

**Commission on Health and Safety and Workers' Compensation**

**MINUTES OF MEETING  
October 6, 2005  
Elihu M. Harris State Building  
Oakland, California**

In Attendance:

Chair John Wilson

Commissioners Allen Davenport, Kristen Schwenkmeyer, Alfonso Salazar, Robert B. Steinberg,  
Darrel "Shorty" Thacker and Angie Wei

Executive Officer Christine Baker

Not in Attendance

Commissioner Leonard C. McLeod.

**Call to Order**

Chair John Wilson called the meeting to order at 10:00 a.m.

**Minutes from the August 25, 2005, Meeting**

Chair Wilson asked for a vote regarding the Minutes of the August 25, 2005 meeting.

*CHSWC Vote*

Commissioner Thacker moved to approve the Minutes of the August 25, 2005 meeting, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

**Update on the Medical Treatment Study**

Barbara O. Wynn, RAND

Barbara Wynn from RAND presented observations from the Medical Treatment Study. She stated that she would review the status of reform initiatives affecting medical treatment provided to California's injured workers, share observations from the RAND medical treatment study, and identify priority areas and issues where research and evaluation would help drive value-based medical care for injured workers.

*Issues in Recent Legislation*

She also reviewed recent legislation that addresses utilization and cost issues, including the following

- The treating physician presumption was repealed and ACOEM guidelines were deemed presumptively correct until the Administrative Director (AD) issues a utilization schedule;

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- Utilization review guidelines were repealed and new standards for the utilization review process were implemented;
- Employers were able to establish medical networks and control medical care for the duration of a claim;
- A 24-visit limit per industrial injury was implemented on chiropractic, physical therapy and occupational therapy; a second-opinion program for spinal was implemented;
- Up to \$10,000 in payments before compensability was established;
- The fee schedule was expanded to include outpatient surgery facility fees and other services; and
- Allowable fees for pharmaceuticals were lowered and generic drugs were required.

*Reforms Reduced Workers' Compensation Costs*

Ms. Wynn stated that Workers' Compensation Insurance Rating Bureau (WCIRB) data indicated that reforms have reduced workers' compensation costs. The rate per \$100 payroll peaked in the last half of 2003 at \$6.36 and fell 16 percent to \$5.26 by the first half of 2005. She stated that the WCIRB has proposed a 15.9 percent pure premium rate decrease effective January 1, 2006. In addition, Ms. Wynn stated that estimated ultimate medical costs per indemnity claim decreased from \$27,029 for accident-year 2002 to \$23,208 for accident-year 2004, and aggregate payments for medical services declined 6 percent in 2004. However, as Ms. Wynn, stated, the impact on access to care and quality of care is unknown.

*Concerns About Potential Impact of Reforms*

Ms. Wynn also addressed concerns expressed by key informants over potential impacts of various reform measures. Interviews were conducted from June to October 2004 as part of a study task to identify cost and quality issues. Interviewees focused on early implementation issues raised by the ACOEM guidelines, utilization review and 24-visit limits. Additional concerns were also expressed about negligible experience with the early-payment provision and about the fact that new rules on utilization review and medical networks had not been issued. Ms. Wynn stated that two systemic issues commonly raised by interviewees focused on: (1) the challenges posed by the complexity of four different medical delivery models with different utilization and dispute-resolution processes, and (2) the level of distrust and contention within the workers' compensation system.

*Key Questions*

Ms. Wynn then stated that mixed views on the likely impact of medical networks raise important questions on access, quality, and cost of care and the impact on patient satisfaction. She reviewed the key questions about access, quality and cost.

- Questions about access include: 'Do the networks provide reasonable access to high-quality providers?', and 'What type and percentage of care is provided in out-of-network care?'

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- Questions about quality include: 'What is the impact of broad vs. narrow networks vs. non-network care on the quality of care and return to work?', 'How do patterns of care compare?', and 'How often and when is the new independent medical review process used to resolve disputes?'
- Questions about cost include: 'How do medical and indemnity payments compare for network vs. non-network care?', and 'Is there a fee for discounting?', and 'To what extent is economic profiling used and how?'
- Ms. Wynn also raised the question of what the impact on patient satisfaction is.

Ms. Wynn then reviewed other provisions that raise additional questions.

