MINUTES OF MEETING
February 23, 2007
Elihu M. Harris State Building
Oakland, California

In Attendance

Chair John Wilson
Commissioners Alfonso Salazar, Kristen Schwenkmeyer, Robert B. Steinberg, Darrel "Shorty" Thacker and Angie Wei
Executive Officer Christine Baker

Not in Attendance

Commissioners Allen Davenport and Leonard C. McLeod

Call to Order / Minutes of Previous Meeting

John Wilson, 2007 CHSWC Chair, called the meeting to order at 10:05 a.m. He stated that the order of the Agenda would be modified and the first presentation would be on access to care.

DWC Update: Report on Access to Care
Lisa Dasinger, Project Director, Medical Access Study, DWC
Gerald Kominski, Principal Investigator, Medical Access Study, UCLA

Lisa Dasinger stated that a little over a year ago, she had talked to the Commission about the background of the study and the progress at that time. She stated she would discuss the mandate for the study, Labor Code Section 5307.2, the study questions addressed, the teams involved in the study, and the project timeline for completing the study.

Ms. Dasinger stated that Labor Code Section 5307.2 of Senate Bill (SB) 228 mandates that the Administrative Director (AD) of the Division of Workers' Compensation (DWC) contract with an independent research firm to perform an annual study of access to medical treatment for injured workers. There are two major goals to the study: the first is to analyze whether there is adequate access to quality health care and health-care products for injured workers; and the second is to make recommendations to ensure continued access. The Labor Code has one mechanism for the AD to respond to a finding of insufficient access, should one exist, by making appropriate adjustments to the Fee Schedules; in addition, if substantial access problems exist, the AD may adopt fees in excess of 120 percent of Medicare fees.

Ms. Dasinger stated that the questions addressed in the study included: what is the current nature of access to health care and health care products? is there adequate access to health care and health care products? is there access to quality health care and health care products? and if the study were to find that access problems exist, are they substantial?

The DWC contracted with the UCLA Center for Health Policy Research to conduct this independent study. The data collected for two of the surveys, the injured worker survey and the provider survey, were collected by the San Francisco State University (SFSU) Public Research Institute. The first nine months of the study were spent designing the three surveys: an injured worker survey; a provider survey; and a claims administrator survey. Given the changes that have taken place in the workers' compensation system due to recent reforms, it was important to develop a number of new questions. Ms. Dasinger stated that the project began with sample design and selection, followed by obtaining Institutional Review Board (IRB) approvals from UCLA, SFSU, and the State. In April 2006, interview training began at the Public Research Institute followed by pilot testing of the instruments. Data collection occurred from May to October 2006, with preliminary analyses and a preliminary report on October 19, 2006, and a final analyses and report were produced during the period October 19, 2006, through December 2006.

Dr. Gerald Kominski stated that he would start by talking about the three surveys conducted. The first is the injured worker survey, which included 976 participants with injuries between April 1, and June 30, 2005. This sample was collected from a random sample from the DWC claims database; these workers were interviewed 15 months after the date of injury, providing ample opportunity to have cases that were fully resolved as well as some that were still unresolved. The total response rate was 35 percent, which is comparable to the response rate of about 20 to 63 percent found in other workers' compensation studies. The survey included questions about: the nature of the injury; the first medical visit; the doctor most involved in medical care; access to various providers; access to prescription drugs; satisfaction with the main provider and overall care; recovery from injury; and return to work.

Dr. Kominski stated that the physician survey included 1,096 providers including MDs, osteopaths, chiropractors, acupuncturists and psychologists. Both current and recent providers of workers' compensation care during the period 2001 through 2006 were interviewed, although the majority in the sample was providing workers' compensation care. A series of questions was asked of those providers who were no longer participating in the system. Gynecologists, pediatricians, and radiologists were excluded because they were unlikely to be primary care providers for workers' compensation conditions. A list of names of providers was provided by the State. The final sample included about 80,000 names of providers. In addition, a list of high-volume providers by a private carrier was used. This was to make sure that the sample included a few hundred high-volume providers to see how their responses to changes in the system might be systematically different. Dr. Kominski stated that the response rate to the survey was 25 percent, which is very comparable to about 22 to 30 percent response rate in surveys of providers in both workers' compensation and general health.

Dr. Kominski stated that the physician survey asked questions about: provider and practice characteristics; the scope of the workers' compensation practice; the level of workers' compensation payment relative to the Fee Schedule; occupational medicine behaviors; changes in their workers' compensation practice since 2004; intention to make changes in their volume of workers' compensation patients and the reasons for changes;

and perceptions of injured worker access to quality care.

Dr. Kominski stated that the third survey was administered to claims administrators including insurers, third-party administrators, self-insured and self-administered employers. The sample was stratified by large, medium-size and small companies; the companies represented in the survey accounted for 75 percent of 2005 workers' compensation claims. The survey questions focused on networks; contracting with physicians; perceptions of provider willingness to treat injured workers; access and quality standards; and perceptions of access and quality.

Dr. Kominski stated that the results of the injured worker study were that 83 percent felt they were able to get access to quality medical care for their injury, and 78 percent were satisfied with the overall care they received for their injury. This figure compares with a 77 percent who were satisfied with their overall care in a 1998 DWC Study and with 83 percent in a 2004 Pennsylvania study.

Dr. Kominski stated that injured workers received care from providers who engage in behaviors considered important in occupational medicine. Comparing responses in both the injured worker survey and the provider survey to questions about occupational medicine behaviors indicated that: 83 percent of injured workers and 84 percent of providers felt that the physician understood the worker's job demands; 87 percent of workers and 92 percent of providers responded that the physician discussed work restrictions; and 81 percent of injured workers reported that their physician discussed ways to avoid re-injury.

Dr. Kominski stated that the survey looked at return to work. Findings were that: 2.4 percent of injured workers reported that they did not get specialty care; 5.5 percent reported that they got specialty care but had difficulties obtaining it; and 2.3 percent reported that they did not get any of the recommended occupational therapy or physical therapy treatment, while 6.3 percent reported that they got specialty care but had difficulties obtaining it.

Dr. Kominski stated that findings of the survey about return to work were that: 78 percent were currently working at the time of the interview; 11 percent were not working for reasons unrelated to their injury; 10 percent reported that they were not working as a result of their injury; and 55 percent of workers reported that they had not fully recovered more than one year after injury; though these workers may be back at work even though they are not fully recovered. In addition, 45 percent reported that they were fully recovered, and 10 percent reported that there was no improvement. These figures for return to work are somewhat comparable to previous studies: 70 percent of workers had not fully recovered in the 1998 DWC study, and 72 percent in the 2000 Washington State study had not fully recovered; however, Dr. Kominski stated, it should be noted that these studies had shorter timeframes.

