data were missing in the responses; otherwise, there would have been more data. Commissioner Roxborough also asked how many men and women responded to the survey. Dr. Harris said about 70 percent were women and the rest were men. Dr. Harris said the age, sex, ethnicity of the 457 workers who responded to the survey were included in the models and she presented data on them.

Commissioner Roxborough asked if there was an age breakdown for both sexes. Dr. Harris said they had that data, but for the sake of time she did not present it; but she can include that in her follow-up. Dr. Harris said she compared younger women under 50 to women over 50 and men under 50 to men over 50. Commissioner Roxborough asked if there was a survey category for part-time janitors. Dr. Harris replied some were part time, most of them had two jobs though collectively, their hours worked during the week were quite high. They had jobs in two separate companies.

Dr. Harris stated that they were working on a report but still collecting survey data and conducting sensitivity analysis to identify any bias. It was not ready. Commissioner Roxborough asked if they were in the second phase or the third phase as she had said in December 2022, the study will be completed by 2024. Dr. Harris said she was hoping to be done a year and half ago but could not get access. She was hoping to finish collecting data before the end of the year and then that will allow them to at least provide a substantial report in early 2024 on the survey data. They will complete the survey data collection and then it will take some time to analyze the video and do those ISSA comparisons in the latter half of 2024.

Commissioner Brady asked if the Time Motion study had a different group of people. Dr. Harris replied there was a smaller subset of people in that study, so they were hoping to get 64 and currently had data on 23. That was a detailed analysis where they followed them for approximately four hours, and they analyzed that data using the MBTA approach as well as collecting direct measurements of tasks. It was a smaller number, but it's a much more detailed analysis.

Commissioner Voorakkara asked about the Time Motion study and how a sample size of 16 could be

extrapolated to a broader thesis. His second question was understanding the definition about duration. The third was about not having access to an office building in the Time Motion study because you must work with the leaseholder of that building to gain access to conduct the study. He asked if there was a role for SEIU or others to help support that. His final question was why a difference in the high decision latitude between men and women was there, and its reasons. How much can they attribute that high decision latitude, from men, from a policy that they do not want to acknowledge their vulnerability. Dr. Harris replied that for decision latitude there could be multiple reasons that they see the difference between men and women. It could be cultural, just not wanting to acknowledge that they do not have as much decision latitude over their work as they might want; it also could be that men have higher ranks in the janitorial positions; or it could also be that they were men and they just might assert their power a little bit more and push and make those decisions more than the women do. There was much they would not know. However, they still have interviews and focus groups, and she will take note and see if they can ask through the focus groups to give context for that data. Commissioner Voorakkara asked when they did their final report it would be good if there were ways to call out qualifiers like that. Dr. Harris agreed.

Dr. Harris said she was hoping to be finished with office buildings, because it seemed to be the easiest venue to have access to. For example, they were working with CalPERS and were ready to start but then there was new legal language that was going to take a long time to try to get through the University. Now they were stuck with either trying to negotiate with CalPERS to take the standard IRB language that the University has agreed to. She was trying to negotiate and push that through the University or go to another venue. They had interns who were excited to help them collect data. Dr. Harris added she was forewarned about how challenging it was to gain access for this research because you must get so many people lined up and she has never experienced it in any other industry or project. Commissioner Voorakkara asked if they had these conversations around the RFPs and lessons learned from this study when others propose to use an office building; and other lessons learned to inform future recipients of RFPs. Dr. Harris said they had the typical support lined up as they would have for other projects, for getting the data and it came down to the details such as liabilities, being outside, and not wanting a video taken because it was a biotechnology company; she could not have forecasted these issues. Passing their experience on to future researchers was a good idea. Dr. Harris welcomed ideas for other sites. She added they would like to get 64 subjects, even if there was a variation of different venues or some other group, so they will keep trying.

Commissioner Voorakkara asked about extrapolating information from 16 subjects. Dr. Harris said she did not know if she could extrapolate it to all workers, because they were going into one venue or maybe one or two companies that represent a venue. It gave a good understanding of what the risks were and how close the time allocation was to reality. More work is needed and yet that work was hard to do. However, it was a good estimate, and she could not generalize it to every single venue. Commissioner Voorakkara said that he used to work in philanthropy, and he would often say when you have seen one foundation, you have seen one foundation. Thinking about the venues, since they only have one or two, it was hard to extrapolate to say this is the experience in every single situation like this. Dr. Harris pointed out that one of the values of this study was that it will provide a roadmap of how to make these comparisons and analyses in a way that is novel. They have been working with their colleagues in Washington state and they focused only on office workers. Now they will be able to expand a similar approach to other types of venues. If others work with other janitors in different venues, there was a road map so that they can add to the body of data. She thought it was an important foundational piece.

Commissioner Voorakkara asked about the definition of duration. Dr. Harris replied it was how many hours per week and that was difficult to guess, and it varies week to week, and they had categorical options.

Commissioner Kessler asked in the non-union environment was there any follow up to see whether the workers experienced any intimidation or harassment post interview especially if the interview was at the work site. Her experience had been that workers at a job site were observed by their management then do not participate in the study. Dr. Harris said luckily, they partnered with MCTF, and they called workers for that very reason. She does not know if every single person was off-site. They had one-on-one interviews to collect the survey data through the phone. Many workers were not comfortable answering questions at all, including a couple at one of the airports. Most of them preferred them to call or meet with them at another time.