- Regarding ACOEM Guidelines and utilization review implementation, key questions are: 'What have been the changes in patterns of care and outcomes?', and 'Is utilization review cost-effective?'
- Regarding the 24-visit limit on chiropractic, physical therapy and occupational therapy services, the key questions include: 'What has been the impact on injured workers with chronic conditions and/or multiple surgeries?', and 'What has been the impact on participation rates and payments for these specialties?'
- Regarding the dispute-resolution process, the key questions are: 'What are the trends in disputed claims?', and 'What has been the experience with the new processes, such as Spinal Surgery Second-Opinion Process (SSSOP), Agreed Medical Evaluator (AME) or single Qualified Medical Evaluator (QME), and independent medical review (IMR)?'
- Regarding payment before the compensability determination, the key questions are: 'What percentage of claims is ultimately determined compensable?', 'What has been the impact on when care is initiated?', 'What are the payments?', and 'What are the outcomes?'
- Regarding provider participation rates, key questions are: 'How have the new schedules affected payments?', and 'Has the continued freeze on payments for medical-provider services and other changes affected access?'
- Finally, a key question is whether there is an interaction between changes in temporary disability (TD) payments, medical treatment and return to work.

*Evaluation of Reform Initiatives*

Ms. Wynn stated that evaluation of reform initiatives poses challenges. Significant evaluation challenges include: no single repository for administrative data; multiple changes with different effective dates; lag time between the effective date and when claims mature; and inadequate measures of appropriateness of medical care. Ms. Wynn also stated that evaluation needs to occur in stages: (1) early warning mechanisms need to be developed; a Division of Workers' Compensation (DWC)-funded study by UCLA is looking at access issues, and key informant interviews would update earlier findings; (2) baseline data from payers and self-insured employers need to be developed; (3) short-term effects on utilization and annual expenditures need to be examined; and (4) longer-term impacts and outcomes need to be examined.

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Ms. Wynn further stated that evaluation challenges highlight the need for ongoing monitoring and evaluation. The DWC has issued regulations requiring submission of medical bill data. Translating data into useful information requires: holding providers, payers, and employers accountable for data timeliness and quality; the ability to relate medical data to other administrative data sets; and standard and accepted measures to gauge system performance. Public-use files that protect worker privacy and confidentiality are needed for program evaluation and research.

*Medical Guidelines*

Medical guideline evaluation, Ms. Wynn commented, recommended further efforts to improve medical care. This included short-term priority topics for guidelines which include: physical therapy and chiropractic manipulation of spine and extremities; spinal injection procedures; magnetic resonance imaging of the spine; and chronic pain, occupational therapy, and acupuncture. Other efforts to improve medical care include longer-term effort to develop overuse and under use criteria to measure appropriate care; and an accessible clearinghouse for evidence-based information on common conditions and modalities that would help drive value-based care.

*Fee Schedules*

Ms. Wynn then stated that substantial changes have been implemented in fee schedules for medical services. First, Medicare-based fee schedules with regular updates have been established for: hospital inpatient and outpatient services; ambulatory surgery center facility fees; clinical laboratory services; ambulance services; and durable medical equipment, prosthetics, orthotics and supplies. In addition, maximum allowable fees for pharmaceuticals are tied to Medi-Cal.

Ms. Wynn stated that pass-through payments for spinal hardware remain an issue for the following reasons: Medicare's standard payment rates for inpatient services are intended to cover all items and services provided during the stay; Senate Bill (SB) 228 allows a pass-through under the payment system for the costs of hardware and instrumentation used in complex spinal procedures; and the pass-through continues until the DWC adopts a regulation specifying separate reimbursement, if any, for the hardware and instrumentation.

Ms. Wynn stated that RAND's analysis suggests that the pass-through is unnecessary for the following reasons: (1) worker's compensation patients are 14 percent less costly than Medicare patients; (2) before taking the pass-through into account, the estimated payment-to-cost ratio for workers' compensation spinal surgery patients was 1.45 compared to 1.20 for private payor, and lower when hardware was inserted (1.33) than when it was not (1.51), but still higher than the private payor average; and (3) excessive and duplicative payments create incentives for unnecessary spinal surgery and costly hardware.

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*Issues With Services Outside Medicare-Based Fee Schedules*

Ms. Wynn reviewed the remaining services outside Medicare-based fee schedules that raise issues, including: (1) physician and other practitioners, involving aggregate payment level, geographic adjustment factor, site-of-service differentials for facility component, and redistributions across specialties; (2) specialty hospitals, involving insufficient data to determine whether Medicare-based per discharge payments are reasonable for rehabilitation and long-term hospital and administrative burden, which is particularly an issue for hospitals with relative low workers' compensation volume; (3) home health agencies, where Medicare's per episode fee is unlikely to be appropriate for workers' compensation patients; (4) skilled nursing facilities, involving insufficient data to determine if per diem rates are reasonable for workers' compensation patients. In response to a question from Commissioner Davenport regarding the rates in Los Angeles, Ms. Wynn said that she could not comment on that.