Dr. Kominski stated that the results of the provider survey, which assesses the physicians' perception of access to care and therefore is not a qualitative measure, were

that: 65 percent of physicians felt that access to care has declined since 2004; 27 percent reported that access to care stayed the same; and 7 percent reported that access to care improved. Dr. Kominski stated that across specialties, the rates are quite different. Chiropractors, acupuncturists and clinical psychologists reported a much higher rate of perceived decline in access to care. He commented that this is not surprising given the recent workers' compensation reforms. Dr. Kominski then stated that among MDs, there is a fair amount of variation, such as: 75 percent of orthopedic surgeons reported that access to care has declined; 40 percent of primary care physicians reported that access to care has declined; 46 percent of providers agreed that injured workers have adequate access to quality care, while 54 percent disagreed that injured workers have adequate access to care. Only 8 percent of chiropractors agreed; 62 percent of physicians agreed; and 65 percent of podiatrists agreed. Primary care and other surgical specialists had the highest level of perceived access to care.

Dr. Kominski summarized the findings of the study: (1) most injured workers have access to quality care; (2) most injured workers are satisfied with their care, and levels of satisfaction appear unchanged since 1998; (3) the percentage of injured workers experiencing problems accessing care is low; however, the number of individuals potentially affected is large, given the large number of workplace illnesses and injuries reported each year in California; (4) providers' perceptions of access and quality differ substantially from injured workers' perceptions; and (5) providers' negative ratings of access and quality are concentrated among certain provider types and specialties.

Dr. Kominski stated that the study is being publicly released today and that the entire study is available at: http://www.dir.ca.gov/dwc and http://www.healthpolicy.ucla.edu.

Questions

Commissioner Wei asked whether the study could identify what the severity of the injuries was. Dr. Kominski responded that there were no study questions and no data on severity. Commissioner Wei then asked whether there were data on how the physician was chosen. Dr. Kominski responded that there are some data on that and that the number of injured workers reporting that they had pre-designated their physician or had seen a pre-designated physician was low, possibly 10 percent. Commissioner Wei stated that it would be interesting to see if there were different outcomes based on how the physician was chosen. Dr. Kominski responded that they could go back to the study to determine this. Commissioner Wei asked if this study would be considered a point-in-time study and whether if the time period were longer, the findings would be different. Dr. Kominski responded that if the interviews were conducted at a time further away from the date of injury than the 15-month period of the study, then there could be recall bias, which means that the injured worker might not remember details about the care received, especially if there was a recovery and the injured worker was back at work.

Commissioner Wei then asked if on the provider side, a question was asked if the physician was still taking workers' compensation patients. Dr. Kominski responded that 10 to 15 percent of the physicians contacted reported that they were no longer taking

workers' compensation patients, and they were asked the reasons why. Commissioner Wei asked if the physicians who were still taking workers' compensation patients were the ones asked about perception about access to care. Dr. Kominski responded that that was correct. He also stated that due to recent reforms in workers' compensation, physicians in the state have experienced a lot of change in the way workers' compensation care is practiced. The system has changed from being completely open-ended with no restrictions on how care is delivered to having a lot of restrictions. Commissioner Wei asked how the satisfaction findings of this study can be similar to those in 1998 given the significant reforms to the system. Dr. Kominski responded that even if providers are dissatisfied, they are still professionals; therefore, they are still treating their patients as well as they could possibly treat them.

Commissioner Steinberg asked if the survey work was done over a period in 2005. Dr. Kominski responded that the contract was awarded in the summer of 2005. Commissioner Steinberg asked if the sample reflected how the injured workers chose their doctors, and Dr. Kominski responded that that was true. Commissioner Steinberg then asked if injured worker reaction might be different today than in the time period of the study. Dr. Kominski responded that issues about choice of physician were the same during the study period.

Commissioner Salazar asked whether physicians were surveyed in the 1998 study. Dr. Kominski responded that physicians were not included in the 1998 study, and there was no companion study. Commissioner Salazar stated that he thought that there would be greater differences in physician attitudes toward access, yet the data of the current study suggest that attitudes were similar. Dr. Kominski responded that attitudes toward quality would likely be different rather than attitudes toward access. He stated that he is concerned that if access to care has declined, that would indicate that quality has declined. Commissioner Salazar asked if the Division has a plan to ask questions about quality. Dr. Kominski responded he would defer that question to the AD of the DWC.

Carrie Nevans, Acting AD of the DWC, stated that this was the first of what will be an annual study, and it is clear that further questions need to be asked. In the next study, injured workers reporting dissatisfaction with access to care will be asked more questions, and injured workers reporting that there were delays in seeing a specialist will be asked about the causes, for example, scheduling or utilization review (UR), as well as about the length of the delay.

Commissioner Wei asked what the main finding of the study is. Ms. Nevans responded that overall she is pleased with the findings of the study that the majority of injured workers are satisfied with their care, but she is concerned about the reporting of dissatisfaction and especially concerned about racial disparity in the reporting of dissatisfaction. She stated that the top three physician concerns were: first, the fee schedule, which is being addressed through increases in the annual codes; second, the administrative and reporting requirements, which are being addressed by revisions to the PR-2 Form, a commonly used reporting form, so that it will be simpler with a check-off format and can be downloaded and done on the computer; and third, UR, which is being

addressed with penalties and by the Division beginning to do audits and investigations about UR.

Commissioner Wei asked what the report findings about UR were. Ms. Nevans responded that about 32 percent of physicians were concerned about UR, and it was the third-lowest concern below reporting requirements and the fee schedule. She also stated that for the 2.4 percent of injured workers who said they were referred to a specialist but never saw one, there are likely to be UR issues, and the Division would probably go into that further in the next study. Commissioner Wei stated that she appreciates that the concern about disparity due to racial differences is being identified as an important issue. She stated that it would be good to conduct the survey in Spanish or other languages. Dr. Kominski responded that the survey was conducted in Spanish. Commissioner Wei asked if there was a significant sample size. Ms. Nevans stated that 21 percent of the injured workers were interviewed in Spanish out of the 40 percent of the total sample that were Hispanic.

Commissioner Wei asked if there were any results from the third survey that could be discussed. Dr. Kominski responded that the claims administrators did report that there is difficulty recruiting specialists into medical networks in rural areas of the state and that this would be an ongoing challenge.

Public Comment

Mark Vickness, applicants' attorney with the Russo Law Firm in Oakland, asked whether injured workers surveyed in the study were asked about quality care in terms of differentiating between care offered through the industrial insurance carrier and care that was either self-procured or obtained through private insurance, as well as care that was obtained by the injured workers' private workers' health insurance carrier. Dr. Kominski responded that that difference was not asked. Mr. Vickness then asked if the study indicated whether the care discussed in the study was care provided by a private carrier such as Kaiser. Dr. Kominski responded that the study did not indicate what type of care was received. Mr. Vickness stated that the results that a high percent of injured workers are pleased with the care they are receiving could be misleading if care for a work injury is delivered by private health insurance is not differentiated from care delivered through the industrial insurance carrier. He stated that many injured workers are forced to seek care from their private carriers because of UR delays or the denials of care by the industrial carrier

Steve Cattolica with the California Society of Industrial Medicine and Surgery and U.S. Health Works asked whether 976 was the number in the survey or the number of respondents. Dr. Kominski responded that 976 represented 35 percent of those contacted. He also asked if there was any question that differentiated injured worker claims by lost time or permanent disability. Dr. Kominski responded that there was. Mr. Cattolica asked if there was a breakdown of those who were dissatisfied who experienced lost time. Dr. Kaminski responded that the survey did not do a breakdown on that question but that there is a question that does a breakdown of satisfaction by the number of visits. Mr.