Commissioner Kessler asked about differences between union versus non-union subjects. What were the differences and what surprised her. Dr. Harris said she will follow up with CHSWC. Her recollection was that some of the associations were higher in the non-union work, but some of the precarious work and some of the precarious work measures were higher than nonunion. However, a couple of workload indices were higher in the in the union group. She wanted to understand MCTF more because they were incredibly organized. It did not feel like a typical nonunion experience where there was no organization and support, and everyone was on their own. Instead, they used MCTF, and they were on top of things and helped reach out to workers associated with them.

Commissioner Kessler asked if they were able to find established policies or contract language that determined the time taken for each task. Dr. Harris said they would get the data first and then ask for that sensitive information. What was critical was getting the area floor plan because to understand and apply the ISSA rates, they had to understand exactly what the square footage was including information such as the number of toilets. She believed the contract language differed, and they had been concerned about asking about it and just having people not participate at all. She said she could follow up but was not sure she would get that information.

Commissioner Bloch said that working with MCTF decades ago, it was one of the model organizations that provided health and safety training. It had training for workers and their collectively bargained joint labor management organization. To him that was a testament about what happens when labor and management work together. Commissioner Bloch said it was gratifying having seen this work its way through the process and he remembered that this study came out of legislation that was passed. He asked from the time the bill passed to now, how much time was left. Dr. Harris said did not know but would be happy to investigate and put it in her report.

Commissioner Bloch said that this sort of in-depth study, talking to workers, meeting them in a place where they were comfortable talking to you and getting a snapshot of what was happening to their bodies and their minds based on their workloads would be valuable in any other industry. He agreed with the questions from Commissioner Kessler about understanding workload, especially in collective bargaining agreements which was a significant issue with the hotel workers and in healthcare around staffing and understanding how their collective bargaining can address those problems. Dr. Harris agreed that her Lab was working on using technology with more efficiency, both AI as well as wearables, to be able to perform this workload analysis with more efficiency. As that progresses it will be a lot more feasible to do this across multiple industries.

Commissioner Steiger said it was amazing work. He asked about workers' compensation and in conversations with these workers did they file workers' compensation claims and what was their experience. Dr. Harris said that was brought up at the last meeting. Unfortunately, that was not in their initial survey and so she added it. She did not have great information for them at this point, but hopefully as they complete the next round of surveys and they were out in the field, they will have more to offer in terms of how many of those injuries were reported, how many claims were accepted, and how many were denied. Those were important questions and they added those to the survey. She said they had more interviews and focus groups. Focus groups have been extremely challenging to pull people together. They were going to transition the focus groups to just interviews. Dr. Harris can elaborate on their questions about workers' compensation injuries and acceptance of those claims if they're made.

Commissioner Roxborough asked since the bill passed, did they have a breakdown in terms of the data by year to see if things were getting better or worse and were they making progress. Dr. Harris said they had not looked at that because so much of the data came at the same time; it had come in more slowly since then. When they finish the next round of data collection, they will be able to answer his question. Commissioner Kessler added that COVID-19 had corrupted any ability to have consistent linear information. Things change and it was different to clean an office building when nobody was there versus fully staffed. She said there needed to be a notification in the report differentiating the COVID-19 pandemic data versus non-COVID-19. Dr. Harris said that the workload was different during COVID-19 depending on the venue. They have specific questions such as, was this workload that they were reporting higher or lower than typical given COVID-19. They have the information and can report on that too.

Commissioner Brady asked if immigration status was in the survey. Dr. Harris replied that the survey was emailed and at one point they had included immigration status, but it might have been removed because the Institutional Review Board (IRB) was worried about personal data that could be used to identify an individual since it was emailed. She will check on that information and about loss of job anxiety.

Commissioner Bloch said SEIU notified him that that the request for this study came from a legislator. Dr. Harris said she will try to identify the dates of all those in a timeline.

V. Report on Alternative Payment Models for California's Workers' Compensation Study Denise Quigley, Ph.D. and Melony Sorbero, Ph.D., RAND

Commissioner Kessler commented on why RAND was presenting on something that they just received notice on and that they had no details about. She said she was curious whether it is appropriate to put this to the next meeting so that they get the information in advance to be able to review and provide thoughtful comments or if there is some time constraint that they have to do this right now in order to vet the report. She indicated that she did not know what the process was because she was on vacation when she saw this come in from Mr. Enz and had no idea what this was or why this was happening. Chair McNally expressed not having an explanation and deferred to Executive Officer Enz who explained that RAND had asked for input from the Commission before finalizing their report and that the report was due to be completed within the next month. Ms. Kessler commented that RAND had not listened to them in the past so she wasn't sure why they would listen now. Chair McNally acknowledged to Commissioner Kessler that she is always at the ready to express an opinion. There were friendly

gestures of acknowledgment on the dais or head table. When asked by Chair McNally if she agreed to proceed, she stated that they did not seem to have a choice.