Ms. Wynn then referred to additional issues including: services that are not covered by Medicare fee schedules requiring development of allowable fees, including repackaged drugs dispensed by physicians; transportation services other than ambulance; eyeglasses, hearing aids, etc., and home health aide services.

*Emerging Issues*

Ms. Wynn then stated that emerging issues also warrant attention. These include implications of the aging workforce on health and safety and workers' compensation; the potential of pay-for-performance initiatives for providers treating injured workers; and integration of group health and workers' compensation. She concluded by focusing on what is needed to drive value-based medical care for injured workers: an ongoing monitoring system to assess system performance with access, quality, cost, utilization, and patient satisfaction; clinical criteria to measure appropriate care; readily accessible evidence-based treatment information on common workers' compensation conditions and modalities; implementation of a new physician fee schedule; and evaluation of reform initiatives to inform future policy development.

*Questions and Answers*

Commissioner Wilson asked if there will be a recommendation to remedy the lack of central data collection. Ms. Wynn responded that steps are being put in place to gather data by DWC. Rules regarding the Workers' Compensation Information System (WCIS) have gone out. Ms. Wynn stated that RAND is working on identifying the standardized measures. The issue will be turning that data into data that can actually be used in ongoing monitoring of the system. Currently, there is a gap before that system will produce useful data, and some research needs to be short-term. Ms. Wynn commented that Christine Baker has asked RAND to put together a research agenda on medical care for the Commission.

Commissioner Wei asked if the data requested by the DWC is sufficient for exhaustive evaluation of the system. She also asked if there are any ongoing evaluation projects about medical treatment and if not, if RAND under any contract is to do an evaluation. Ms. Wynn deferred on the first question because she has not studied the DWC regulations but stated that she

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understands it to be a full claims database, which is important to gather because you need the flexibility as issues arise to have all that information in-house. She further stated that one thing that needs to be realized is that information contains administrative data but that quality measures require medical review. Ms. Wynn responded to the second question by stating that Dr. Nuckols-Scott and Dr. Ash of RAND presented the proposal that RAND has developed as a pilot to develop a measurement using carpal tunnel syndrome to CHSWC at the August meeting. Ms. Wynn stated that Christine Baker has been providing invaluable support in gathering stakeholders who might be interested in funding that proposal, but that right now, RAND does not have a contract.

Ms. Baker mentioned that the CHSWC/RAND feasibility study was approved at the previous CHSWC meeting and that eventually, there will be a research agenda for monitoring medical care and there will be no need to wait for DWC data, which would take a very long time to get.

Commissioner Wei asked if there is anything that needs to be done in the law to allow for more public access but to ensure patient confidentiality in the data. Ms. Wynn stated that she will address that in the report. She also stated that California does have more research that is done using data than any other state because of the data that the Office of Statewide Health Planning and Development (OSHPD) makes available.

Commissioner Salazar commented that he is concerned that there is a request for proposal (RFP) in process for some time that would allow the Department of Industrial Relations (DIR) to update its database system in order to generate the data and provide data for public use and analysis. He stated that he is not certain that even if the data were available, that there would be a system to allow CHSWC to use the data. He stated that it is a huge void given that many important and positive changes have been made to the workers' compensation system yet there is not adequate technology to evaluate the results. Chair Wilson commented that this has been an ongoing problem. He stated that he would appreciate some outside direction on what should be done.

Commissioner Wei stated that quantitative data is important, but there also has to be a qualitative research agenda to assess the quality of care. This type of data would show up in interviews.

**Update on Study of Repackaged Drugs in the Workers' Compensation System**

Frank Neuhauser, Project Director, UC DATA, UC Berkeley  
Barbara O. Wynn, RAND

Frank Neuhauser stated that he has been working on a CHSWC project with Barbara Wynn and Alex Swedlow from the California Workers' Compensation Institute (CWCI). He stated that he would talk about the main issues with repackaged drugs, the data sources for the study, the early results and future work.

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*Background*

Mr. Neuhauser stated that physicians may both prescribe and dispense drugs, and those drugs that come from the physician's offices are supplied by drug repackagers. These repackagers take large quantities of drugs from manufacturers and repackage them into single prescription sizes, for example, 30, 60, or 90 pills. The drugs are then re-coded with new drug identification numbers and are sold through the physician's office.