Cattolica said that this would be a significant issue to get survey results about.

Kathy Bender, an ergonomics assessment provider, asked why the study did not occupational medicine specialists in relation to satisfaction with access to care. Dr. Kominski responded that they did not sort out those specialists because there were too few in the sample. Ms. Bender asked whether physicians providing care over a long period of time were sorted out from those providing care over a short period of time. Dr. Kominski responded that they have the ability to do that but have not reported that. He also stated that the study looked at workers' compensation providers on the basis of volume of workers' compensation cases, and that those providers with a high volume did report a higher perception of access or quality problems.

Steve Zeltzer with the California Coalition for Workers' Memorial Day asked if the study differentiated between care from self-insured employers and outside carriers in terms of the care injured workers received. Dr. Kominski responded that they did not. Mr. Zeltzer also asked if the injured workers had been surveyed about whether they had to go to public agencies or agencies outside their covered care, and he stated that the issue of cost shifting needs to be addressed in a future study.

Commissioner Salazar asked if any suggestions on future studies or other types of analysis that should be done were included in the study. Dr. Kominski responded that there were two recommendations for further study: the first is the issue that African Americans reported higher dissatisfaction and no improvement in their condition; and the second issue is that roughly 10 percent of all workers report 15 months after injury that they had no improvement in their condition, and that since this number was surprising, it would be important to determine if there are cases of permanent injury in this percent of injured workers.

Minutes of Previous Meeting

CHSWC Vote

Chair Wilson stated that there would now be a vote on the Minutes of the previous meeting.

Commissioner Salazar moved to approve the Minutes of the December 8, 2006 meeting, and Commissioner Thacker seconded. The motion passed unanimously.

Report on Permanent Disability Study
Carrie Nevans, Acting Administrative Director, DWC
Bill Kahley, Research Manager, DWC

Bill Kahley stated that three different lines of research by the DWC have been going on to evaluate permanent disability (PD)-related issues and the various impacts of the 2005 Permanent Disability Rating Schedule (PDRS). The first area of research looks at injury

and illness incidence rates across industries; the second area of research involves wage loss analysis, which is mandated by the Legislature; and the third area of research involves return-to-work rates of injured workers. He stated that preliminary results on return-to-work rates would be discussed today.

Mr. Kahley stated that three sources of data were used: ratings information from the Disability Evaluation Unit (DEU), which makes over 100,000 disability ratings per year; data from the DWC Workers' Compensation Information System (WCIS), which began to collect information in March 2005 and has over five and one-half million injured workers represented in that database; and data from the California Employment Development Department (EDD) base wage file, which represents quarterly wages earned based on payroll wage data on more than 15 million workers, with data covering the fourth quarter of 1985 to the second quarter of 2006, with more quarters being available on an ongoing basis. The data sample used includes information on permanently injured workers with dates of injury from the fourth quarter of 2000 through the fourth quarter of 2002. Three sub-periods were created to see if there were any differences in rates: the fourth quarter of 2000 to the fourth quarter of 2002 (57,934 injured workers); the first quarter of 2003 to the fourth quarter of 2004 (30,118 injured workers); and the first two quarters of 2005 (3,323 injured workers). These sub-periods would allow evaluation of the 2005 reforms and reforms prior to 2005.

Mr. Kahley stated that the criteria for inclusion in the sample were that: the DEU rating was greater than zero; the rating was issued within 18 months after the quarter of the date of injury (this was to control for severity, though this is actually to try to compare injured workers who were rated similarly to maximum medical improvement or permanent and stationary status); the DEU cases that match to WCIS cases based on name, social security number, and date of injury; and the workers returning to work with any employer in the base wage file which are counted as returning to work.

Mr. Kahley stated that these results are preliminary and subject to revision as additional data become available. He also stated that some work has already been done subsequent to the numbers being reported. The methodology for the way that the 12-month return-to-work rate was calculated was to match the DEU data with the WCIS data and then match the DEU/WCIS data with the EDD data. For example, for the first quarter of 2005, the number of workers injured in the first quarter of 2005 who were working in the first quarter of 2006 (about 12 months after injury) was divided by the number of workers injured in 2005 to calculate the return-to-work rate. Mr. Kahley stated that the data showed that the return-to-work rate increased 70 percent in the sub-period 2005 as compared to the two previous sub-periods. Another conclusion is that return-to-work rates vary significantly by part of the body. For example, psychiatric disabilities and multiple disabilities show the lowest return-to-work rates; in contrast, disabilities of the elbow and hand show the highest return-to-work rates.

Mr. Kahley stated that a third conclusion from the analysis is that return-to-work rates increased in the 2005 sub-period for most parts of the body or five out of six major parts of body. Still another conclusion is that return-to-work rates increase with age up to age

60. These data are not shown at this time by sub-period, but the data indicate that the PDRS adjusts for age and occupation and that in the current rating schedule as well as in previous rating schedules, the age level rate above 39 years was increased, whereas the data suggest that that adjustment is not particularly appropriate because wage loss is lower due to the higher return-to-work rate. Mr. Kahley stated that the AD will speak to some of the ways that the information from this return-to-work study, the wage loss study, and the illness and injury incidence rate study will be used to come up with changes to the 2005 rating schedule.

Mr. Kahley stated that final return-to work estimates will include: additional data (all DEU data); types of employers (any employer, the at-injury employer, and multiple employers); age and severity; analysis of the multiple injury category; average wages pre- and post-injury; cumulative return-to-work rates; and other factors. Already, the DEU data and the DEU data matched with WCIS data have produced a five percent improvement in the return-to-work rate, or the same results.

Mr. Kahley stated that in the press and in previous research, the point has been made that it is particularly important that workers return to work at the at-injury employer. As related earlier, the return-to-work rate reflected the rate for returning to work at any employer. He stated that if the sample is restricted to injured workers who return to work at the at-injury employer, the return-to-work rate also increases five percent.

Mr. Kahley stated that they are still working with the data and that age and severity will be looked at, as well as analysis of cumulative return-to-work rates and analysis of rates beyond 12 months. He invited the participation of stakeholders in asking questions and stated that the DWC wants the process to be transparent and that all the data are looked at in appropriate ways so that the best possible picture is presented.

Mr. Kahley stated that next steps would include a wage loss study which would estimate post-injury wage change due to PD, with information from the EDD and other sources from WCIS and the DWC. He stated that wage loss would actually be the wage earnings compared to what the injured worker would have earned had the worker not been injured. He also stated that that was not an easy calculation to make, because those earnings cannot be observed. He stated that other researchers, including the path-breaking work by RAND a decade ago, have looked at control workers who were like the actual injured workers and then compared the earnings of those non-injured workers with the actual earnings of the injured workers.