Dr. Quigley introduced herself as a senior health policy researcher at RAND who was presenting with Dr. Melony Sorbero and explained that RAND had assembled an interdisciplinary research team with substantial expertise in alternative payment mechanisms and workers' compensation in California to conduct the requested research on possible alternative payment mechanisms for California workers' compensation. She explained that they were there virtually to present their findings. They presented the following bullets and narrative:

Dr. Quigley explained that the California Workers' Compensation (WC) Payment is based on Fee for Service.

- California WC uses a relative value scale-based fee schedule to pay physicians.
 - SB 863 (effective January 2014) required adoption of fee schedule for physicians.
- Official medical fee schedule (OMFS) set based on Medicare payment.
 - WC is set at 120% of Medicare.
 - Labor Code Section 5307.1 directs DWC to adjust OMFS to conform to Medicare Payment System.

Dr. Quigley explained that the RAND study was to assess alternatives to using the OMFS in workers' compensation in California.

- Alternative payment models (APMs) seek to mitigate fee for service payment incentives.
- Study goals were to:
 - Assess evidence on the use of APMs.
 - Examine advantages and disadvantages of APMs.
 - Include assessment of APM applicability to the WC system in California
 - Make recommendations to the California Legislature on alternative payment pilot program.

Dr. Quigley said that RAND used a mixed-methods approach to address the stated research goals. She explained that they began with an initial assessment of APMs and their applicability to workers' compensation in California by performing a scoping review and environmental scan of the literature on the evidence of APMs in use across the country as well as the literature on the use of APMs in workers' compensation. During that process, the team identified two states where APMs were being used in workers' compensation however with little peer-reviewed literature published about them. The team next conducted semi-structured interviews with workers' compensation staff in those states that implemented APMs in workers' compensation to be able to ask those staff about the challenges, feasibility, and rationale for why they implemented APMs in workers' compensation and how implementation had gone. She said that based on the evidence from the scoping review, environmental scan and the input from the two state WC divisions using APMs, the team moved forward with a more in-depth review of 3 selected APM programs: pay-for-performance, value-based payments, and bundled payments.

Dr. Quigley said that the first step to obtain input from workers' compensation stakeholders in California was to conduct a quantitative analysis of claims data from 2016 to 2019 to identify high-

volume provider specialties providing care in workers' compensation. She said that those identified specialties were physical therapy, chiropractic, occupational medicine, orthopedics, physical medicine, and rehabilitation, as well as pain medicine and anesthesiology.

Dr. Quigley said that the team's next step was to recruit and conduct interviews with the leaders of the California associations representing those high-volume WC specialties. RAND conducted semi-structured interviews with the presidents and vice-presidents of those associations. She said that they spoke to these executives to gain information about their understanding of APMs, the use of APMs within their specialty, and the types of discussions they had had in the past or currently about particular APMs within their specialty. RAND also asked those executives their willingness to help RAND introduce the study and recruit workers' compensation providers within each of the respective specialties so that RAND could follow up and invite the individual providers to a focus group. She said that they were able to conduct a focus group with California health care providers and discuss alternative payment mechanisms. She said that RAND also conducted a focus group with employer representatives, which included employers and insurers from across California, and that the team also conducted semi-structured interviews with employee representatives, which included union representatives and applicant attorneys.

Dr. Quigley explained that before presenting the findings, she wanted to provide an overview of the APMs that they considered relevant for workers' compensation in California:

- Quality incentive programs
 - Pay-for-performance.
 - Value-based payment systems
- Accountable Care Organizations (ACOs)
- Bundled payments.
- Global budgets (including capitation)

Main Features of Quality Incentive Models:

- Pay-for-performance
 - Primary goal: Improve quality performance.
 - Providers receive additional payments or other incentives when they reach certain benchmarks.
- Value-based payments
 - Primary goal: Improve quality performance and encourage consideration of cost.
 - Assess providers' performance on quality and other measures relative to set benchmarks.
 - Hold providers accountable for the cost and quality of care through the inclusion of specific measures.
 - Total cost of care, costs of episode of care, utilization of low-value services

Main Features of ACOs and Bundled Payments:

- ACOs
 - Primary goal: Efficient care coordination and care provision
 - A group of physicians, hospitals, and other providers voluntarily partner to deliver coordinated care to a designated group of patients to reduce duplicative

- and low value care.
- Risk-adjusted spending and quality targets set by payer.
- Bundled payments
 - Primary goal: Efficient care provision
 - A patient's care is defined in terms of episodes of care (usually surgery)
 - For the defined episode, providers are given a single, comprehensive payment that covers all services performed during that episode of care.

Main Features of Global Budgets:

- Global budgets
 - Primary goal: Efficient provision of care within a set budget
 - Provide a set dollar amount for a facility to spend.
 - Requires networks of hospitals and health care providers to work together while receiving a fixed monthly payment for a patient or group of patients.
 - Like capitation which sets a risk-adjusted dollar amount for each patient that a provider sees.

Dr. Quigley explained that the need for an APM assumes that there are problems with the current fee-for-service payment model that cannot be addressed with minor changes. In the focus groups and interviews, the RAND team asked stakeholders to identify the top three issues with the current system that need to be addressed. In the focus group and interview discussions workers' compensation stakeholders primarily pointed to access issues. She said that regardless of stakeholder group – WC providers or provider association leaders, employers, insurers, union reps and applicant attorneys, WC stakeholders most consistently raised issues that were related to an injured worker's ability to access workers compensation care.

