

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
February 9, 2006
Elihu M. Harris State Building
Oakland, California

In Attendance

Chair Angie Wei

Commissioners Allen Davenport, Kristen Schwenkmeyer, Alfonso Salazar, Robert B. Steinberg,
and John Wilson

Executive Officer Christine Baker

Not in Attendance

Commissioners Leonard C. McLeod and Darrel "Shorty" Thacker

Call to Order

Chair Angie Wei, 2006 Chair of the Commission, called the meeting to order at 9:07 a.m. She stated that Commission staff and Commissioners extend condolences to Commissioner Thacker on the death in his family. She stated that she will be taking public comment at the end of each Agenda item. She asked those who would like to speak to pass in a business card to Commission staff.

DWC Update

Reform Efforts and Regulations

Destie Overpeck, Chief Counsel

Insurance Study

Glen Shor, Research Program Specialist II

Medical Access Study

Lisa Dasinger, Research Program Specialist II

Glen Shor stated that he would present key points about the insurance study on the effects of workers' compensation reform on insurance rates, which was recently released by the Division of Workers' Compensation (DWC) which focused on the effect of workers' compensation reform on insurance rates. As mandated by Labor Code 138.65, which was part of Senate Bill (SB) 899 passed in 2004, the Administrative Director (AD) shall contract with a qualified organization to study the effects of the 2003 and 2004 legislative reforms on workers' compensation insurance rates. Mr. Shor stated that the purpose of the study is to: identify and quantify reform savings; review insurance rates to determine the extent to which the rates reflect reform savings; assess the effects of reform on replenishing surplus; review the effects on insurance rates, marketplace and competition; and review the adequacy and accuracy of pure premium rates recommended by the Workers' Compensation Insurance Rating Bureau (WCIRB) and the pure premium rates adopted by the Insurance Commissioner. Under Labor Code 138.65, the Governor and Insurance Commissioner are expected to review the results of the study and

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make recommendations as to the appropriateness of regulating insurance rates. Mr. Shor stated that if the Governor and Insurance Commissioner determine that rates do not appropriately reflect savings and the timing of the savings associated with 2003 and 2004 reforms, they may submit proposals to the Legislature. Those proposals should consider how rates should be regulated and by whom.

Mr. Shor discussed the study context, focusing on Assembly Bill (AB) 749, AB 227, Senate Bill (SB) 228, and SB 899, which introduced major changes into the workers' compensation system. Mr. Shor commented on repeal of the minimum rate law. He stated that insurance rate regulation has been part of the workers' compensation system since 1914. In 1989, reform legislation created the Rate Study Commission, which reported to the Legislature in 1992. This Commission recommended repeal of the Minimum Rate Law and reliance on competition within the context of the "floor with a door" minimum rates that could be pierced with prior approval of the Commissioner. The Commission also recommended ongoing assessment of the competitive market. In 1993, the legislature passes deregulation of workers' compensation rates, effective 1995. Mr. Shor stated that key issues need to be addressed, including: the cost savings generated by reforms; the extent to which savings were reflected in rates; the effect on insurer surplus; the effects on the marketplace and competition; and the adequacy and accuracy of WCIRB proposals and Department of Insurance (DOI)-approved pure premium rates.

Mr. Shor stated that the role of the DWC is to contract with a qualified organization, Bickmore Risk Services (BRS), after consultation with the Insurance Commissioner and staff, to conduct the study; to facilitate and help assure access to relevant organizations, data and claims files for review; and to accept and submit a study report to the Governor, the Legislature, and the Insurance Commissioner. He stated that the project timeline began in April 2004 with the passage of SB 899 and concluded in February 2005, when a report was delivered to the Governor, the Legislature, and the Insurance Commissioner and was released to the public. The study is currently available on the DWC website and the website of BRS.

Mr. Shor introduced the study project staff: Gregory Trout and Mark Priven of BRS and Malcolm Dodge of Octagon Risk Services, subcontractor to the contractor. Mr. Trout stated that the conditions leading to reforms were the change to open rating in 1995, under pricing of the insurance product for workers' compensation, claims cost increases, premium increases (after 2001 and 2002), and a large number of carrier insolvencies from 2000 to 2004. From 1995 to 2001, the WCIRB was recommending pure premium rates under open rating, and loss costs were eating up all of the premium with very little left for all the other costs that an insurer incurs. The BRS Study of Reforms was authorized by SB 899 and initiated by the DWC, through an assessment on the insurance industry. The scope of the study is the impact of reforms on claims costs, including charged premiums, insurance company surplus, marketplace/competition, and WCIRB/California Department of Insurance (CDI) estimates, as well as evaluation of rates in other states, evaluation of the reforms in other states, an evaluation of the regulatory structure (DWC, WCIRB, and CDI), and the role of the Commission. Mr. Trout stated that the areas that were outside the scope of the study included: fairness of benefit levels and medical fees; quality of and access to medical care; effects of reforms on self-insurers (including public, local

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government, state and private employers, constituting possibly 25% of the employer market in California); and long-term effects of reforms.

Mr. Priven stated that based on data from the WCIRB for active insurers, the overall one-time savings from claims prior to reforms from medical fees, evidence-based medicine, and permanent disability that occurred on claims in 2000 and prior were \$5.4 to \$9.4 billion for active insurers and \$6.4 to \$10.7 billion for all insurers. Mr. Priven stated that there is a big difference between what insurance companies were reporting and what the WCIRB was estimating that the ultimate cost would be. Information on deductibles and re-insurance affect these numbers. Therefore, these numbers can not be taken literally, but they can indicate the general magnitude and the direction or change. Looking at the retrospective impact of reforms, January 1999 and July 2003, rates were steadily increasing; after that, rates decreased steadily due to reforms. The decrease indicates that the reforms have had more than 46% impact. Mr. Priven stated that it is possible to project what the rates would have been without reforms as cost drivers would have continued to cause increases. Commissioner Davenport asked if this is a mathematical projection, which does not take into account actual circumstances. Mr. Priven responded that it is just a mathematical projection and it is based on 10% per year.