Mr. Kahley stated that the DWC will be doing an analysis like that, although it will be a more thorough and complete analysis than RAND was able to do because RAND did not have the data that are now available to the DWC and because computers are a lot faster now. He also stated that he was speaking with the SAS statistical software company whose representatives stated that their software runs 1,000 times faster than just five years ago. He then stated that the magnitude of change in the technology that allows crunching numbers is amazing. The technology changes, along with information that was not available to RAND, would allow the DWC to do analyses that are very helpful.

Lastly, Mr. Kahley stated that they will be looking at several issues including: safety in the workplace and patterns of change; how frequency and severity may have changed over time and by industry level; how temporary disability and PD may have changed by industry and employer size; and calculation and analysis of illness and injury incidence rates. Altogether, these three different lines of research will allow the DWC to get a better understanding of what is going on in the workers' compensation system.

Ms. Nevans stated that the wage loss information is just a first glimpse of what is occurring post reforms and it is by no means a complete picture; however, it does begin to tell the DWC how things are progressing. She stated that the next step will be the wage loss data where they will be calculating wage loss on workers who were injured in the first six months of 2003. She stated that there will be three years of wage loss data on those people. She then stated that the DWC will take that wage loss data and ask what events have occurred since 2003 that might affect wage loss. Three basic factors are: changes in the temporary disability rates so that there is more wage replacement for injured workers; changes in return-to-work rates, with improvements in most types of injuries; and decreased overall PD ratings. She stated that by looking at those factors, the DWC can approximate how the schedule is performing. Ms. Nevans stated that a commitment was made in the regulations on the 2005 schedule that data would be collected for 18 months and then the DWC would analyze the schedule. The regulations state that data collection is to continue until the DWC obtains sufficient data. She stated that she recognizes that the DWC does not have ideal data; however, she believes that the DWC has enough data to do a thorough analysis and for the DWC to use that analysis as a roadmap to make changes in the PDRS.

Questions

Commissioner Wei asked for clarification on the four factors Ms. Nevans mentioned. Ms. Nevans responded that the fourth factor is 2003 wage loss rates. Ms. Nevans stated that all four of those factors would be used to approximate overall wage loss for workers injured after January 1, 2005, under the new schedule. She stated that what is known is that of the people injured during those first six months of 2003, about 12,000 of them were rated under the old schedule and 800 were rated under the new schedule. She stated that depending on how those 800 sort out by part of body, etc., they may be able to do a direct comparison for, perhaps, the new spine ratings versus the old spine ratings for wage loss. She stated that until they go further with the analysis, they will not know if it is possible.

Commissioner Wei stated that she is concerned about using the study because the return-to-work rates look at the first 18 months, and arguably and perhaps as documented, that the lesser complicated cases were rated during that time frame. Ms. Nevans responded that this would be true for cases across all years. In every year, they are still looking only at people who were permanent and stationary (P&S) within 18 months of their injury. Commissioner Wei stated that since the fulcrum in the discussion is the 2005 schedule,

the dynamics may be more enhanced. Ms. Nevans responded that they do not know the answer to that yet.

Commissioner Wei stated that she was concerned about return to work and not being able to measure return to the at-injury employer as well as the amount of wages that are earned now. She stated that one could see someone in the 50-60 years age range with a relatively higher return-to-work rate, or not really higher rate, who is returning to a part time job for a day or two a week to make up for the losses in PD benefits. Ms. Nevans stated that such a concern would be captured on the wage loss side. She stated that the DWC did do subsequent review of what the return-to-work rates were at the at-injury employer and found that the increase of five percent was consistent. Ms. Nevans clarified that 80 percent of those workers who returned to work returned to their at-injury employer.

Ms. Nevans stated that the DWC does not yet know about wages earned, and Mr. Kahley stated that the wage loss study will provide those answers. He also stated that the DWC will be looking at the wage path of workers, and he stated that information going back 20 quarters (five years) for all workers, beginning with workers injured in the fourth quarter of 2000, is available. The DWC will estimate the wage trajectory and look at actual wages post the date of injury for the three years. He stated that they will look at the impact of other factors, including gender, industry, employer size, job tenure, litigation, multiple compensation claims and geography. He stated that all of these factors were not available to RAND because of the technical limitations of computing capacity. He stated that quite a lot of information will be available that will shed light on some of Commissioner Wei's concerns.

Ms. Nevans stated that what RAND found in their original study was a positive impact on wage loss when you return to the at-injury employer, whether or not you returned to the same job. She stated that it did not matter whether injured workers returned with fewer hours, modified duty or a different job; RAND still found a very positive impact on overall wage loss. Mr. Kahley added that other factors to look at include unemployment insurance take-up and whether workers received unemployment insurance as well as State Disability Insurance (SDI). He stated that the pattern of loss as associated with injured workers under different circumstances will be clarified. Ms. Nevans stated that that was the last piece of data the DWC was waiting for from the EDD. She stated that the DWC has asked EDD for unemployment and SDI data.

Commissioner Wei stated that she appreciates the complexity of the task in measuring total wage loss, given other social insurance safety nets. She stated that the concern is the cost shifts that may happen. Mr. Kahley stated that they may be able to shed some light on that concern. Commissioner Wei stated that it would be useful not just for PD but for system-wide cost shifts. She stated that California, before SB 899 and other reforms, had the worst return-to-work rate in the country. She stated that it struck her that significant changes in the rating schedule and new incentives to return workers back to work have created a picture of only a five percent improvement. She stated that she understands that that is statistically significant, but asked whether it is socially significant. She stated that

when she compared the return-to work rates in Chart 3 with Mr. Neuhauser's report on benefit cuts by injuries, the following results are evident: for knees, an 80 percent return-to-work rate is associated with a 42 percent decline in benefits ratings; and for hands, an 86 percent return-to-work rate is associated with a 42.5 percent decline in benefits ratings. Commissioner Wei asked for an explanation of the correlation that the deeper the cuts, the more the need to get back to work to try to replace lost wages and whether that was the social policy that was desired. She also asked whether the deep cuts in benefits and ratings, 40 percent in ratings and 50 percent in benefits, justified a 5 percent return-to-work rate.

Ms. Nevans responded that the goal of the system is for injured workers to return to work. In fact, unless an injured worker is 100 percent disabled, the system does not provide a suitable income for the rest of the injured worker's life. The fact that injured workers feel that they have to go back to work is what they are supposed to do and what the system is designed for. She stated that further analysis expected in March will indicate more about the correlation of the PD ratings and return to work. She stated that the DWC can say that initially, the result is positive and the return-to-work rate has improved.

Commissioner Wei stated that she wanted to be clear that the shared goal for nearly all stakeholders, if not all stakeholders, involved in the system, is to return injured workers back to work. She stated that that is the best outcome for injured workers as well as employers, but that it has to be a system that works so that injured workers do not feel that they are economically pressured to have to return to work before their bodies are ready to return.