Dr. Quigley said chief (or predominant) among the access issues raised by stakeholders were the low number of overall providers in WC including the low number of needed specialists who are willing to provide care within the workers' comp system, as well as the reluctance of providers to take on difficult or complicated cases. She said that the stakeholders perceived that the workers compensation system is administratively cumbersome and provides relatively low reimbursements for the time spent by providers. She said that the perception did not just include the care provided, but also the rest of the administrative requests by providers to be able to provide care in the workers' compensation system. She said that what that means overall is that fewer providers really do want to accept workers' compensation patients. Dr. Quigley said that stakeholders observed that with such a restricted supply of providers, patients could not get timely care. Dr. Quigley said that stakeholders also discussed the high rates of delays and denials in WC care delivery, as well as the inadequacies with the medical provider network that included not being able to provide (assign) providers to those injured workers who needed a provider.

Dr. Quigley said that these workers' compensation issues that were heard in the focus groups and interviews have been documented in previous studies and are commonly heard WC issues. She said it is important that the team asked what the top issues were because they wanted to ensure that the goal of an alternative payment mechanism would be designed to help or improve the (observed or felt) issues in the current system.

Dr. Quigley turned the presentation over to Dr. Sorbero to discuss the findings with the following outline:

Outline for Presentation of Findings

Describe issues raised by stakeholders.

- Examine important WC considerations.
- Stakeholders' perspective
 - Pay-for-performance
 - Bundled payments
- Conclusions and policy implications

Dr. Sorbero discussed the important considerations and potential workers' compensation specific challenges. Dr. Sorbero said that the multi-payer system in California creates challenges that many other states' workers' compensation systems do not have to contend with. She said that this is particularly a challenge for ACOs and global budgets. She said that RAND was not aware of any applications of these models where multiple payers have come together for implementation. Dr. Sorbero said that pay for performance and value-based payments, in particular, are driven by measures that are included in the program. She said that performance measures may be used with bundled payments and accountable care organizations to ensure that quality thresholds are met. Dr. Sorbero said that global budgets are the only model where payment is not typically tied in some way to performance and quality measures.

Dr. Sorbero said that how the payment is designed is clearly an important consideration for all the models, but the specifics vary by the type of model. She indicated that in the report they highlight potential workers' compensation specific challenges for each of the models. She said that in the case of pay-for-performance and value-based payments, risk adjustment is required for many types of measures, including patient outcomes, patient experience, and any cost of care measures. She said that for the other models, risk adjustment is necessary to create payments and spending targets that accurately reflect differences in the underlying patient populations of providers.

Dr. Sorbero said that the low volume of workers' compensation cases treated by individual providers could impact all these models. Low volume makes it challenging to accurately and reliably measure providers' performance on quality measures. It can also lead to providers (not) having enough patients to have predictable treatment costs or for them to be able to accept financial risk associated with bundled payments, accountable care organizations and global budgets.

Dr. Sorbero said that RAND only found examples of pay-for-performance and bundled payments being used in workers' compensation in other states, with the pay-for-performance programs being more robust. She said that based on their findings in the literature and review of programs in other states, they decided to discuss pay-for-performance, value-based payments, and bundled payments with stakeholders.

Dr. Sorbero said that stakeholders were generally supportive of pay-for-performance programs as a way to introduce new payment models into workers' compensation and summarized the issues:

Stakeholder Perspective on Pay-for-Performance:

- All stakeholders discussed incentivizing providers under this model.

- Consensus that pay-for-performance could be used to incentivize most types of providers delivering care to workers’ compensation patients.
- The exception being emergency medicine doctors because:
 - Less likely to respond to incentives given the nature of the types of care they provide.
 - May not be aware that they are treating a workers’ compensation patient at the time of service delivery.
 - Cannot refuse a patient based on their insurance status.
- Stakeholders suggested several types of incentives for providers. Most often they suggested:
 - Reductions in the burden of utilization review (UR) or independent medical review (IMR) processes
 - Receive expedited approvals (prior authorization and prior approval)
 - Reduction in paperwork requirements; payment for all reports
- Other suggestions included:
 - Access to a care manager or navigator
 - Early or increased payment

Dr. Sorbero said that stakeholders suggested a range of performance measures that could be used to assess healthcare providers and pay-for-performance or value-based payment programs, including patient experience, timeliness and completeness of workers’ compensation specific reports, timeliness of care, provision of (medical treatment) guideline consistent care, and return-to-work rates. She said that patient experience and return-to-work measures would require risk-adjustment.

Dr. Sorbero said that stakeholders did raise some concerns about challenges and feasibility issues they could foresee for quality incentive program, in that their effectiveness might be limited unless paired with administrative and statutory changes. Stakeholders also noted the challenges and importance of designing incentives that would be meaningful to providers and selecting performance measures that would have provider buy-in. She said that, as with any program, there were a few concerns raised about the possibility of gaming by program participants.

Dr. Sorbero said that when RAND researchers discussed bundled payments with stakeholders, many concerns were raised that this model would not be the best option at this time, and that considerable development work would be needed to determine how to define episode of care, and how the actual payment would be determined.