Mr. Priven stated that as for policies incepting in January 2006, the annual savings is \$8.1 billion dollars. He stated that there is tremendous uncertainty in evaluating the benefit of reforms, and the study tries to give a sense of that by giving low and high estimates, with the difference between those estimates being quite substantial. Mr. Priven stated that the claims costs savings from reforms could be broken down by component, though the cause of the changes could not be broken down. Chair Wei asked if the chart indicates that 40% of the estimated savings came from permanent disability, and Mr. Priven responded that it did. He also stated that there are several parts to the permanent disability component. Twenty percent are due to claims that are rated zero. Roughly, half of the savings are due to apportionment or claims no longer available or the two-tiered system. Chair Wei asked if the portion which is evidence-based medicine, which represents the use of ACOEM Guidelines and utilization review, can be broken out, and Mr. Priven responded that they can not break that out. Mr. Priven stated that the study indicates insurance company rates filed for all insurance companies, comparing what the CDI and WCIRB thought the rate change should be and what an insurance company actually took as a rate change. Starting in 1999, the underwriting ratio, or how much money is paid out relative to how much money is taken in, indicates that prior to reforms in 2000, insurance company rates were going up, and after reforms, underwriting ratios were going down. Chair Wei asked where 41%, which is not accounted for in terms of extra costs, is. Mr. Priven responded that it would with the insurance company.

Mr. Priven stated that the study also looked at changes in the market after reforms, by focusing on market share of the State Compensation Insurance Fund (SCIF) by year. From 2000-2003, market share increased substantially, and since 2003, SCIF's market share has decreased substantially. He pointed out that there are adjusted and un-adjusted numbers because SCIF reports its premiums on a slightly different basis than other insurance companies.

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Mr. Priven also stated that the study compared California to other states post-reform by looking at approved CDI rates on losses only and compared the loss rates in California to several other states, especially western states and large states, including Florida, New York and Texas. Prior to the reforms, California was either the highest or second highest in the nation, well above most of the other states. After reforms, California had lower rates than Florida and Montana filed rates by more than 25%; Alaska and Texas are 0-25% higher than California; Minnesota is 0-25% lower than California, and the other states have rates that are over 25% percent higher than California.

Mr. Trout stated that they did a detailed claim file review of four of the major insurers in California of approximately 400 claim files to determine the effects of reforms at the claim file level. The findings are provided in detail in the report. He stated that they also conducted surveys of employers throughout California through electronic survey, as well as the major insurance agents and brokers, to determine the state of the market in California and how competitive it was. The results are contained in the report in the Appendices. He stated that they also conducted an in-depth survey of executives in the medical network provider (MPN) industry, because MPNs are a key component of SB 899, to get an understanding of whether that had an impact on costs.

Mr. Trout stated that uncertainties remain; these include how future and retroactive cost savings will be affected by changes due to legal decisions, legislative changes, regulatory changes, and changes to the system through voter initiatives. Areas suggested for further study include: California Insurance Guarantee Association (CIGA) and its funding capacity, as well as the effect of reforms on CIGA and its future liabilities and capabilities for future income; closer evaluation of the role that SCIF plays in the competitive market; effects of reform on the public sector; a significant component of the California workers' compensation system; a more thorough review of the adequacy of the current regulatory system and whether the regulations through CDI and DWC can control a recurrence of a destructive market cycle and impact on CIGA and future policyholders in the state; and a more accurate monitoring of competition so that a healthy competitive market is maintained.

Commissioner Davenport asked if there was enough time to do the study and meet the DWC's objectives. Mr. Trout responded that there was sufficient time to reach the results required by the DWC and the Legislature. They are prepared to continue working on the report if there are areas still to be identified. Commissioner Davenport also asked whether there was a particular effect that SCIF had during the course of the reforms that was either good or bad for the general marketplace. Mr. Trout responded that SCIF's market share changes have to have an effect on the market and the availability of adequate services provided to injured workers and employers. He stated that it is important to maintain a competitive market; SCIF has a dual role as both part of the competitive market and as a residual market. He stated that there is an important question of whether there should continue to be a residual market in California, and therefore maintaining the solvency of SCIF, as well as maintaining a private market.

Commissioner Davenport asked if the study was limited to the fiscal outcomes for insurance marketplace, not how the savings were generated. Mr. Trout responded that that was true. Chair

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Wei asked about the 27% savings from quantifiable, evidence-based measurements and asked what percent of that savings has been passed on to premium reductions. Mr. Trout responded that it was not possible to answer that question because only the total costs and total premiums can be reviewed. Chair Wei asked if the chart represents all of the savings insurance companies had taken into account 100% of the savings. Mr. Trout responded that each insurance company makes its own determination of what the savings are, and that there were some minor savings that had not been taken into account. Commissioner Steinberg asked about permanent disability costs, and Mr. Trout responded that a reduction in permanent disability cost because of the new permanent disability schedule held a degree of uncertainty that could affect older claims. Commissioner Steinberg asked what exists currently that would restrain the volatility of the insurance market, or what BRS might recommend if nothing currently exists. Mr. Trout responded that there are now greater controls over the cost drivers because of reforms that did not exist with open competition. Also, the rate-making process should be more accurate because there is a much more careful monitoring of the process, and there have been some minor statutory modifications that give the Insurance Commissioner greater control over rates to help prevent predator pricing. He stated that this issue needs further study. Commissioner Steinberg asked if Mr. Trout believes that the Insurance Commissioner has adequate authority over rates. Mr. Trout responded that this is an area that warrants further analysis.

Steve Zeltzer, from the Coalition for Workers' Memorial, stated that his organization finds it contemptible that the first study on the effect of the reforms has been on insurance companies and not on injured workers and how they are being treated under reforms. The \$760,000 spent on the study from state funds has gone to a firm that does businesses with workers' compensation insurers and is in favor of the private market running the workers' compensation system. He stated that the deregulation bill, SB 899, was written by the insurance industry. He stated that his organization believes this is a conflict of interest and not an objective analysis when the people doing the study are in the insurance business. He also stated that cost shifting is going on because workers are not getting medical benefits from their employers and the insurance companies; as a result, they are winding up in public hospitals and on welfare and on SSI, and that the people in California are paying the cost. He also stated that interpreters who would help non-English-speaking workers are not getting paid for translation services unless the worker wins his/her case and that means that non-English-speaking workers are having difficult getting interpreters to help them get their benefits. Injured workers are having to fight insurance companies and the bureaucracy to get their medical benefits.

Destie Overpeck, Chief Counsel for the DWC, stated that her presentation will cover the status of regulations implementing the reforms. She stated that the first response to the SB 899, the medical provider networks, became effective September 15, 2005. The independent medical review regulations became effective June 10, 2005, and the permanent disability regulations also became effective June 10, 2005. The return-to-work regulations have had a public hearing and just were sent out for an additional 15-day comment period. The predesignation of personal physician regulations were sent to the Office of Administrative Law (OAL) for final review and should be approved by March 13, 2005. Labor Code 5814.6 penalty regulations will be ready to be submitted to OAL and sent out to the public by the end of February with the hearing date

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being April 27th. Rule-making for the qualified medical evaluator (QME) changes will begin with rule-making shortly; non-substantive changes have already been approved by OAL.