*Concerns*

Mr. Neuhauser stated that employers have been concerned about this process, particularly about the cost of repackaged drugs. There have been some complaints from employers and insurers that prices being charged for repackaged drugs are substantially in excess of the prices that are being paid by the workers' compensation department. Also, employers are concerned about utilization; when a doctor acts as both the prescriber and a dispenser, there may be some incentives for the doctor to over-prescribe certain drugs. In the past, there have been situations where doctors use their own laboratories and therefore self-refer. Mr. Neuhauser stated that doctors often see dispensing repackaged drugs as an opportunity for patients to have more convenient access to prescription drugs and improve compliance with the medication routine; however, another concern for physicians is that they feel that the fee schedule reimbursing for services is too low and they need the income from prescribing and dispensing repackaged drugs as a source of revenue to stay in business and deliver services to workers' compensation patients.

Prior to SB 228, the Official Medical Fee Schedule (OMFS) for California workers' compensation reimbursed generic drugs at 1.4 times the average wholesale price (AWP) and brand name drugs at 1.1 times the AWP. This was in excess of what was paid by private payors or Medicare. SB 228 aligned workers' compensation with the MediCal fee schedule, which is the lower of .83 times the AWP plus \$7.25, a dispensing fee, or the federal upper limits or maximum allowable ingredient cost (MAIC).

After the passage of SB 228, the issue of repackaged drugs became much more of a concern. Physicians were able to circumvent the MediCal pricing for drugs because the drug code was changed and there was no Medi-Cal pricing for repackaged drugs. Drug codes for repackaged drugs are not listed in the Medi-Cal formulary because the identification number is changed when the drug is repackaged. In this case, prior OMFS drug prices apply and will continue to apply until there is a statutory change or the DWC issues a new set of regulations.

Commissioner Davenport asked whether there are legal issues with the DWC issuing a new set of regulations. Mr. Neuhauser responded that he would defer to Judge Lach Taylor on this matter but that he believes that the DWC has the authority to create regulations about this. Judge Lach Taylor confirmed that the DWC does have the authority to do so.

Mr. Neuhauser then stated that prior to the CHSWC study, there was no information on the extent of repackaged drug use, no estimate of the premium paid for repackaged drugs, and no estimate of the impact on employer cost. The data sources were supplied by the California

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Workers' Compensation Institute (CWCI) ISIS database, which has a very large sample of prescription drug transactions. This is similar to the database discussed by Ms. Wynn. In addition, First Data Bank provided pricing data. MediCal also provided pricing data, particularly a "low-cost" price and a "no substitution price," as well as a discount to the AWP.

*Preliminary Findings*

Mr. Neuhauser stated that the preliminary results of the study show that for the five most commonly prescribed prescription drugs in the current system, a comparison between what MediCal pays for these drugs and the average repackaged drug price shows that the mark-up for repackaged drugs varies from 490 percent to 698 percent.

*Proposed Legislative Changes*

Mr. Neuhauser then reviewed proposed legislative changes for repackaged drugs. One proposal is to apply MediCal pricing to physician-dispensed drugs. Alternatives for allowing premium for physicians dispensing drugs have included a higher multiple to the AWP and/or a higher dispensing/professional fee. One of the key issues is that in pharmacies, generic drugs are being dispensed most frequently. Only about 6 percent of the time is a brand name drug dispensed at a pharmacy when a generic drug is available. In repackaged drug-dispensing, there is about a 50-50 split, so there is not much movement toward dispensing generic drugs. Brand name drugs with generic equivalents, which are frequently repackaged, have low acquisition costs but very high AWP. To avoid high costs in the repackaging of drugs, it will be important to restrict prescribing of brand name drugs.

Mr. Neuhauser then discussed the impact on employers if pricing proposed by SB 292 were in effect: with no change in physician behavior, there would be a 38 percent decline in costs; if physicians switched to all brand name drugs, there would be a 16 percent decline; and if physicians dispensed brand name drugs and generic drugs in the same proportions as pharmacies, there would be a 78 percent decline in costs. Mr. Neuhauser then stated that repackaged drugs are approximately 30 percent of workers' compensation prescription drug costs, much higher than anticipated. In addition, employers are paying about 4.5 times more than when drugs are dispensed through pharmacies. This is approximately \$150 million in added cost to employers.