She said that there were numerous concerns raised about bundled payments creating incentives to underprovide care, which is why this model is frequently paired with performance measure expectations. There were also concerns that this model might make providers feel they are being held responsible for patient care that is outside their purview. Another concern was that bundled payment amounts might be too much for some patients, while too low for others, and that risk adjustment would not adequately account for this. Employee representatives in particular were concerned that a bundled payment model could discourage workers’ compensation participation, which would further exacerbate provider supply issues.

Dr. Sorbero said that they developed a set of recommendations that aim to improve access to care for injured workers by targeting several interrelated issues that were frequently raised by stakeholders during their focus groups and interviews. She said that these issues include medical provider network

inadequacies, low reimbursement for services relative to the time spent on activities, which in part is due to the high administrative burden of workers' compensation care. She said that all these issues contribute to not enough providers participating in workers' compensation, which can make it challenging for injured workers to find a provider to deliver treatment. She said that this in turn affects the timeliness of workers' compensation care, along with delays and denials through the utilization review and pre-authorization process.

Dr. Sorbero said the set of recommendations includes: the development of a pay-for-performance pilot program that focuses on workers' compensation providers, a small set of changes to the fee schedule, an assessment of the timeliness of responses by insurers to requests for authorization, and an assessment of medical provider network adequacy.

Dr. Sorbero said that she would briefly discuss each of these recommendations in turn. She said that they suggest initially starting with a voluntary pay-for-performance pilot program and engaging affected stakeholders in the planning process. This will improve buy-in by participants, allow providers and other stakeholders time to acclimate to the program and its measures, as well as the necessary time to identify any features that need to be modified to make the program run more smoothly. Having the pilot centrally managed by DWC would create efficiencies, ensure consistency, and allow for the pooling of data across insurers, which will improve the accuracy and reliability of performance estimates.

Dr. Sorbero said that they suggest starting with measures that assess administrative aspects of participation in workers' compensation. These measures have the advantage of applying to all workers' compensation patients, which will help mitigate the issues related to small numbers. It is also possible that these measures could be constructed using available information systems, which would reduce burden. Dr. Sorbero said patient experience measures are commonly included in these programs. While the measures do require data collection, providers and patients have been exposed to these measures outside of workers' compensation. She said that the Consumer Assessment of Healthcare Providers and Systems surveys, better known as CAHPS surveys, could be used as a starting point, and tailored to workers' compensation. She said that in the future, measures could be expanded to include provision of (medical treatment) guideline consistent care, improvements in functional status and ability to return-to-work. These measures likely require more time to develop the measure specifications and any necessary risk adjustment.

For the incentive structure, Dr. Sorbero said that they suggest a mix of financial and non-financial incentives including the easing of utilization review and preauthorization requirements for high performing providers. She said this could take the form of expedited reviews or waiving certain types of reviews. RAND also suggests reimbursing for reports that are currently not compensated but that require documentation and effort beyond what is typically required for delivering care (in other settings).

Dr. Sorbero said that while they provide suggestions for some of the overarching structure of a pilot program, there are many components that need to be developed for a successful program. They recommend that a two-stage process be used to develop a pilot. During the first stage, she said they suggest holding stakeholder working groups to discuss stakeholder commitment to the pilot, program goals, data needs, and overall program design and definitions. During this stage, they also recommend analyses be performed to assess the feasibility of specific metrics, such as what existing systems can be

used to construct the measures, how many patients meet the requirements for the measures, and how many providers see an adequate number of workers' comp patients to construct reliable estimates of performance. In the second stage, the details of the plan would be developed, an assessment of the resources needed for successful program implementation would be performed, and additional analyses to tailor measures to California's workers' compensation data and determine the level of performance that would be required to receive rewards would be performed.

Dr. Sorbero said they also recommend improving provider reimbursement for workers' compensation specific reports and processes that require effort that is beyond what is typically required in the delivery of care. She said this would include reimbursement for currently uncompensated reports and improved reimbursements for reports that are under-compensated. She said that this would start with an assessment of the level of effort and resources required to complete the reports to set appropriate reimbursement levels. The level of payment for reports could be linked to the timeliness of their submission and their completeness.

Dr. Sorbero said that there was a perception among some stakeholders that penalties are not consistently levied when claims administrators do not meet time requirements for requests for authorizations. She said that they recommend analysis be performed to assess the frequency with which time requirements for request for authorizations are exceeded and whether penalties are levied when this occurs. If a problem is identified, incentives that encourage adherence to current requirements could be considered.

Lastly, she said that they recommend an assessment of the adequacy of medical provider networks. Stakeholders raised concern that the Medical Provider Network (MPN) directories are frequently out of date and that few providers are accepting new workers' compensation patients. "Secret Shopper" studies could be performed wherein professional actors use scripts to call workers' compensation providers to schedule an appointment. The study could assess how many providers needed to be called to schedule a timely appointment. The results of such a study might indicate the need for requirements and maintaining directories or network adequacy.