Other regulations that are also in process that relate to reform measures other than SB 899 include:

- Sending in the workers' compensation information system medical data collection to OAL and approval is expected by March 22nd.
- The medical treatment utilization regulations should be ready to be submitted to the public by the end of February or early March. The utilization review penalty regulations are going to be submitted to OAL by the end of February with an anticipated hearing date of April 27th.
- Medical-legal report fee schedule regulations were submitted to OAL on December 6, 2005, and the public hearing was the end of January and public comments are currently being reviewed.
- The electronic billing regulations, part of SB 228, are being discussed in ongoing monthly meetings and should be ready to be submitted to the public by March.
- The update of the benefit notice regulations should be ready by March.
- The audit regulations should also be updated and go out to the public in March.
- And the repackaged drug regulations have been reviewed and a revised draft is currently under consideration. Ms. Overpeck stated that progress on rule-making is available on the DWC website, except for those that have not left the DWC office as yet.

Chair Wei asked if information could be sent to the Commission for posting on the Commission's website.

Dr. Lisa Dasinger, Project Director for the medical access study of the DWC, stated that according to Labor Code 5307.2, of SB 228, the AD is mandated to contract with an independent research consultant to perform an annual study of access to medical treatment for injured workers. The study shall analyze whether there is adequate access to quality health care and health care products and make recommendations to ensure continued access. Dr. Dasinger stated that if the AD determines that there is insufficient access, the AD may make appropriate adjustments to medical and facility fee schedules and may adopt fees in excess of 120% of the applicable Medicare payment system fee for the applicable services or products. Dr. Dasinger stated that the study is being done with regard to system changes which are part of SB 228; as of January 1, 2004, major changes made in the workers' compensation system included: repeal of the treating physician's presumption of correctness; adoption of peer-reviewed, national recognized evidence-based medical treatment guidelines (ACOEM guidelines); establishment of a mandatory utilization review process by employers; a 24-visit limit on chiropractic and physical therapy for the life of the claim for all claims; and a 5% reduction in fees for most physician services. In addition, as part of SB 899, as of January 1, 2005, employers may establish medical provider networks (MPNs), as well as limitations on occupational therapy visits to 24 visits for the life of the claim.

Commissioner Davenport asked about the promptness of medical treatment. Dr. Dasinger stated that this is a component of access. She stated that the study looks at how these changes

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potentially affect access to medical care at many levels, including: whether and how much physicians are willing and able to participate in the workers' compensation system and treat injured workers; the nature, quantity, and quality of medical care an injured worker receives; and who controls access to medical care. Study questions to be addressed are: what is the current nature of access to health care and health care products? Is there access to quality health care and health care products? If access problems exist, are they substantial? The study will establish a base line for access and quality of care for injured workers.

Dr. Dasinger stated that the study teams include the DWC, the UCLA Center for Health Policy Research, and the San Francisco State University (SFSU) Public Research Institute, a subcontractor of the UCLA Center. The study design includes four surveys: a physician survey of 1200 current and past workers' compensation providers; a physician survey on California physicians; an injured worker survey of 1,000 workers who have had an injury in 2005; and a claims administrator survey of self-insured, self-administered employers, insurers and third-party administrators. The project timelines include: July 2005 to February 2006, which will be for literature and survey instrument review, survey development sample design and selection of participants and fulfilling requirements of three Institutional Review Boards (IRBs), one from each center and one from the state; February 2006, which will be for interviewer training and pilot testing of the survey instrument; and March 2006, which will be for the start of data collection, the timing of which depends on IRB approval.

Commissioner Salazar asked if the study is on schedule. Dr. Dasinger said that the schedule is a little uncertain because of the IRB process. Chair Wei asked if the surveys will include doctors or nurse practitioners who perform utilization reviews. Dr. Dasinger responded that the physician surveys will be limited to those treating injured workers; there is no way of knowing if the physicians in the sample perform utilization reviews. Chair Wei asked if there is a date for completion of the study, and Dr. Dasinger replied that they are aiming for the end of the summer of this year. Commissioner Wei asked if the study will be able to be updated and reissue every year, and Dr. Dasinger replied that it would.

Chair Wei asked for public comment. Anita Labossiere stated that the study did not include the Bay Area and northern California, even though there are many injured workers in northern California. Dr. Dasinger replied that the data includes injured workers from all over the state. Ms. Labossiere stated that she is an injured worker who has been told that she cannot get workers' compensation and she would like to know what avenues the Commission can suggest for people like herself other than an attorney, as she cannot afford attorneys' fees. Chair Wei responded that the Commission is not able to deal with individual cases but Commission staff would be ready to speak with her to indicate any resources that might be helpful to her.

Steve Zeltzer stated he was speaking on behalf of Barbara Clark who was injured on the job and could not be present today. He stated Ms. Clark faced retaliation after her injury from her employer after she filed a workers' compensation case. Her employer released her personal documents after she filed the complaint and displayed them in public places. He stated that under HIPPA laws, medical records are no longer private. He stated that he believes that a survey

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should be conducted on HIPPA laws and on employers releasing private medical reports and using those reports to punish workers after workers' compensation cases are filed.

Dina Padilla, President for the California chapter of Voices and with the Coalition of Injured Workers, stated that since SB 899 went into effect, medical care has been unavailable or cut off for injured workers, even those who have had court action. She stated that since her own injury case in 1989, insurance carrier adjusters are making legal and medical decisions that they are not licensed to make. She stated that there should be a survey of all injured workers to see if they are getting care.

Carl Brakensiek stated that if the access study was going to be used to establish a base line, it should include physicians to ask them about their willingness to treat injured workers during 2003 and 2004. Dr. Dasinger replied that they would be asking physicians about their history of treating injured workers. As many as 50% of doctors are indicating that they are declining to take new workers' compensation cases and this is a crisis that needs to be addressed.

Minutes from the December 9, 2005 Meeting

CHSWC Vote

Commissioner Wilson moved to approve the Minutes of the December 9, 2005 meeting, and Commissioner Davenport seconded. The motion passed unanimously.

Permanent Disability Rating Schedule Recommendation

Lach Taylor, Workers' Compensation Judge, CHSWC
Christine Baker, CHSWC Executive Officer

Judge Lach Taylor stated that it is important to understand permanent disability issues and that permanent disability reform is part of overall system reform. Permanent disability costs are only one part of the escalating costs of the workers' compensation system. Reforms have made dents in many areas. Reforms had to be made to permanent disability system because of high costs. A doctor evaluates the medical impairment and the rating schedule is used to translate the medical impairment into a disability. The old schedule used a standard rating, while the new schedule uses the AMA impairments modified by an adjustment factor, or a future earning capacity (FEC) factor. The permanent disability schedule includes tables to adjust the standard rating on the basis of occupation and age of the worker. The labor code converts the percentage to a number of weeks and dictates the weekly rate.