*Future Study*

Future work, stated Mr. Neuhauser, will be to refine current estimates by doing additional analysis of sample characteristics and providing a full report on distribution of drugs and range of prices charged. There has also been some concern that pharmacies are using some repackaged drugs, as there have been efforts by repackagers to get into that field. In addition, research work will be done on the impact of dispensing on worker health and disability by examining the duration of lost time and the total medical cost. Research will also be done on the impact of physician dispensing on physician-prescribing practices, as well as an analysis of the impact of pharmacy proximity and access to pharmaceuticals on injured worker health and disability.

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*Questions and Answers*

Commissioner Steinberg asked about drugs dispensed by repackaging physicians that are never dispensed by pharmacies. Mr. Neuhauser responded that there was an observed tendency for physicians to overuse certain services where they had a vested interest; and there would be a concern that physicians are prescribing certain drugs that are not being dispensed by pharmacies are receiving some benefit, but that it would be difficult to control for the conditions of the study (types of patients and types of industries).

Commissioner Steinberg asked if there are repackagers repackaging both brand name and generic drugs and if physicians obtain both types of drugs through repackagers. Mr. Neuhauser replied that that is correct, and that this is a profitable business for repackagers, as well as profitable for those physicians who have enough volume to justify having an operation in their office. Commissioner Steinberg commented that this creates a workers' compensation burden of about \$150 million more. Mr. Neuhauser commented that that is on a paid basis; on an incurred basis, the cost is probably close to \$300 million. Commissioner Steinberg asked if that means some payors are not paying. Mr. Neuhauser commented that the payors do not have a choice, but he does not know if they have a basis for denying claims. He also commented that he has been contacted by a couple of insurance agencies which have asked what they could do about paying claims with repackaged drugs, but that is a legal question and he does not know the answer.

Mr. Neuhauser stated that what insurance companies will pay on the insurance claim over the life of a claim is typically about double what they pay during the year. He stated that the system is profitable. In the past, there was not a substantial difference in the premium that you paid a doctor and the premium that you paid the pharmacy; now there is a premium difference of about 450 percent because of the Medi-Cal OMFS.

Commissioner Wei asked if doctors prescribing drugs are required to prescribe generics. Mr. Neuhauser responded that pharmacies are required to prescribe generics but he was not sure about doctors. Judge Taylor commented that there is no law restricting what doctors can prescribe. Commissioner Wei then stated that we could extend the pharmacy requirement to doctors. She also stated that the state Labor Federation has written to the Administrative Director (AD) of the DWC requesting a regulation, as it does not appear that a law will be passed. She asked the Commissioners and staff to support the AD's effort to regulate repackaged drugs.

**Update on the Permanent Disability Study**

Frank Neuhauser, Project Director, UC DATA, UC Berkeley  
Lachlan Taylor, CHSWC Staff Judge

Frank Neuhauser thanked the Commission for the opportunity to provide an update on permanent disability (PD) and the presentation given at the previous CHSWC meeting in August. He stated that CHSWC has been the leader for almost a decade in analyzing issues of PD. He stated that the analysis he will present is a continuation of the CHSWC's research and also a

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response to the requirements of the legislation. The changes in the PD Schedule and the move to the American Medication Association (AMA) Guides should be analyzed with an eye towards correcting any problems when comparing this to wage loss for different disabilities and the adequacy of benefits.

*Study Approach*

Mr. Neuhauser stated that the data source for the PD study was the Disability Evaluation Unit (DEU), and the data were ratings between 1991 and September 17, 2005. A database was created at UC Berkeley, and then a comparison group was created to compare prior ratings to current ratings under the pre-2005 PD schedule. Comparisons are made based on time from the date of injury to the date of the rating, type of impairment, multiple disabilities and rating type, that is, whether it is a summary rating or a consult rating. The summary ratings are typically unrepresented workers, and the consult ratings are represented workers. The represented cases are typically more complex and involve larger ratings. The pool of ratings for unrepresented workers could look very similar to cases before and after; for represented workers, there could be changes due to SB 899, and this could influence whether the cases would go through the DEU. Mr. Neuhauser further stated that there is a set of claims where the impact cannot be seen yet, and that set does not get a rating under the AMA-based schedule and may not get to the DEU. The analysis of those cases will rely on some different approaches and future research. This situation could have an important impact on payment, both to compensation paid to workers and costs for employers.

*Preliminary Findings*

Mr. Neuhauser stated that there are now 2400 ratings that have been done under the new AMA-based schedule; that is up 50 percent since the previous CHSWC meeting. About 1,100 summary ratings were for unrepresented workers and 1,300 consult ratings were for represented workers.