Commissioner Questions or Comments

Commissioner Subers asked about how the stakeholder issues were presented, and what was meant by consistently reported by one stakeholder over another. She asked if she was correctly reading the presentation slide about access to care being consistently reported as an issue by stakeholders including insurers, except for by unions. Dr. Quigley explained that that is correct. Commissioner Subers said that as a representative of a union, the one thing they hear a lot about is access to care and rates of denials. She said that their finding was a red flag for her. Dr. Quigley explained that the way the question was worded was to name the top three important issues, so it does not mean that access to care is not an issue, for unions in the example. Dr. Sorbero added clarification that the unions' greater focus was on the issue of not enough providers in workers' compensation and inadequacies in the medical provider networks. Commissioner Subers observed that lack of providers and inadequacies in networks lead to poor access to care, but she did not pursue the question further and thanked the presenters.

Commissioner Kessler prefaced her statement by saying that anything she asked or commented on is not meant to be a personal attack on anyone. She said that she is responding to what she is hearing and the results that are being presented. She said she wanted to be clear about that.

Commissioner Kessler said that this was the first time she was hearing about this (report), so she has lots of questions such as “How is an outcome defined?” “Who determines how it is defined?” “Is there an appeal process (of how something is defined)?” “How do you modify a program, if necessary, if an implemented program is not working?” “Can you do a test run?” “Who are the stakeholders?” She said that there a lot of different issues that are important about the way they are being presented and that she is concerned about it. She said that she is concerned that RAND wants their (CHSWC’s) input but that it is not going to change anything because RAND has a timeline to adhere to. She said she was concerned about what the Commission was being asked to do. She said that they were past 1:00 pm still with action items on the agenda. She said that she was concerned how this research study was rolling out. She said she wants to ask the rest of the Commission what their thoughts were. She said that if the report is going to have an impact on legislation and that they have not had the opportunity to discuss modifications and the report seems to already be in the can. She said she was concerned.

Dr. Quigley said that RAND sent the PowerPoint slides on July 3 as asked by DWC so that the commissioners had the slides 10 days in advance of the briefing. She said the report is due at the end of July, and that they had been invited to present the findings to the Commission. She said that they wanted to present the findings for discussion, and that they were asked by DWC to do this at the CHSWC meeting.

Dr. Sorbero said that the questions raised by Commissioner Kessler are part of the reason why RAND was recommending starting with a pilot because they share Commissioner Kessler’s concerns and because workers’ compensation is very different in many ways from the commercial insured environment in which many of the described programs have been implemented. Dr. Sorbero said it is going to take a lot of consideration to thoughtfully apply these types of programs to workers’ compensation. She said that they did try to do as much stakeholder engagement as they could during the time they had for the project. She said that they fully recognized that many more discussions are needed and much more stakeholder engagement is required to work through the issues, which is why they recommend that a two-stage process be used in just the development of a pilot program.

Dr. Sorbero said that they completely agree with Commissioner Kessler, and they do not have enough information to say what should be done with any definitive nature, but they recommend what they are saying based on what they have heard, what they saw in other states, and what they read in the literature. She said that they think this is a place to start and that they want to be working with all the relevant stakeholders to make sure that they are engaged in the process. She said a pilot program is necessary to get at the issues Ms. Kessler raised about things that will potentially need to be modified even after a program is initiated, and before a program is implemented broadly.

Dr. Quigley said that their job from the Request for Proposal (RFP) was too narrow in on (focus on) which alternative payment mechanism or mechanisms would be the most applicable for workers’ compensation in California. She said their task was to sift through all the alternative payment mechanisms that could be available based on what is known about from the evidence and their use and be able to come back to the legislature and to the Commission and indicate which APMs make the most sense to move forward with in California as a pilot program based on the evidence in the literature, other state’s input and California WC stakeholder input that they were able to receive.

Chair McNally said that he thought that the Commission should table the issue and discussion for now and continue at the next meeting. He said that would give an opportunity to digest the information and

have some later feedback. He said he was feeling incompetent (since this was the first time he was hearing about the report and the findings).

Commissioner Kessler said that there has to be at least an acknowledgement of the presentation since RAND asked the Commission for input. She said that whether the report is given to the legislature - and she said that she was hearing that there was a timeline to do so- she would certainly want there to be an acknowledgement that the Commission did not receive the presentation in advance of the meeting and could not discuss it in a timely fashion in order to give any input. She suggested that CHSWC is not able to take a position because there are multiple concerns that cannot be addressed in the time frame that they have been given to provide any input. She said she wants the legislators to know that this is a concern.

Chair McNally asked what their options were and whether there was time before the report was forwarded to the legislature. Executive Officer Enz said that since it is a DWC study, Dr. Ray Meister or George Parisotto might be able to address this.

Dr. Ray Meister indicated that he was attending via online video conference and was prepared to comment.

Chair McNally said that they were not comfortable or satisfied with where they are right now, and they are not in a position to raise many questions or make recommendations. He said that they want to table the issue until they have had a chance to understand it further and give some direction. He said they want to know if there are any time constraints that require getting back to the legislature because they are not prepared.

Dr. Meister said that study will end in mid-September about the time of the next CHSWC meeting. He said that they had initially thought of having this presentation in September, but they decided to move it up to July to at least give the opportunity for some review and discussion. He said the report should be finalized by the end of this month or early August. He said that he did not know why comments and concerns or suggestions could not come in after that, but that this is the current timeline - that the report will be released in a few weeks, and the study will be over in September.