Chair Wilson stated that the studies that look at other states were showing that California was compensating many more workers in terms of PD than any other state. Ms. Nevans agreed and stated that she believed it was about 270 percent greater in California.

Commissioner Steinberg asked for the timeline on the study. Ms. Nevans stated that they are working towards a March completion date. All the data from EDD were available three weeks ago. DWC researchers are working on the data constantly, and good progress is being made.

Commissioner Steinberg stated that in Mr. Neuhauser's analysis, the reduction in PD benefits has been across the board since the SB 899 changes. He stated that there was some attempt in the previous legislative session to offer a stopgap solution by increasing the weeks of benefits on a temporary basis until the DWC presents its analysis and recommendations on PD benefits to reduce this loss. He stated that in the Governor's veto message, there would be some administrative work done to resolve this problem. He stated that they were waiting and wondered when that work would be done.

Ms. Nevans responded that once the DWC has the wage loss information in March, they should have a pretty good idea of where they are headed. She stated that she has talked with the Governor, the Applicants' Attorneys Association, and the Governor's staff, and

there is a commitment from the Governor's staff to make appropriate revisions in the PDRS. She stated that she believes that once the DWC has the data, the analysis will proceed fairly quickly. Commissioner Steinberg asked if they thought the data would be ready in March, and Ms. Nevans responded that that is what they are hoping for. Mr. Steinberg noted that that was three days away. In response, Mr. Kahley stated that computers are fast.

Commissioner Wei stated that she wished to ask the AD some non-PD-related questions. She stated that she wanted to know if the WCIS system is robust enough to measure the cost shifts that they have talked about. She stated that she is very concerned about injured workers bypassing the workers' compensation system altogether and going into group health, causing all kinds of issues such as out-of-pocket costs for injured workers and cost shifts for employers. Commissioner Wei then stated that she is concerned about the injury and illness study and the fact that claims frequency has dropped dramatically over the past 15 years, based on the data that she has seen. She also stated that she was concerned that the frequency decline and potential severity decline will reflect this potential shift into group health.

Ms. Nevans stated that with WCIS, the DWC is collecting medical data. If there are instances where an injury has been reported and where there may even be temporary disability but no reported medical costs, that would give some indication that there could have been some cost-shifting. The unemployment insurance and SDI data should indicate what is occurring as far as temporary disability or maintenance benefits that might be shifted, especially at the point when the two-year limit comes in. Commissioner Wei stated that April 2006 is the period of the two-year limit, and Ms. Nevans agreed.

Commissioner Wei stated that she was curious about UR, referring to Ms. Nevans' comments about measuring UR and its efficacy at different points in time, and whether WCIS can determine the efficacy of UR, that is, how much it is costing, how much it is being upheld, and how much it is being flipped.

Mr. Kahley stated that as the AD has mentioned, the DWC is supposed to be getting detailed medical billing information for all claims with dates of service after September 22, 2006. He stated that their trading partners, or the claims administrators for entities that send the DWC data, are often third-party administrators (TPAs) or vending companies that send data, such as MedData and Fair Isaac and others, and provide bill review services and other data-related services to insurance companies and self-insured employers. These trading partners are sending data, and the DWC is just now beginning to receive significant amounts of data because they had 90 days from the date of service to provide the information. In addition, variances were provided to a lot of trading partners beginning in September for a six-month period, for technical reasons related to the fact that their systems did not keep information on zero pays, and they had to rework their systems to give zero pay information and some other technical points.

Mr. Kahley stated that the DWC is just now beginning to collect data that will eventually come in at a pace of maybe three terabytes[1] a year, which is a lot of information. He also stated that he believes that many of Commissioner Wei's questions can be looked at with the aid of this data. Commissioner Wei asked if they would be able to look at this information during this calendar year. Mr. Kahley stated that the DWC has limited research staff and they are doing everything possible. He stated that he could not answer the question about timing as he did not know. Ms. Nevans stated that within the system overall, not only in PD, but also in the medical area with the access study, the DWC is starting to be able to make more decisions based on analytical data. (I am not sure, if we need to put this last sentence in).

Chair Wilson thanked Ms. Nevans for her time. Ms. Nevans thanked the Commissioners and stated that she needed to return to Sacramento and could not stay for the rest of the meeting.

Report on the California Insurance Guarantee Association (CIGA)
Wayne Wilson, Executive Director, CIGA

Wayne Wilson stated that in the past seven years, CIGA has exploded. He stated that he would provide a brief history in order to understand the situation CIGA is in now. Pre-2000, CIGA was a small organization with 4,100 workers' compensation claims, five workers' compensation claims staff, and one TPA. On the liability side, there were only 2,360 liability claims, six liability claims staff, and only one TPA, with a total of less than 6,500 claims.

Mr. Wilson stated that in 2000, there were a number of insolvencies and activity increased from 6,500 to 87,000 claims. Such an increase stresses management, stresses claims systems, and most of all, stresses financial resources. The two big companies that became insolvent were Superior National and HIH, both California companies. Insolvencies in 2000 included: LMI Insurance Co. (OH); Superior National Insurance Companies (CA) Credit General Insurance (OH); and HIH & Great States Insurance (CA). The total number of takeover claims was 87,643.

Mr. Wilson stated that in 2001, CIGA again had a number of insolvencies with an additional 20,751 claims. The biggest were Reliance and PHICO. Reliance was a multi-line carrier with a substantial book with workers' compensation claims. Insolvencies included: Amwest Surety Insurance Co. (NE); Sable Insurance Co. (CA); Frontier Pacific Insurance (CA); Far West Insurance (NE); Reliance Insurance Companies (PA); and PHICO (PA).

Mr. Wilson then stated that again in 2002, more California companies became insolvent, in this case, smaller companies with a total of 12,197 additional claims. Insolvencies included: National Auto & Casualty (CA); Western Specialty (IL); Paula Insurance Co. (CA); American Horizon (IL); and Alistar Insurance (CA).

[1] One terabyte is equal to 1000 gigabytes or one trillion bytes.

Mr. Wilson stated that 2003, unfortunately, was another banner year. A number of California companies became insolvent. The biggest was Fremont, and the total number of additional claims was 65,235. Insolvencies included: Western Growers Insurance Co. (CA); Millers Insurance Co. (TX); The Home Insurance Co. (NH); Legion & Villanova Insurance Co. (PA); Fremont Indemnity Co. (CA); Pacific National Insurance Co. (CA); and Wasatch Crest Insurance Co. (UT).

Mr. Wilson stated that between 2000 and 2003, about 150,000 claims were added. Then in 2004, more customers became insolvent, albeit much smaller companies, for a total number of 760 additional claims. Insolvencies included: Protective National (NE); Casualty Reciprocal Exchange (MO); and American Bonding (AZ).

Mr. Wilson stated that in 2005, there were more insolvent customers, but much smaller companies, for a total of 1,268 additional claims. Insolvencies included: American Growers (NE); South Carolina Insurance Co. (SC); Consolidated American Insurance Co. (SC); and Cascade National (WA).