The data show that average ratings for summary cases for the two schedules, the 2005 PD schedule and the pre-2005 PD schedule, have a similar decline of about 40 percent. With this data, the impact on the average indemnity award for summary ratings and for consult ratings for the 2005 PD schedule and the pre-2005 PD schedule is about the same, 50 percent. Mr. Neuhauser then stated that the dollar amounts have declined somewhat more than the average ratings.

The sample size for subcategories has increased since the data were presented previously. For the top four subcategories, wrist/hand, arm/elbow/shoulder, bwer extremity and spine, there is about a 40 percent decline in the average rating. Mr. Neuhauser further stated that psychological (psych) claims are not evaluated under the AMA Guides, as they are under a California approach, and those average ratings have increased under the new schedule by about 30 percent. For the "other" category, which is a pool of other illnesses and disabilities, the difference in average rating is less.

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Commissioner Wei asked if the ends are an accurate distribution of injuries in the system. Mr. Neuhauser stated that the end is how many summary ratings were observed with each of the impairment types. Mr. Neuhauser then stated that the data show more spinal injuries than we would typically expect to see, somewhat fewer lower-extremity injuries, and somewhat fewer psych injuries. The distribution is therefore not quite the same as what would be expected in the long run. He stated he would prepare a distribution that shows the current data against the long-run data. He then stated that it is not sure what the distribution under the AMA Guides will be.

Looking at consult ratings, Mr. Neuhauser stated that there are slightly larger numbers of ratings so the differences are larger. Consult ratings have many different characteristics that they may not be controlling for. Psych ratings are a little different with virtually no decline in the average rating. He then stated that applicant ratings under the old schedule were probably quite high and defense ratings were quite low, so applicant ratings under the new schedule probably can not increase very much. The "other" category shows substantially smaller declines in the average rating.

Mr. Neuhauser stated that the data shown is before the issue of apportionment, which is present in approximately 10 percent of the cases observed and now is about 11 percent of cases. On average, Mr. Neuhauser stated, about 5.5 percent of PD is being apportioned to non-industrial causation. This means that about 48 percent of disability is apportioned to non-industrial causes when it is apportioned, and it is apportioned about 11 percent of the time. The top four categories, wrist/hand, arm/elbow/shoulder, lower extremity and spine, show similar distributions in terms of apportionment for non-industrial causes, about 40 to 45 percent. Psych might look the same, but the apportionment is 80 percent of the remaining causation. In the "other" category, 66 percent is apportioned, but that figure needs to be re-evaluated. Therefore, Mr. Neuhauser concluded, apportionment is about 5 percent of PD, but it is very important to employers and workers where those injuries are being apportioned.

Mr. Neuhauser stated that ongoing research involves monthly data updates from the DEU and ongoing analyses of the data. It is expected that by mid-November, there will be between 4,000 and 6,000 ratings, and that should allow for fairly accurate estimates and to compare wage loss and average ratings under the old PD schedule and the PD schedule under the AMA Guides. There is about a 40 percent decline in the average ratings, both summary and consult ratings, about a 50 percent decline in the awards, and probably about an additional 5 percent decline in the cases with apportionment, which is about 11 percent of cases.

CHSWC Judge Lachlan Taylor stated that the Legislature has asked the Commission to recommend how the Permanent Disability Rating Schedule (PDRS) might be amended in conformity with SB 899. Judge Taylor presented a preliminary analysis to the Commission of how the PDRS could be amended using actual experience under the AMA-based 2005 PDRS using DEU data and noted that this was still work in progress. Judge Taylor also noted that two adjustments would be made to provide more accurate ratings for the schedule. One of the adjustments would provide the crosswalk between ratings under the AMA Guides and ratings under the old schedule. This adjustment would refine the FEC factors in the 2005 PDRS to more closely match the average ratings under the old schedule and the current schedule. Another

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adjustment would correct for inequities across different types of injuries using the ratio of ratings over earnings losses developed by RAND. The two adjustments would be combined in a formula to produce FEC multipliers which could be substituted into the PDRS to produce ratings which would, as nearly as possible today, match the expected percentage loss of FEC.

Commissioner Wei stated that this analysis seems to be on the path to comply with the statute. SB 899 required a PD system that was based on empirical data requested by RAND 2004 study and that required a PD system based on future earnings loss. She asked if the Commission were coordinating with the AD of the DWC and whether the AD will use the actual new ratings. Judge Taylor stated that they are trying to coordinate with the AD and respond to the legislative request which has been extended. Even if the AD were to accept this analysis, the problem would not be solved, as the schedule would need to be further refined and as the RAND report raised early concerns.