Judge Taylor stated that by adopting the AMA Guides, some cases are no longer ratable; these cases are called the zeroes. These cases are difficult to evaluate because they disappear from the system. There have been some efforts to quantify them. The study by Dr. Brigham came up with roughly 40% of cases that were ratable under the old schedule no longer being ratable under the new schedule, those cases representing 30% of the dollars. Another study by Dr. Leigh came up with 10%. Judge Taylor stated that he would use 15% or the middle of the range. The statutory

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changes caused by SB 899 included: the zeros; the reduced weeks of benefits, or roughly a 10% reduction of the total dollars; a return-to-work incentive, or 3% of the dollar cost; and an apportionment to non-industrial causation. These factors together take out roughly 30% of the dollar cost. Judge Taylor stated that the current schedule must use the AMA Guides and must use a diminished future earning capacity factor, which should be based on the RAND study. The RAND study measured losses over time after injury; it measured the percentage of drop in earnings depending on type of injury; and it showed the percentage of earnings loss for injured workers compared to their uninjured peers for each type of injury. The RAND report found that under the old schedule, the relationship between type of injury and loss of earnings was variable. Under the 2005 schedule adopted by the former AD, the ratio of ratings to earnings losses is still not uniform for all types of injuries. In the first 3,500 cases, there was a 40% cut in ratings and about a 50% of cut in dollars, which resulted in about 2/3 of the dollars in the permanent disability system. Another 3,500 cases were available yesterday and the averages are holding true.

Judge Taylor stated that the proposal does not recommend a specific public policy decision but recommends three options. Judge Taylor stated that he will speak to some of the comments and provide responses. One of the comments has been that there is insufficient data to make a proposal. As the averages have grown, the percentages have stayed steady; therefore, what is being observed in the data is a good indication of what will happen in the near-term, about the next two years. Judge Taylor stated that another comment is that the data are not representative because attorneys have been waiting to present cases. The study uses only summary ratings. In addition, attorneys are not involved in the cases with summary ratings. There is also a question of the maturity of cases. Cases get more expensive as time goes by. In the sample observed so far, over 5.5% were rated more than three years after date of injury because the 2005 schedule is being applied to injuries before 2005, so the sample has a fair representation of the more mature cases. Judge Taylor also stated that there has been concern that doctors ratings will change as they become more familiar with using the AMA Guides. He stated that the schedule should be regularly updated. The report is suggesting that the schedule be updated every two years so rating creep will be factored out as FECs are recalculated every couple of years. Judge Taylor stated that leaving out attorney-represented cases, results in studying less than half the total population of cases. However, he stated, that attorney-represented cases have come within 1.5 percent of non-attorney-represented cases.

Judge Taylor stated that another objection has been about whether the most current data are being used. He stated that there is no way to use current injury cases and measure the long-term earnings loss, or loss over three to five years. The next update is expected around 2008 and should be periodically updated, probably on a five-year schedule eventually. With changes due to reforms, there will be differences in earnings losses, so periodical updating will be important. Judge Taylor also stated that the report does not recommend a particular policy decision. The permanent disability schedule is only one step in the total cost of the workers' compensation to employers. The Commission does not address other steps. There has been very little time for public comment.

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Commissioner Davenport stated that permanent disability has been discussed at every meeting over the last year. Judge Taylor responded that this is the first time that the public is seeing the proposal.

Public Comment

Chair Wei stated that all comments from members of the public that were received by the Commission in advance are available at this meeting. She stated that Jason Schmelzer from the Manufacturers' & Technology Association had submitted comments in advance and has contacted the Commission and Commission staff has recommended, and as Chair she agrees, that he would be able to ask questions and have a longer period of time to comment than the three-minute public comment period.

Jason Schmelzer stated that he is not attempting to talk about what should be done but to focus on the findings of the study and the way it was conducted. He stated that throughout the study, it is stated that this is the best available data or the best available method. He stated that it is important to consider that the best available option is not necessarily a good option. He stated that the first problem is the reliance on summary ratings, as he does not see how you can take those ratings, which are the simple, unlitigated minority of claims in the system, and make a broad statement about the performance of the entire system. Judge Taylor responded that out of 3,300 summary ratings, the average rating dropped 42.8% and out of 3,700 attorney-represented cases, the average rating dropped 44.1%. That is a 1.3% difference. So that while these two types of cases are different overall, they having been affected similarly.

Mr. Schmelzer stated that sample size is small in comparison to other studies done on evaluating the workers' compensation system. Judge Taylor responded that the RAND FEC study had approximately 100,000 cases. A summary of this report is in the draft report. He stated that pure size is not the most important factor; it is how much confidence you can have in the averages. If the numbers are tightly clustered around a specific point, then you can be confident that that is the average. The initial sample size had a standard error less than half a point for the type of injuries that cover more than 85% of all cases. Now that the sample size has doubled, there is more confidence that these ratings speak for the experience of the system.

Mr. Schmelzer stated that concern that in one of the footnotes, it is claimed that prior to the 1/1/05 permanent disability schedule, attorneys were doing their best in the interest of representing their clients to make sure that big claims were rated under the old schedule. There may also be some concern that attorneys are currently holding back some cases, waiting for changes to the permanent disability schedule. That might cause a smaller number of high-dollar cases to be part of the sample of consultative ratings. There is a possibility that the sample of consultative cases would have a smaller number of serious high-dollar claims within it. Judge Taylor responded that the attorney-represented cases, once there is a larger sample, might sustain a large impact than the non-represented cases. Mr. Schmelzer stated that there is still a problem of looking at one small portion of the workers' compensation system and saying that it represents how the entire system works.

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Mr. Schmelzer stated another problem with the study is that the RAND FEC study uses old data from the late 1990's, and the workers' compensation system in its entirety has changed radically from that time. He stated that current data would probably be different because of increased return to work and the use of ACOEM guidelines which streamlines treatment and leads to appropriate treatment. He stated that these factors should lead to lower loss of future earnings capacity. He stated that the RAND study would not apply when trying to evaluate the system. Judge Taylor responded that if you took the same population as in the RAND study, the number of cases would be 7/8 of what was there.

Judge Taylor stated that needs to be a cultural change in the state where injured workers get back to work, but that will take a long time to achieve. Mr. Schmelzer asked if there was an attempt to evaluate the impact of return to work on the sample. Judge Taylor responded that there was no attempt in the current study but that RAND is doing a return-to-work study. Mr. Schmelzer asked what the total reduction of permanent disability is according to the study. Judge Taylor responded that 2/3 of the permanent disability cost, because 30% are statutory, and the remainder is based on the schedule, was at \$22 million in 2004 and now it would be one-third. Mr. Schmelzer asked if there are any other evaluations to compare the study's numbers and Judge Taylor responded that he could not think of any at this time.