In 2006, Mr. Wilson stated, the total number of additional claims was 1,574. Insolvencies included: Vesta Fire Insurance (TX); Hawaiian Ins. & Guar Co, Ltd (HI); and Municipal Mutual Insurance Company (CA).

Mr. Wilson stated that among the insolvent companies from 2004-2006, there were not heavy concentrations of workers' compensation claims. The bulk of CIGA's claims date back to 2003 dates of injury or earlier. He stated that they inherit a lot of legacy claims from the companies. For example, he stated that from an audit report he read, there is a claim on the books from 1939, 68 years. He stated that that must be a good pension, receiving maybe $25 or $50 per month. The point is that there are claims dating back to the beginning of these companies. The chart below demonstrates the claims still on the books as of the end of September 2006, about 90 percent of which are workers' compensation claims. Mr. Wilson summarized the growth by year of all claims as follows:

Year	Takeover	Open as of Sept. 06
Pre 2000	4,100	2,038
2000	87,643	14,261
2001	20,751	6,161
2002	12,197	1,199
2003	65,235	22,938
2004	760	397
2005	548	98

2006	1729	1,597
Totals	**192,963**	**48,689**

In comparison with workers' compensation claims, auto claims settle much more quickly. Mr. Wilson then stated that in-house open claims staffing today includes 50 workers' compensation staff and 25 auto and liability staff, as well as 5 TPAs with 16 locations and approximately 432 claims staff adjusters, supervisors and managers.

Mr. Wilson stated that everyone knows that the problem at CIGA has been how to come up with the money to pay the claims that have been assigned to it. The money paid from 1969 to 2000 was $1.5 billion, with an annual average of $51 million. In 2000, the numbers started to dramatically increase, as shown in the following chart. The 2001 workers' compensation claims paid were nearly eight times the total annual average. He stated that the situation got worse in the following years, peaking in 2004 when total payments surpassed $1 billion, of which $886.8 million was for workers' compensation. Now, those claims have matured and decreasing payments will result over time. He summarized the historic loss payments by year as follows:

Historic Loss Payments by Year in Millions of Dollars

Fiscal Year **(ends June 30)**	**Auto/Home**	**All Other**	**Workers' Compensation**	**Total Paid**
2000	$3.2	$7.6	$8.6	**$19.4**
2001	$1.9	$20.3	$405.1	**$427.3**
2002	$19.6	$49.0	$639.0	**$707.6**
2003	$40.8	$77.9	$787.0	**$905.7**
2004	$38.6	$83.7	$886.8	**$1,009.1**
2005	$24.2	$64.4	$621.5	**$710.1**
2006	$11.1	$112.8	$410.2	**$534.1**
Total	**$139.4**	**$415.7**	**$3,758.2**	**$4,313.5**

(From 1969 – 2000, the total paid was $1.5 billion, with an annual average of $51 million.)

Mr. Wilson stated that compared to 2000, there are ten times the number of claims today and liability has doubled:

	Pre-2000	Today
Workers' Compensation Claims	4,100	44,063
Workers' Compensation Claims Staff	5	432
Third Party Administrators	1	5
Liability Claims	2,360	4,626
Liability Claims Staff	6	25
Third Party Administrators	1	1

Mr. Wilson then pointed out the insolvencies that created the problem, with Superior and Fremont topping the list, both in excess of $1 billion. This then explains where the deficit has come from over the past six to seven years. He stated that there may be more state recoveries coming, which would reduce the deficit numbers shown in the following table. He stated that, interestingly, most of it has come from California-based companies, probably driven by the marketplace competition that everyone recalls. He stated that the deficit has to be financed.

Major Insolvencies and Workers' Compensation Deficits

Insurance Company	Workers' Compensation Deficit as of December 31, 2006
Superior National (CA)	$1,763,152,767
Fremont Indemnity (CA)	$1,106,308,521
Legion/Villanova (PA)	$ 748,558,032
Reliance (PA)	$ 358,678,676
HIH/Great States (CA)	$ 300,200,870
Paula (CA)	$ 183,562,520
Credit General (OH)	$ 116,666,312

Mr. Wilson stated that the workers' compensation deficit as of December 31, 2006, is $2.5 billion, which can be financed the following ways: cash; investments; interest; bond proceeds in hand; assessments; estate distributions; and additional bond issuance.

Mr. Wilson stated that there are some bond proceeds left. At the end of 2004, the Legislature authorized CIGA to issue up to $1.5 billion in bonds through the Infrastructure and Economic Development Bank. They have issued $750 million, half of which is authorized and bonded. He stated the CIGA will continue to seek assessments against member insurers. CIGA's assessment capability under California law is 2 percent, and in 2007, it drops to 1 percent. In 2008, for claims purposes, CIGA will be additionally assessing an assessment to retire the principal and interest on the bonds.

CIGA forecasts that those two assessments combined will essentially remain at the 2 percent level.

Mr. Wilson stated that in addition, estate distributions have to be financed in the deficit. As the estates mature over time, there are reinsurance proceeds. CIGA has to pay the claims first before the reinsurance, that is, before the re-insurer becomes liable, to the estate. CIGA is constantly reporting its payments to all of the estates, that is, the liquidators, whether it is Collateralized Loan Obligation (CLO) in California or the liquidators in Pennsylvania. As the reports are received, CIGA bills the reinsurers and the reinsurers either make payments or dispute them or deal with the issues under reinsurance agreements.

Mr. Wilson stated that if CIGA must, it will seek additional bonds; however, CIGA would prefer to use other methods first. CIGA is constantly analyzing its cash flow, and the last thing it wants is to lack the money or the capability to pay injured workers. So that will be first in the order of priority. Cash flows for the next four years, 2007 to 2010, are estimated as follows:

Estimated Losses, ALAE and administrative expense = -$1,087,789,000
Estimated assessments to pay claims = -$341,894,000
Available cash, investments and interest earnings = -$143,534,660
Available bond proceeds = -$205,442,000
Shortfall consisting of new bonds or estate distributions = -$396,918,340.

Mr. Wilson stated that close to $1.1 billion of cash flow are estimated losses and expenses. There is a gap in the assessments, which is made up with cash and bond proceeds; however, there is still a shortfall of $400 million. Three surety bonds were recently settled out of Superior Pacific estate, for the sum of $32 million, which will reduce the shortfall. Other distributions are expected in 2007, again reducing that number. The Legion liquidator has also indicated that there will be a distribution. All totaled, up to $270 million could be raised in 2007 to address the shortfall. Mr. Wilson stated that money will not be booked until it is received; however, the money is subject to court procedures and processes which in turn could be slow. Therefore, the cash flow cannot be relied upon unless it is in hand. He stated that moving forward as expected, CIGA hopes that there will be no need for additional bond issuance until the end of 2008 if no estate distributions are received.