**CHSWC Report: Understanding the Effect of SB 899 on the Law of Apportionment**

Larry Swezey, Consultant  
Lachlan Taylor, CHSWC Staff Judge

Judge Taylor stated that SB 899 changed apportionment laws dramatically. As part of CHSWC's mandate to continue monitoring the workers' compensation system, a continuing examination of the changes in apportionment has begun on three fronts. Mr. Neuhauser already discussed data coming out of the DEU. Another phase is to examine decisions by workers' compensation judges, and still another is to analyze the changes in the interpretation of the law. This analysis paper has already been out for comments. Very few comments were received, and those who commented suggested that the Commission should wait for definitive interpretation by the courts. In response to those comments, Judge Taylor stated that Larry Swezey has done an exhaustive examination of the changes in the law and identified areas that remain to be interpreted. This is a continuing process. Although the interpretation will continue to evolve with time, Judge Taylor stated that the paper is valuable as a summary of the current state of the law.

*CHSWC Vote*

Commissioner Thacker moved to approve the report, and Commissioner Wei seconded, and the motion passed unanimously.

Chair Wilson then asked Ms. Baker to report on CHSWC staff activities.

**Executive Officer Report**

Christine Baker, Executive Officer

Ms. Baker presented the Executive Officer Report with an update on projects since the previous CHSWC meeting.

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*CHSWC Annual Report*

First, she stated that CHSWC staff had finalized the 2005 Annual Report and she did not anticipate any major changes, unless the Commission advises changes, just some final editing and then publication.

She stated that this Annual Report includes CHSWC's recommendations for legislative and administrative changes of the California workers' compensation and health and safety systems. The CHSWC recommendations in the 2005 Annual Report include:

- Evaluate the Revised Permanent Disability Rating Schedule to Assess the Impact of the Schedule on Premium Costs and Injured-worker Outcomes, Such as Wage Loss and Future Earning Capacity
- Continue Evaluating and Monitoring the Workers' Compensation System, Including the Medical System, to Determine Whether the Goals of the Reforms are Being Realized
- Conduct a Demonstration Project Illustrating How Quality Monitoring Might be Used in the System
- Restrict Costs of Repackaged Drugs
- Conduct a Survey of Workers Affected by the Spinal Surgery Second-Opinion Process to Evaluate Outcomes and Any Barriers to Treatment
- Evaluate the Impact of Apportionment Developed Pursuant to the New Statutes on the Medical and Legal Process

Ms Baker stated that the Annual Report is now ready for approval by the Commissioners. Commissioner Davenport stated that he was assuming that when the Commission makes recommendations and has the budget to implement the recommendations that the Commission will do so. Ms. Baker responded that CHSWC does have the budget to implement the recommendations.

*CHSWC Vote*

Commissioner Davenport moved to approve the report, and Commissioner Salazar seconded. The motion passed unanimously.

Chair Wilson commended the staff on behalf of all the Commissioners for another really outstanding job on the Annual Report, which is an extremely comprehensive report covering the Commission's activities. He encouraged the Commission to review the report and provide any comments to the staff.

Commissioner Salazar asked if the 2004 CHSWC Annual Report was formally approved. Ms. Baker responded that it was.

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*Strategic Planning for WOSHTEP*

Ms. Baker then stated that during the month of September, CHSWC staff spent quite a bit of time preparing for a Strategic Planning session with the Worker Occupational Safety and Health Training and Education Program (WOSHTEP) enters, the Labor Occupational Health Program (LOHP) at UC Berkeley and the Labor Occupational Safety and Health (LOSH) Program at UCLA. These two Centers assist with implementing WOSHTEP.

The first year of this program was dedicated to developing the curriculum and materials, and the second year was dedicated to piloting the training. Commission staff decided that it was now time to step back, look at the trends, make the necessary adjustments to the program's roll out, and direct resources in a systematic way to implement the program throughout California.

Ms. Baker stated that she was pleased to have both labor and management representatives present for the first day of the Strategic Planning Meeting and also representatives from UC Berkeley and EDD to advise WOSHTEP staff on the state of the economy and general demographic trends. Janice Shriver, from the EDD, addressed the changing California economy and workforce to provide insight into employment trends, and Frank Neuhauser gave a briefing on injury rates.