Mr. Schmelzer also stated that there are concerns about the timeline recommended for adoption of the schedule, that the new schedule be published by March of this year and be adopted by July first of this year, and asked whether there was sufficient public policy discussion. Judge Taylor responded that it is important for there to be enough lead time for the insurance industry to price its products, and there should not be unnecessary delay. He asked if Judge Taylor thought that there was sufficient time for a public policy decision. Judge Taylor responded that he was not sure. Mr. Schmelzer stated that he would like to see more analysis financially and statistically on the age modifier portion of the study. Judge Taylor responded that the California age modifier is based on the assumption that the older the worker, the more severe the economic impact of the medical disability. Empirical data in the RAND study shows that this is not true, as it is most severe for the youngest and least severe for the middle and something in between for the older worker. One of the report's recommendations is to adjust the age modifier to be consistent with the RAND findings. Mr. Schmelzer asked if modification of the age modifier based on the RAND FEC study could affect the formula for the schedule. Judge Taylor responded that the public policy decision will relate to the age modifier and could be taken into account at that point.

Mr. Schmelzer stated that he would like to see examples of how the FEC formula would work with different numbers. He stated that once the study leaves the Commission, it will be used as a tool to make public policy decisions. He stated that he is concerned that the data is insufficient to come to the conclusions of the study and convince the Association that it is true, even partly true. He stated he would like to see that the concerns he has raised are addressed before the study is sent to the Legislature and is used as a tool for making public policy.

Commissioner Davenport stated that the former AD met her deadlines to develop the regulations that were supposed to be empirically based, and he asked Mr. Schmelzer if he and his colleagues

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had participated in that process and if they had found the timeframes and the datasets used for that analysis satisfactory or more satisfactory or equally satisfactory than the present process. Mr. Schmelzer responded that he was not in a position at that time to evaluate the process. Commissioner Davenport asked if the California Manufacturer's Association had taken a position on that process. Mr. Schmelzer responded that it did and that a representative from the Association involved at that time is present at this meeting.

Commissioner Davenport asked if Mr. Schmelzer found the present regulations completely satisfactory based on what he knows about how they were derived. Mr. Schmelzer stated that he does not see an empirical evaluation of the regulations or that schedule in the Commission's study. He stated that he is concerned about the appropriateness of the data in the study. Commissioner Davenport asked if Mr. Schmelzer felt the same way about the current schedule and he replied that the same issues could apply if there was not sufficient data.

Commissioner Salazar asked that the debate about the study needs to be presented formally. He asked if there is a way to better formalize questions and concerns about the study and responses from Commission staff to the questions and concern raised at this meeting. Chair Wei stated that she recommends that the public comment be continued and then hear from Commission staff about a recommendation from the Commissioners to consider. Commissioner Salazar agreed that that would be an appropriate action.

Liberty Sanchez, from the law offices of Barry Broad, stated that she would like to urge the Commission to adopt the study with a couple of caveats. She is concerned about the recommendation that the disability ratings be deemed conclusive. That is based on the fact that the original schedule as revised by SB 899, promulgated in the regulations adopted by former AD Andrea Hoch, so greatly differed from what the intent of the legislation was. She stated that she is concerned that the former AD would deviate so significantly from what the legislation had passed and signed into law. The second concern is about the recommendation that any amendments to the schedule apply prospectively instead of retroactively to cover the period of time since the adoption of the new schedule. She stated that she is also concerned about comments from the employer community about the sample being too small. She stated that even if one injured worker receives a reduction in benefits, that is too many, and so to wait for more data is unacceptable. She stated that she appreciates that the former AD agreed to review the schedule more quickly than that outlined by law, and she wants to urge the existing Acting AD to act immediately to make changes to the schedule to ensure that injured workers receive appropriate benefits.

Dina Padilla stated that part of SB 899 changes were geared to address what was going on which was to deny and delay workers' compensation medical care and benefits. Injured workers could not get benefits over a number of years and suffered extreme economic hardship. Some injured workers were forced by applicants' attorneys and insurance carriers into accepting a Compromise and Release (C&R) payment of 6-10 percent of the permanent disability rating, which was insufficient to live on. She also stated that it was a known fact within the claims adjusting community that attorneys were pushing claims so that could be under the old schedule.

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She stated that injured workers do not get adequate compensation whether it is for medical care, permanent disability or temporary total disability.

Scott Lipton, representative from the California Coalition of Workers' Compensation (CCWC), stated that a key area of concern is the incongruity between summary and consultative ratings and how they relate to one another and that nowhere in the Commission study was the relationship between these ratings fully explained. He stated that he is also very concerned about the short public-comment period, three business days to review and draft comments, and that the Commission had less than two business hours before the Commission's meeting to review public comments and potentially adopt them into a form recommendation to the requesting parties of the study. This extremely short turnaround time gives the impression that the Commission less interested in thoughtful discussion as in achieving a political goal. Commissioner Davenport stated that the Commission does not have a political goal; it has a deadline to meet that was established by people the Commission is accountable to. He asked Mr. Lipton about what role he played in the development of the regulations and how he finds the actions of the former AD and her reliance on empirical data to determine the new schedule in comparison to what is being proposed in the Commission's study. Mr. Lipton responded that he could not comment on the empirical data former AD used. He stated that it was his understanding that there was an advisory panel of over 25 stakeholders that had several months of discussion before the regulations went through the regulatory process, and the panel went through the full OAL and regulatory process. He stated that he cannot speak to the use of dataset by the former AD, but that the timeline for the former AD was longer than the timeline of the recommendation of the Commission. Commissioner Davenport asked if Mr. Lipton's organization had criticism about the data set the former AD used. Mr. Lipton responded that he could not answer this question. Chair Wei stated that the permanent disability regulations for the current schedule were adopted by the former AD on an emergency basis after a five-day public-comment period. It was not done through the regular rule-making process until after adoption as emergency regulations.

Marti Fisher, from the California Chamber of Commerce, stated that one of the key components of the workers' compensation reforms was to address inequities and imbalances in the rating system. She stated that the workers' compensation system is a complex system; therefore, she stated that she is concerned that there was not an adequate amount of time for review of the study and time for public comment for the Commission's study and for the public policy issues at hand. She also stated that permanent disability ratings and how future earning capacity is determined are very broad issues and more time needs to be devoted to public comment on these issues. Ms. Fisher stated that her organization supports an 18-month study, that has been previously recommended and is based on data being collected by the Division of Workers' Compensation (DWC), and that will include a wide array of data that could be used to assess the impact of the schedule. The data and methodology of the Commission's report could be included in that study. The Chamber urges that the report be held until more complete data are available and can be studied. She also stated that she was not involved in the development of the current schedule. Commissioner Davenport stated that he would like to point out that if the deadline for the former AD was not sufficient to do the work in the right way, then he wonders if the Chamber felt the same way about that timeframe, and about the other issues, as it feels about the timeframe for the Commission's study. Ms. Fisher stated that she does not have that insight

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and there was no time to prepare for that question. Commissioner Davenport stated that it is only fair to ask for the same standard to be used for both sets of recommendations.