Commissioner Bloch said that he joined the Commission at the time of the SB 863 reforms, and that the Commission spent a lot of time hearing reports from DWC Director Parisotto about establishing fee schedules. He said that some of them, saying he remembers the copy fee schedules being very controversial, but DWC went through a very exhaustive process to establish fee schedules for every part of the workers' compensation system. He said the part he would like to hear - if and when RAND comes back - is why DWC is now considering an alternative to that? Mr. Bloch said he did not understand the rationale.

Commissioner Roxborough commented that someone said that they don't have enough information but that they want to start a pilot program. He asked why they would (the legislature or DWC) want to start a pilot program if the RAND folks feel that they do not have enough information.

Dr. Meister replied that the legislature asked DWC to provide this study and report, so that is the reason that alternative payment methods was brought up as a topic of further study.

Commissioner Roxborough replied that it is helpful that they received the study so that at the next meeting the Commission will have some thoughts on what the preliminary report looks like. He explained that that was his perspective. He said that he has more questions than answers when he reads this study.

Public Comments

Don Schinske said he was there on behalf of the Western Occupational and Environmental Medical Association (WOEMA) and that they work with the American College of Occupational and Environmental Medicine (ACOEM) guidelines which is the backbone of the Medical Treatment Utilization Schedule (MTUS). He said that this alternative payment mechanism report was directed to be done under SB 1160 from 2017 or 2018. He said that there was a real opportunity with this study. He said there are different ways to look at this requirement such as, for example, as a throw-away line in legislation to conduct a study, to check the box and move on. The other way to look at it is as a real opportunity.

Mr. Schinske stated that there are real weaknesses in how the system pays for medical services in the workers' compensation system. He said this could be the beginning of a chance to address those weaknesses. Instead, this could be seen as not tinkering with the processes of how the system provides care, but how to improve the quality of care and outcomes for injured workers. He said that the issues could be broken down into small, medium, and large. Capitation and bundled payments – those are academic exercises and could be considered the checking of the boxes part of the study. He said that there was room for an enhanced fee-for-service system. He said that they had done a lot of study on this topic, for example, getting the billing codes correct – the evaluation and management activities. (He said he would leave some materials for them after the meeting.) He said that presently they (the system) use the AMA CPT codes, the 9920 and 9921 series. What do those do? Well, a patient comes in and the provider gets a complaint, you run the systems, with a social and family history, the things one would want to catch in an undifferentiated patient. However, in workers' compensation they do not do that; you do not hear that life profile of "Doc, you know, I have not been feeling right lately..." Instead, you get a patient who presents a knee that has been blown out. He said that they think that they can do some specific improvements with CPT codes that are tacked onto the Medicare codes that get doctors to focus on causation, functional assessment, less social and family history but more work history: what is the work situation like, what is the possibility in the mind of the worker to go back to work, any issues there that the doctor should know about. He suggested tweaking the CPT codes will tell the doctors that this is the kind of information that the system needs. He explained that this was an example of the small items. The medium is consultations; they encourage discussions between doctors and patients. They want doctors to talk to UR physicians more often, as well as claims adjusters and employers about a whole range of things. He said that there was nothing in the system that incentivizes those conversations, even though they all talk about how important they are. He said, finally, that there were many things they could do to address quality that are not part of the fee schedule and that do not necessarily cost a lot of money. He said that presently they do no randomized, 1 out of 2,000 claims, review with a group of doctors to assess whether this is good plain medicine (medical care), are they making good clinical decisions, there are no randomized checks on care. He concluded that there was a lot of work there, a lot of meat on the bone, and encouraged examining it.

Chair McNally said that the Commission is going to say that they are unprepared to comment on the study.

Diane Przepiorski with the California Orthopedic Association said that she understands that RAND was asked to look at alternative payment systems, but she said she thinks it needs to be seen in the context of how this alternative payment system would improve access. She said the DWC had a public hearing a few months ago and that every speaker who approached the podium, whether employer or union, had problems with the current system. She said that RAND seems to be following the Medicare model of managed care of establishing a global payment, handing it to somebody, and then ultimately putting the providers more at risk if they don't meet those targets. She said the Medicare system really has not been very successful because even high performing providers do well the first year and might receive some incentives for their work and the additional administrative costs of administering all of that - but they cannot consistently simply continue to cut costs year after year after year. She said that as a result they are seeing large orthopedic groups drop out of the Medicare system. She said it does not seem to her to be the best model to be following, because she thinks providers are now aware that they are not going to accept this risk and have the cost shifted to them eventually. She said that she challenges RAND in their report if they are going to recommend an alternative payment system, whatever it might be, that it be coupled with how they would perceive that it would increase access to care for injured workers which is the problem they are offering to solve.

Dr. Sorbero responded that RAND did not recommend anything that was risk bearing by the providers because they did observe the issues in the literature that Ms. Przepiorski raised which is that groups are dropping out of the bundled payment programs. Dr. Sorbero repeated that they discussed these issues with stakeholders who raised a lot of concerns with bundled payments and that is not what the RAND team recommended in any way, shape, or form. She said that what the RAND team was trying to focus on were pay-for-performance type models. She said they do think if they focused on specific measures, that the team does think the APM could improve access. She said that they acknowledge none of these types of models typically have a primary goal of improving access, so the team thought hard about what types of models, what types of measures could potentially be included to create incentives that could potentially improve participation of providers in the WC system.