Mr. Wilson stated that the bond issuance will not occur, even if there is no additional money, until the end of 2009. If more money comes in, that date will be pushed out even further. He stated that the real goal is to not have to issue any more bonds and to continue to finance and pay claims with estate distributions, the money in hand, and the bond proceeds in hand. He stated that estate distributions are the biggest area where additional monies will derive from in the future. Mr. Wilson stated that a lot of the estates are maturing now, and that during liquidations, managers will try to commute the reinsurance treaties, essentially look forward to the lifetime of the reinsurance contract, bring it all forward to present value, and try to get the money now. Therefore, there should be some

significant distributions. However, he stated, one never knows how those commutations will actually flow. Mr. Wilson also mentioned that CIGA's assessments of 2 percent against the workers' compensation carriers and the 1 percent in 2008 for paid claims are driven by the workers' compensation premiums written in the state. He stated that as workers' compensation premiums decrease, the assessment revenues will also decrease, making the estate distributions a critical factor.

Mr. Wilson stated that the prognosis includes the following: assessments combined with cash, investments and bond proceeds in hand will mean that any need for additional bond issuance will not occur until the end of 2008 if no estate distributions are realized. Some estate distributions are likely in 2007 and 2008, which could eliminate the need for borrowing, if at all, until after 2010.

Questions

Commissioner Wei asked Mr. Wilson if the cash flows can be broken down into a loss ratio. Mr. Wilson responded that he understands loss ratio as the ratio of premium income to claims that need to be paid out. He stated that CIGA just looks at it in terms of cash flow. From an insurance perspective, with $1 million of premium with $650,000 of claims to pay out, there would be a 65 percent loss ratio. He stated that CIGA does not compute that number because CIGA does not have the ability to increase revenues by increasing rates, like normal insurance companies would do. There is a gap in that CIGA has to pay what it has to pay and that it cannot change its revenue stream.

Commissioner Wei stated that she has seen insurance companies with historically low loss ratios of 30 percent, and she asked whether those other loss ratios put more pressure on CIGA. Mr. Wilson responded that it is generally irrelevant, except that it affects what CIGA decides to collect in premium. As premium decreases, CIGA's assessment capacity as a percentage of what the insurers write also decreases. The loss ratio does not really matter, since the assessments are based on the amount of policies written. Commissioner Wei asked whether it was time to get an increase in the assessment. Mr. Wilson responded that the way things are structured currently, CIGA will be capable of moving forward, assuming decent estate distributions. He stated that there were many factors such as the forecast for how much CIGA will have to pay, which it does not know for sure and which is somewhat under dispute with actuaries and others. The forecast could be off by five percent above or below the current numbers. He stated that they also could be inaccurate about the estate distributions. He then stated that it is important to keep enough ahead of the analysis to understand the present situation and make sure that if it is necessary to go to the bond market, CIGA will have to start the process about six months before the bonds are issued. Mr. Wilson stated that they will be well ahead of that in terms of the analysis.

Commissioner Steinberg asked how the current bonds will be retired. Mr. Wilson responded that in 2008, instead of having a 2 percent assessment, which is what they have now and which is used to pay claims, the assessment to pay claims will go to 1 percent. The additional assessment will be used to pay the bonds to retire the principal

and interest. When that assessment was established, it was determined that it would be adequate at a 1 percent level to pay off $1.5 billion, not just the $750 million that has been issued. Mr. Wilson stated that they believe that that assessment will be adequate.

Commissioner Steinberg asked whether the assessments were statutory. Mr. Wilson responded that they were statutory, and that it is the same across the country for guarantee associations. He stated that he did not believe that there was a guarantee association with a funding mechanism that was attached to anything but written premiums, such as loss ratios or profit or anything like that. He stated that that might work in some years, but in years where there were losses, the assessment number would be a big problem.

Chair Wilson stated that the liability numbers were based on reported liabilities. He asked whether there were any calculations for incurred but not reported liabilities. Mr. Wilson responded that CIGA did such calculations and that CIGA works with actuaries to forecast that number. He stated that, for example, the actuary reported that the last claim might be paid off in 2043, but that is uncertain and still an estimate.

Chair Wilson thanked Mr. Wilson for his presentation.

Executive Officer Report

Christine Baker, CHSWC Executive Officer

Christine Baker thanked the Commission for the opportunity to provide a briefing on Commission activities.

Spinal Surgery Second-Opinion Process

The Commission is required by Labor Code Section 4062 to conduct a study on the spinal surgery second-opinion process established in subdivision (b) of Section 4062. In 2005, the Commission issued an interim report and determined that a survey of injured workers regarding this process was needed. Draft recommendations have been out for public comment since last year. This new report includes information from the interim report, incorporates the survey information, and makes a final recommendation. Ms. Baker stated that this report was prepared by a team of graduate students at UCLA, under supervision of Frank Neuhauser of UC Berkeley, and by her team under her supervision including Irina, Nurgul, Selma, Chris, and Kirsten. The report is ready for distribution and feedback. The recommendation is for a one-month period for feedback before it is submitted to the Legislature.

CHSWC Vote

Commissioner Thacker moved to approve the release of the draft CHSWC Report and Recommendations on the Spinal Surgery Second-Opinion Process for distribution and feedback, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

DWC Audit and Enforcement Process

Ms. Baker stated that at the last Commission meeting, concerns were raised about the effectiveness of the DWC's audit and enforcement process by Mark Gerlach, the applicants' attorneys' representative. 2006 Chair Angie Wei requested that staff review the recent audit process and comment on the concerns raised at that meeting. CHSWC staff has prepared an Issue Paper in response to that request, which provides a background history of the DWC audit function and summarizes the findings from a brief review of audit reports from 2001 through 2005.

Ms. Baker stated that in 1989, California workers' compensation reform legislation established an audit function within the DWC, and she was the first audit manager in that new function. Several years later, in April 1998, the Senate Industrial Relations Committee and the Assembly Insurance Committee jointly requested that the CHSWC undertake an evaluation of the effectiveness of the DWC Audit function. The CHSWC study determined that a redirection of audit activities could produce more effective outcomes. The research team found that the original audit procedure did not include all insurers within a reasonable period of time, did not focus on the worst performers, and concentrated penalties on relatively inconsequential violations.

Ms. Baker stated that under the original DWC audit procedures, locations were rarely subject to random audits and almost never subject to targeted audits. The study team discussed ways to address those issues. After research and thoughtful discussions with the Audit Advisory Committee and other community members, the study team recommended a new DWC Audit System. Two members of the team, Frank Neuhauser and Marie Wardell, who is now a member of the State Compensation Insurance Fund (SCIF), were very much involved in that revision. Ms. Baker stated that in 2003, the Audit function was changed as a result of the study, and a simplified audit focused on key violations and auditing all locations in a five-year cycle.

Ms. Baker stated that at the previous Commission meeting, Mark Gerlach raised several concerns about the current audit process. Those concerns include the decline in the number of audits performed, instead of the expected increase, and the amounts of unpaid compensation in the files audited. Frank Neuhauser performed a brief analysis of the DWC audit process, based on the DWC Audit Reports for 2001 through 2005. Some of the findings are as follows:

- The simplified Profile Audit Review, or PAR, appears to be accomplishing the objective of improving performance of claims adjusting locations.