Lori Kammerer, Kammerer & Company, stated that she strongly recommends that the Commission adopt the report. She stated that there is a lot more data now than when the former AD adopted the current schedule. She stated that it was never the intention of the legislation to reduce workers' compensation benefits in the upper end. She also stated that there will be more discussion about this recommendation in the future. She stated that she believes that the Commission's paper is a good start to address issues with the new schedule.

Carrie Lee, California Restaurant Association, stated that she has the same concerns raised by Jason Schmelzer of the California Manufacturers' & Technology Association and the Chamber of Commerce.

Willie Washington, former employee and currently consultant to the California Manufacturers' & Technology Association, stated that he would address Commissioner Davenport's question about the current schedule and whether or not the Association concurred with that schedule. Mr. Washington stated that the difference between the consensus on the current schedule and the lack of consensus on the Commission's study was that it was clear what the current schedule recommendations were based on and a number of meetings. He also stated that meetings were held with a number of participants on the current schedule, whereas with the Commission's report, there have not been discussions about the selection of the criteria, how it would be used and how the report would be formulated. Commissioner Davenport asked Mr. Washington about the empirical nature of the data for the Commission's report and for the process for the current schedule. Mr. Washington replied that the RAND report was not based on empirical data and has been challenged and the report had to be redone so that it was satisfactory to the community it was presented to. That RAND study is not highly praised for its use of data. Millions and billions of dollars are at stake in the workers' compensation system; therefore, any mistakes in the analysis would create significant costs and concerns for employers, as well as for those representing labor.

Anita Labossiere stated that there is a big problem with workers' compensation as many workers who are unemployed have become sick and injured on the job and have not received workers' compensation. She stated that there should be a study of those who have been denied workers' compensation over the years and what the reasons for the denial were; the workers' compensation system has failed those people.

Steve Zeltzer stated that employers are happy with the current system and so they are advocating for delays in reworking the schedule. He stated that employers would like to have delays because it benefits them. He also stated that people, especially injured workers, have the right to have notice if there is going to be a hearing about workers' compensation and there should have been notice of this meeting ahead of time about this study so that they could have attended the Commission meeting. He stated that the cost of benefits to injured workers is being shifted to public hospitals and the public. He also stated that workers are afraid to file workers' compensation claims because employers are accepting the workers' compensation claims and

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then claiming that those workers cannot do their jobs, and they are firing those workers, even though that is illegal in California. As a result, workers are continuing to work despite being injured and their injuries are getting worse. As injuries go untreated, care will become more costly. He also stated that doctors do not want to handle workers' compensation cases because they can not treat under the guidelines. This leaves the worker more injured and more unable to get treatment and stuck in a bureaucratic morass. He stated that insurance companies are in control of the workers' compensation system and these companies make a profit by not treating injured workers. He stated that this is a political crisis for all working people, especially injured workers, and there should be initiative on the ballot to get rid of insurance companies.

Mark Gerlach, from the Applicants Attorneys Association, stated that it is important to understand that the Commission's report is a reply to a request to the Commission to report to the Legislature to analyze and recommend how the current schedule has affected workers' compensation benefits and how the schedule could be amended in compliance with Labor Code Section 4660(b) (2). The report includes the very first empirically developed methodology to base the rating schedule on the RAND data as was required in the law. He stated that the current schedule is not based on empirical data. This report takes the RAND data as required by statute and it shows how that data can be used to develop an empirically based schedule. He stated that the Commission's report does not go far enough. He stated that the Bickmore study pointed out the 30% of savings under the new schedule come from reduced permanent disability benefits to injured workers. There was no problem with indemnity costs which were flat. Because of the changes in the schedule, most workers would receive 36% less benefits. Another 59 % percentage drop on top of that was caused by using the AMA Guides. That was not what the Legislature proposed. The Commission report should go forward to the Legislature so that the Legislature is informed as it makes its decisions.

David Rockwell, President of the California Applicants Association, stated that Commission studies by RAND have addressed the adequacy of permanent disability. He stated that the Commission agreed with the findings of the RAND study that permanent disability benefits were inadequate. He stated that the Commission recommendations do not address adequacy completely enough and that the zero ratings should be considered by the Commission. He stated that up to 38% of those cases that could get benefits now cannot. He stated that the zero cases have significant diminished future earning capacity. Mr. Rockwell also stated that a limited conclusive presumption may not be legally possible because it could be an unconstitutional delegation of authority from the Legislature to an administrator. He also stated that it could be dangerous politically with a change of administration. Mr. Rockwell concluded by stating that it would be a denial of due process to make the schedule conclusive as it would not allow either side to show that the schedule is incorrect.

Cathon Rhodes Adams, injured worker with a self-insured company, stated that she was not given medical benefits after injuries on the job and from 1995 to the present. Her case was dismissed when taken to court. She stated that she would like the Commission to understand that injured workers are suffering and need to be heard.

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Peggy Sugarman, from Voters Injured at Work, stated that her organization submitted comments on the report. She stated that in the quest for consistency and predictability of the schedule, that a recommendation be considered for a statutory change to limit the discretion of the AD to prepare a permanent disability schedule. She suggests that those affected by the current schedule consider that the AD should not be in a position to make a policy decision on the schedule, and she suggested that the Commission's report be amended to include a recommendation to limit the AD's statutory discretion. Ms. Sugarman stated that the report should include a discussion of affordability.

Chair Wei stated that she would defer to Commission staff for a recommendation that the public comments would be noted formally. Ms. Baker thanked everyone for their comments and stated that Commission staff would like an opportunity to respond to those questions. She stated that she wanted to clarify the source of the data. Commission staff had to wait to receive data from the DEU of the DWC. The Commission and the DWC are using the same methodology and the same dataset, and that there is only one source for the data. She stated that Frank Neuhauser from UC Berkeley is working with DWC to be sure that the data are usable. Ms. Baker stated that the Commission would like the opportunity to work with the employer and worker communities to have some Task Force meetings to discuss the report's analysis and recommendations in detail. She stated that the Commission would also like to attach responses to the public comments and questions to the report. She stated that the report has been sent out for peer review outside of California so that independent comments could be made. The Commission has responded to that independent comment and amended the report to incorporate any concerns raised. She stated that the Commission's recommendation is to incorporate the Addendum within ten days and then send the report out.