Ms. Przepiorski asked to add one more thing. She said that she thinks the DWC understands that the California Orthopedic Association is not opposed to looking at alternative payment systems. She said that, in fact, they have been creating some payment systems with group health payers themselves that they think could work. They are not opposed to looking at these alternative payment systems, but she thinks one thing is clear, the existing system needs some reforms right away. With anything they are talking about here with alternative payment systems, it seems like it will take a very long time to even figure out what it is, much less implement it in any meaningful way - so it's a 2-step process.

Chair McNally reiterated that the Commission is not going to comment on the study and wait and see, digest and have a chance to discuss it at length at the next meeting. He said that depending on how it goes, there may be a letter that they send in regarding their comments and opinions about the report.

VI. Executive Officer Report

Eduardo Enz, CHSWC

Mr. Enz asked Commissioners to consider approval of several action items. The first action item was:

- 1) Did the Commission approve the final release and posting of the draft 2022 CHSWC Annual Report? Commissioner Brady moved the motion and Commissioner Subers seconded the motion. All were in favor, and none opposed. The motion passed.

Commissioner Kessler said she submitted several questions and asked if her questions were forwarded to the other Commissioners. Her concerns were that some reports including the RAND studies on *The Frequency, Severity, and Economic Consequences of Firefighter Musculoskeletal Disorders* as well as the *PTSD in California's Workers' Compensation System* had several issues that needed to be addressed and she can resend the questions to all the Commissioners. She asked the vote on approving the final release of the 2022 CHSWC Annual Report be delayed until the next meeting to have an opportunity to discuss it. There were definite questions about penalties, COVID-19 impact, and many items.

Commissioner Kessler asked to set up a separate vote on the 2022 CHSWC Annual Report. Mr. Enz said he would recommend approving the draft 2022 CHSWC Annual Report because it has already been delayed. He added that usually the CHSWC Annual Report is printed in March or April, and they have had delays because of missed meetings. He added they could have discussion about all the issues and then make recommended changes. In the meantime, it would be important to get the Annual Report to all the stakeholders. Chair McNally stated they had a first and second motion. Commissioners Bloch, Brady, Roxborough, McNally and Subers voted in favor and Commissioner Kessler was opposed. The motion passed.

The second action item was:

- 2) Does the Commission approve the final release and posting of the draft 2022 Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Advisory Board Annual report? Commissioner Kessler moved the motion and Commissioner Subers seconded the motion. All were in favor, and none opposed. The motion passed.

Mr. Enz said that he appreciated the opportunity to brief the Commissioners on CHSWC activities. He thanked the presenters for their excellent presentations. Since CHSWC last met in December, CHSWC staff has been busy fulfilling the different CHSWC requests and monitoring all the work in the projects and studies. He provided an update on the Request for Proposal (RFP) process. Commissioners had requested that the Department of Industrial Relations (DIR) Contracts Unit address the list of concerns on the RFP process. The DIR Contracts Unit provided those responses and he sent those to the Commissioners in March or April, and they indicated that some of the concerns such as a reflection of the Commissioner comments on final reports and determination of who owns the report could be addressed by articulating and incorporating the appropriate language within the RFP scope of work. On the issue of Commissioner review and feedback, prior to the RFP being finalized, DIR Contracts did indicate that since the competitive bid process should be confidential until the process was complete, participation in the development and draft process was limited to designated CHSWC staff. However, one proposed option that DIR Contracts suggested was to allow Commissioners an opportunity to review and provide feedback was to post the draft RFP on the State of California's public bidding site, which is Cal E-procure. For DIR Contracts, this would allow seeking public comments from interested parties regarding the content and keep it a fair process. During this time, CHSWC Commissioners will have the same access as the public to the draft Request for Proposal (RFP). Another possible option would be for Commissioners to use feedback on existing or previous contracts in RFPs as a vehicle to discuss suggestions for future solicitation efforts.

The third action item was:

- 3) Mr. Enz stated that his recommendation would be to move forward with posting a draft RFP on California e-Procure website for 30 days. The CHSWC Commissioners as well as the public can review and provide feedback on the Request for Proposal (RFP). The motion was moved by Commissioner Roxborough and Commissioner Bloch seconded the motion. All were in favor, and none opposed. The motion passed.

Mr. Enz asked if this process should also apply to all proposals and contracts going forward, and not just be limited to this RFP. Commissioner Kessler said that if they were going to be funding whatever that RFP is, it would apply to all proposals. Commissioner Kessler added that when the draft RFP was posted on the California e-Procure website if it would be possible to forward a draft of the RFP to the Commissioners. Mr. Enz answered yes.

Mr. Enz asked if all contracts including Interagency Agreements that are non-competitive through the University of California like the WOSHTEP, School Action for Safety and Health (SASH) and Young Worker Partnership, should all go through the competitive RFP process. It would not apply for this cycle because CHSWC just negotiated contracts with the University of California's WOSHTEP and SASH programs and those have a three-year agreement that began in July. He asked if there would be a new process for all contracts going forward. The CHSWC Commissioners responded that it would not apply to Interagency Agreements.

Other Business

None

Adjournment

The meeting was adjourned at 1:34 p.m.

Approved:

Sean McNally, 2023 Chair

Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC

Date