A panel addressed issues on key constituencies. The panel included: Scott Hauge of Small Business California, who spoke about the needs of small businesses and the ways to disseminate information to small business networks; Tom Rankin, Past President of ALF-CIO, and Andrea Dehlendorf, Staff Director, Northern California, SEIU, Local 1877, who provided perspectives on labor issues; Deogracia Cornelio, from LOSH, who presented information on the underserved workers; and Diane Bush, from LOHP, who addressed issues for young workers and the organizations serving them. In addition, Professor David Levine from the UC Berkeley Haas School of Business gave a presentation on the importance of evaluation and monitoring. Chair John Wilson joined the staff and presenters on the first day.

Ms. Baker stated that the two days were exciting. The information presented by the speakers on the first day and the working group activities on the second day helped to define priorities and action steps for all parts of the WOSHTEP program. She stated that she advised both LOHP and LOSH and the trainers that ultimately it is CHSWC that makes the decisions and that the staff will just summarize the information and pull together recommendations and submit to the Commission for review and approval. She stated that she will put together a briefing on the process and the reasons for the how the recommendations were made.

Ms. Baker then stated that she is pleased to report that the California Department of Corrections and Rehabilitation has decided to implement WOSHTEP throughout the state of California, and they will probably be monitoring the cost savings. The Department determined that their workers' compensation costs are so high and their safety problems so problematic that they needed to take some action. They identified WOSHTEP as the ideal program where labor and management work together to implement a safety program.

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*Permanent Disability Schedule*

Ms. Baker then commented that as discussed at this meeting, CHSWC staff is working on suggested changes to the PD schedule to more accurately reflect the average wage loss as determined by the RAND study.

*Fraud Assessment Commission*

Ms. Baker then stated that she will be attending the Fraud Assessment Commission (FAC) meeting next week, where she will brief the FAC on the Request for Proposal (RFP) that Commission staff, the Department of Insurance and the FAC worked on and will provide the FAC with some options that they may have regarding project initiation. The FAC does not have the funds to get started this year, but is in the process of a budget change proposal. She stated that she will also provide the FAC with some suggested timeframes for implementation.

*Other Projects*

Ms. Baker stated that some of the projects that were voted on last year are getting approved by the Department of General Services. These contracts took approximately 6-9 months to go through. CHSWC goes through the RFP process and then there is still paperwork as well as requests for more information to respond to. She stated that there are still questions and requests for information for the RAND contract that RAND is currently doing. Ms. Baker stated that if the delays continue, she would go to the Department of General Services to move the process along. The two projects that have been approved through the Department of General Services are the return-to-work study and the joint NIOSH-public safety officer disability study, which is going to be a cutting-edge study.

Ms. Baker stated that progress is being made with CHSWC's effort to explore the feasibility of a demonstration project on quality of care monitoring. This is the project that the Commission voted on at the previous meeting. She stated that she will provide a briefing on this project at the next meeting.

Ms. Baker then stated that the issue paper on terrorism will be presented at the next meeting for the Commission's review before going out to the public for comment. She also stated that a research agenda for the medical care is being developed with RAND, as well as a paper on the integration of benefits, and they will be presented at the next meeting. She thanked the Commission for its support.

Chair Wilson asked for any additional action needed. Ms. Baker responded that she would like Commission approval to post on the CHSWC website a working paper by RAND that has circulated, the Payment for Hardware Used in Complex Spinal Procedures Under California's Official Medical Fee Schedule for Injured Workers.

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*CHSWC Vote*

Commissioner Thacker moved to approve the release of the paper, and Commissioner Wei seconded. The motion passed unanimously.

Chair Wilson opened the meeting for public comment.

**Public Comment**

William Zachry, Chairman of the California Fraud Assessment Commission (FAC), stated that he has requested CHSWC's assistance with research concerning the extent and nature of fraud in the workers' compensation system. He stated that he appreciates the efforts of Commission staff to provide research support to get the projects together. He then stated that the FAC has assessed the funding and is waiting to ensure that it has the necessary spending authority within the state system to be sure that it can do the research.

Mr. Zachry also thanked CHSWC for exploring the issue of repackaging, which came before the FAC and which they consider as abuse of the system. He then stated that the FAC is concerned about other issues that possibly should be included in Mr. Neuhauser's research, such as the issue of potential problems with counterfeit drugs, which may actually constitute fraud in the system. He again thanked CHSWC for the partnership and for Commission staff support.

**Adjournment**

The meeting was adjourned at 12:15 p.m. The next CHSWC meeting is scheduled for Friday, December 9<sup>th</sup>, in Oakland.

Approved:

\_\_\_\_\_  
John C. Wilson, Chair

\_\_\_\_\_  
Date

Respectfully submitted:

\_\_\_\_\_  
Christine Baker, Executive Officer

\_\_\_\_\_  
Date