Commissioner Steinberg stated that it is helpful to have the further discussions but is concerned about the timeline of the Legislature and that if there is further delay, the product might not be helpful to the Legislature. He stated that all the public comments have been helpful to the process and that the report might incorporate the comments without any further time-consuming activities. Chair Wei responded that Commission staff is recommending that the Commissioners adopt the report today.

Commissioner Wilson stated that as a former director of a public agency, he is concerned that there should be additional time for public comment. The report could still go forward to the Legislature but not presented as a recommendation of the Commission. He stated that he would have trouble voting to put the report out. Commissioner Davenport stated that the Legislative leadership is waiting for this information to begin consideration. The role of the Commission is to be a research body and present information, not make decisions. He stated that John Burton has called this an excellent report and the report should not be allowed to get stale. Public comments should be attached to the report and submitted to the Legislature. The Legislature will be able to take those comments into account. There will be other opportunities to refine the information in the report. He stated that he would move to adopt the report.

Commissioner Salazar asked if the action would be on a draft recommendation. Commissioner Wilson stated that it is no longer a draft but a final report if it is put out today. He stated that he

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would therefore prefer that the report be voted on at the next meeting. Commissioner Davenport stated that the report will include the comments from the public and the staff response to the comments. Commissioner Salazar stated that there is a policy body beyond the Commission that will look at this report. Members of the community have expressed their support and lack of support. He stated that he believes Commission staff will make the representations fairly by attaching the comments to the report and that will give a clear indication to policy makers that the issues need discussion at the policy level. Commissioner Wei stated that the Commission is not the policy-making body and the report does not lay out policy recommendations for modifying the permanent disability schedule. She stated that the Commission is responding to a request from the Legislature. The Commission is accountable to the Legislature. The report lays out an analysis of the data available. Commissioner Wei also stated that Commission is a public body and wants to encourage public comments, and that it can fulfill its role in a way similar to the State Auditor and the OAL, which put out reports with comments.

Commissioner Salazar stated that either the word "response" or the word "analysis" should be considered for the title of the report. Chair Wei stated ask staff if the word "analysis" would be appropriate and staff responded that it would. She stated that public comment could be extended for another 20 days, after which staff would have 10 days to complete the Addendum and then it would be received by the Legislature 30 days from today. Commissioner Wilson stated that he still believes that it should be a draft today and then voted on at the next meeting in April.

Commissioner Davenport stated that 30 days is more than he anticipated. He stated that the work has been done adequately with the review to date. Commissioner Schwenkmeyer stated that the responses have been very thorough and the report should be gotten out quickly. Judge Taylor asked if the timeline should be another week for response and then a week for Commission staff to prepare the Addendum. Chair Wei stated that she is comfortable extending the public comment for 7 days and then giving Commission staff 7 days to prepare the response, and then the report would be forwarded to the requestors within 14 days.

CHSWC Vote

Commissioner Davenport moved to approve that CHSWC circulate for public comment the Draft Permanent Disability Rating Schedule Proposal after an Addendum of the public comments have been included, and Commissioner Schwenkmeyer seconded. The motion passed with Commissioner Wilson opposed.

Chair Wei thanked everyone for public comment and thanked the DWC for providing data for the report.

A Report on Repackaged Drugs

Frank Neuhauser, Survey Research Center, UC Berkeley

Frank Neuhauser stated that the analysis on the distribution of types of drugs and therapeutic groups has been completed as has the distinction between pharmacy drugs and repackaged drugs

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dispensed from physician's offices and completed the access study about the distance from pharmacies to doctors' offices has been done. He stated that what remains is to address some concerns about pharmacies not filling prescriptions for workers' compensation, which is fairly easy to deal with, to more complicated issues like combinations of drugs and specialized conditions like needle sticks, as well as evaluating the dollar impact of various proposals. He also stated that he would like to provide the Commission, the Legislature and stakeholders a fairly simple tool by which estimates of various proposals could be made.

Charles Smith with Pharma Pac stated that he has not had a chance to review the report at length and has attempted to contact Mr. Neuhauser with no success. He stated he has some questions about where the data is coming from and how the analysis is being done, and he believes that the input that Mr. Neuhauser could get from organizations would assist with getting a more accurate analysis than what has been given to the Commission up to this point.

Executive Officer Report

Christine Baker, CHSWC Executive Officer

Ms. Baker thanked Mr. Neuhauser for his report and stated that the data is being prepared and Commission staff has not yet reviewed it.

Ms. Baker stated that CHSWC staff has been very busy on a number of projects, aside from the Permanent Disability Study which has taken a significant amount of staff time. The Spinal Surgery Second-opinion Process is underway. She stated that there are new requirements in SB 13 for research protocols for studies which would create some delay for getting approvals for research because there has to be an Institutional Review Board (IRB), as discussed by Lisa Dasinger earlier.

Ms. Baker stated that Assembly Member Rick Keene has requested that CHSWC conduct a study of Health Care Organizations (HCOs) in the California workers' compensation system to confirm the benefits of HCOs and evaluate whether legislation is necessary to preserve those benefits. The study will provide information regarding the following questions:

- o What is the current viability of HCOs?
- o What are the differences in requirements for HCOs, MPNs and for fee for service in workers' compensation?
- o What changes, if any, should be made?
- o Is there empirical data that would demonstrate HCOs' effectiveness?

Ms. Baker stated that CHSWC is in the process of working with a large HCO to obtain data and be able to respond to the legislative request.

Ms. Baker then stated that the Commission's return-to-work study is underway. Memoranda of Understanding are being developed for the data acquisition. Commission staff is working with CalPERS, the Employment Development Department (EDD), the WCIRB and the Department of Insurance.

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Commission staff has also been working hard on several conferences. At the request of the Commission, CHSWC has put together an agenda for a Catastrophe Preparedness Conference on Friday, April 7, 2006, at the South San Francisco Convention Center. Many of the speakers have made commitments, and the Commission will begin to advertise the conference shortly, put out brochures, and put price contracts in place.

CHSWC has contracted with the UC Berkeley's Center for Occupational and Environmental Health for CEU Units for industrial hygienists, safety professionals and nurses. The speakers that have been scheduled for the forum include representatives from The Governor's Office of Emergency Services and Homeland Security, the National Institute of Occupational Safety and Health (NIOSH), Kaiser, and the employer and business community. The Labor Agency and Cal/OSHA have committed to support this effort.

Ms. Baker stated that the Commission has been asked by the Industrial Board of Accidents and Commission to jointly sponsor a session on Occupational Medicine in March in San Diego. Ms. Baker stated that the National Academy of Social Insurance (NASI) has been asked as a member of the Academy to co-chair a forum on Lessons learned from California. This forum would take place in October in Washington, D.C.

Ms. Baker stated that the California Healthcare Foundation will provide a grant for evaluating the process for a joint labor-management project on 24-hour care.

Ms. Baker next stated that at the previous Commission meeting, the Compliance and Proof of Coverage Report was approved to go out for public comment. Commission staff received some questions by phone, but nothing in writing. Commission staff believes that it is ready for adoption by the Commission.

CHSWC Vote

Commissioner Davenport moved to authorize that the report of the study on Workers' Compensation: Compliance and Proof of Coverage be finalized and approved, and Commissioner Wilson seconded. The motion passed unanimously.

Ms. Baker stated that she would provide an update of the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The WOSHTEP Advisory Board met on December 6th. The Advisory Board and Commission staff have prepared the 2005 Annual Report. The Report reviews the mandate and objectives of the program, summarizes key accomplishments over the past three years, and present and future activities.

Some of the key accomplishments included: a trainers' network to deliver the WOSH Specialist course statewide and the presentation of the first training-of-trainers courses; listservs for WOSH Specialists and Trainers to help them stay current on health and safety issues; a Young Worker Leadership Academy which brings together young people across the state and trains them on leadership skills for safety in the workplace; many trainings offered to small business and small restaurants in particular and the State Compensation Insurance Fund has been particularly

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proactive providing its clients with health and safety information and the small business restaurant training.

Ms. Baker also stated that Resource Centers and distribution systems of health and safety materials are available both north and south through the University of California, UCLA and UC Berkeley. A Multilingual Health and Safety Resource Guide, providing health and safety resources in 23 languages, is available online through the Commission's website.

Ms. Baker stated that also included in the Report is a listing of the trainings that have taken place both in English and in Spanish. Over 250 WOSH Specialists have been trained. Commission staff recommends approval of the Report. The Advisory Board has approved the Report for Commission approval.

Commissioner Davenport stated that he appreciates the update on WOSHTEP. This program is an example of work that improves the workers' compensation system and he hears from his members that they are happy to have this program.

CHSWC Vote

Commissioner Davenport moved to authorize that the 2005 WOSHTEP Advisory Board Annual Report be approved, and Commissioner Wilson seconded. The motion passed unanimously.

Ms. Baker stated that two meetings ago, the Commission was briefed by Barbara Wynn regarding a medical research agenda. An outline presented to the Commissioners for review covers key medical issues from the reforms. The Commission is proposing to go out for bid in a Request for Proposal (RFP) which would cover medical necessity determinations, medical networks, provisions for early treatment, and the impact of the official medical fee schedule changes as well as a review of pay for performance. The RFP would be open bid, and the Commission expects a number of competitive bidders. The cost of this project over two or three years would be approximately over \$600,000, but with the competitive bid process, there would be bidders up to \$600,000.

Ms. Baker stated that Commission staff recommends moving this critical RFP forward. There are critical factors in the reforms that have affected the medical benefits, and this study would allow the Commission to obtain data to measure and provide information on the changes to the workers' compensation system as a result of the reforms.

Commissioner Wei asked if this is a different study from the access to medical care study. Ms. Baker responded that it is different. Commissioner Wilson asked if there would be cross-over and coordination between this study and others, and Ms. Baker responded that there would.

CHSWC Vote

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Commissioner Salazar moved to approve the RFP for a study on the impact of key medical changes to the workers' compensation system as a result of reforms, and Commissioner Davenport seconded. The motion passed unanimously.

Commissioner Wei stated that she has heard that there is strong public interest in catastrophe preparedness in the workers' compensation community and therefore in the Commission's conference on this topic. The Commission has already voted on the conference.

Commissioner Wilson stated that Mr. Trout commented on the need for data on workers' compensation in public organizations and that this information could be obtained from the California Institute for Public Risk Analysis, which publishes an annual report on workers' compensation in the public agencies. He stated, however, that this organization has been unable to get data they rely upon from the Office of Self-Insured Plans, so he would like to see the Commission continue to work on this area and even help this agency obtain data.

Public Comment

Chair Wei opened the meeting for public comment.

Dan Wilson stated that he came to settle the final close of his workers' compensation claim. He is at the point of 22 percent disabled and his medical is open. He stated that he was injured seven years ago. He stated that he is thankful that he had a lawyer who helped to explain things and provide information. He stated that he had a job making \$19 an hour and has been retrained to make half that amount. He stated that he is trying to live with the workers' compensation system and understand it. He stated that he thanks those who are trying to improve the system.

Steven Kessler stated that he had an injury in 1987 which was settled in 1992. He stated that he had a stipulated agreement, which means that he gave up money in exchange for future medical. He stated that he is now being denied medical treatment that his doctors want him to get, which he believes is a breach of contract. He believes that he should be offered money if he is not going to get medical care. He then stated that a study by the Institute of Industrial Relations, Labor Center, of the University of California, on workers' compensation as offered by the exclusive fund states which did not allow private insurance companies to do business. There are currently five states, Washington, Wyoming, North Dakota, West Virginia and Ohio. He compared those states with other states and the rates for businesses were lower and the medical benefits for injured workers were better. He suggested that the Commission do a study about this issue. Mr. Kessler stated that he ran a homeless shelter for the City of Berkeley and met a substantial number of injured workers who became homeless because they did not receive benefits. He suggested that when studies are done, they should look at homeless shelters and community clinics and county hospitals, like San Francisco General and Highland Hospital, which are assuming the cost offloaded from the insurance companies. He also stated that General Assistance which is assuming some of the burden has reduced the amount of general assistance; in addition, as workers' compensation insurance companies offload the burden of medical payments, local governments and citizens are assuming some of that burden. State Disability Insurance is providing benefits to workers who are not getting workers' compensation.

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Ms. Padilla stated that she worked for a large employer, self-insured, which is Kaiser. She stated that 30 percent of injured workers, or 300,000 workers, are seriously injured but do not get the care or the wages that they need to sustain themselves. She stated that this is not only a problem in California, but it is a bigger problem in California because of the greater number of people. She stated that every proposal, every recommendation that is made is being made about human beings. She stated that grievances were filed with SEIU, but they went nowhere. She stated that the study by Bickmore Risk Services represents a conflict of interest. She stated that insurance carrier adjusters in the Department of Insurance are on the Insurance Commission.

Adjournment

The meeting was adjourned at 1:40 p.m. The next CHSWC meeting is scheduled for Thursday, April 6th, in Oakland.

Approved:

Angie Wei, Chair

Date

Respectfully submitted:

Christine Baker, Executive Officer

Date