- Performance does appear to be improving, particularly among the most problematic claims administrators.

- The frequency of violations remains substantial, and the amounts of unpaid compensation are likely to be unacceptably high.

- Unpaid compensation appears to be declining as a fraction of all compensation due.

- The number of locations audited appears low despite the streamlining of the audit process, so the productivity of the Audit Unit is low.

- Similarly, the number of claim files reviewed also appears to be low; it should have increased.

- The PAR process requires no more work per file as the pre-PAR process, yet the number of audits and the number of claims have been reduced.

- According to DWC, there have been reductions in Audit Unit staffing.

- Recent reforms to workers' compensation made auditing files more complex due to overlapping statutory rules.

Ms. Baker stated that she understands that the DWC does have a request for additional staffing, but this cannot be discussed as Budget Change Proposals are confidential until they go to the Legislature.

Ms. Baker stated that Commission staff has several recommendations including:

- The DWC Audit and Enforcement Unit should track and report on the frequency and average underpayment of compensation for the randomly selected audits. Otherwise, the targeted and the random audits cannot be determined, and this confuses the analysis. With the recommended change, the overall trends in performance in the overall system could be determined. This would allow policy makers the ability to evaluate overall trends and overall performance of the system.

- CHSWC staff, in collaboration with the Audit Unit, could determine if the indemnity trends are a result of the changes in the benefit levels or increases in the amount of payment due. This could be easily done if the Commission would like that.

- The DWC should adjust staffing levels commensurate with performance requirements of the system.

- All locations should be audited at least once every five years. This would require that the DWC conduct approximately 100 audits per year. Currently, 70 audits per year are being done, so that needs to be adjusted.

- A more complete analysis of the audit process could be conducted.

- CHSWC could host an Audit Roundtable with worker's compensation community members to assess further what is working and what is not.

Ms. Baker stated that these recommendations are in the Issue Paper.

Chair Wilson asked how long the comment period should be, and Ms. Baker responded that it should be one month and that by the next meeting, there could be final recommendations.

CHSWC Vote

Commissioner Wei moved to approve the release of the CHSWC Response to Community Concerns Regarding DWC Workers' Compensation Audits for distribution and feedback, and Commissioner Salazar seconded. The motion passed unanimously.

Temporary Disability

Judge Lachlan Taylor and Frank Neuhauser spoke about temporary disability. Labor Code Section 4656 provides that temporary disability is limited to 104 weeks within the first payment of temporary disability. This time limit is widely regarded as being too short. Even if there are delays in the provision of benefits by the employer, the clock is still running. Until 1979, the limitation was 240 weeks of benefits within five years of date of injury. In 1979, this was lifted. With no limits, there were a few abuse cases. SB 899 (in April 2004) set the limit of up to 104 weeks. Judge Taylor stated that there is consensus that this should be expanded to more than 104 weeks and perhaps even up to five years. The cost estimates would be negligible if limits were extended. He stated that through Mr. Neuhauser's work, a cost estimate is available for the consequences of extending the current limit.

CHSWC was asked to do an analysis on what would happen to the potential costs and benefits of relaxing the restriction that the 104 weeks of benefits be paid within the first two years, in particular, the additional benefit cost of extending the time frame of benefit payments to three, four, or five years while maintaining the limit of a maximum of 104 weeks of aggregate payments. Mr. Neuhauser stated that with the help of Alex Swedlow from the California Workers' Compensation Institute (CWCI), a large sample of claims from the Industry Claims Information System (ICIS), the database maintained by the CWCI, was put together of temporary disability claims that were active before the restrictions imposed by SB 899.

Mr. Neuhauser stated that the impact of relaxing the restriction on temporary disability would be to increase the amount of temporary disability by about 3 percent and the total workers' compensation costs by 0.6 percent. The reason that the impact is so small is that only a small fraction of cases extend beyond two years. Mr. Neuhauser also stated that because nearly all of these payments would have already been paid out, it makes virtually no difference in the direct benefit costs if eligibility is extended to three years or as long as four or five years.

Commissioner Wei commented that she anticipates that legislation would be introduced on changing the time frames of the temporary disability benefit. She added that this data could be helpful to inform the Legislature on this issue.

Public Comment

Steve Seltzer from the California Coalition for Workers' Memorial Day commented that he supports extending the time frame of the temporary disability benefit to five years.

CHSWC Vote

Commissioner Schwenkmeyer moved to approve the release of the Memo on Temporary Disability, and Commissioner Thacker seconded. The motion passed unanimously.

Update on Permanent Disability Data

Mr. Neuhauser summarized the results from an analysis of ratings under the new PD schedule through January 2007, which provides a comparison of average ratings under the PDRS to comparable groups of ratings under the pre-2005. He stated that the results are almost identical to the analysis done in September 2006, as well as to the analysis performed over the past two years. However, he stated that now there were 30,537 ratings under the new 2005 PDRS, which is about 50 percent more than were analyzed in September and about ten times as many as in the DWC Return-to-Work Study. Of the 30,537 ratings, 13,832 are Summary Ratings and are most comparable between the two schedules and 16,705 are Consult Ratings. A comparison of Summary Ratings from the 2005 PDRS with the pre-2005 PDRS reveals a decline of 41.7 percent, and for Consult Ratings, the difference is a decline of 41.1 percent. Mr. Neuhauser indicated that the impact on the average PD award is a decline of 52.9 percent for Summary Ratings and a decline of 51.0 percent for consult Ratings.

Mr. Neuhauser stated that apportionment to causation was introduced as part of the SB 899 reform. The analysis looked at Summary Ratings only since Consult Ratings are not always evaluated for apportionment. Mr. Neuhauser commented that out of 13,649 Summary Ratings, about 10 percent included apportionment to non-industrial causation. From these 1300 ratings, the average percent apportioned to non-industrial causation was about 40 percent. The percent impact on rating was a decline of 4.9 percent. In addition, the percent impact on the PD award was a decline of 5.8 percent. The combined impact from the new PD schedule and apportionment is about 60 percent.

Mr. Neuhauser indicated that he would like to do additional analysis on the impact of "zeros" or how many cases do not get rating at all under the PD schedule. In conclusion, he pointed out that although not much has changed with regard to the impact of the new PD schedule, on average, lower extremities right now are showing the greatest decline in the average PD ratings.

Uninsured Employers Benefits Trust Fund

Ms. Baker stated that all employers in California are required to provide workers' compensation coverage for their employees. However, not all employers comply with the law. The Uninsured Employers Benefits Trust Fund (UEBTF), or the Trust Fund, was established to provide for the payment of workers' compensation benefits to those injured employees of illegally uninsured employers. Ms. Baker stated that the workers' compensation community has been expressing concern with several aspects of the Trust Fund. In response, the Commission requested that CHSWC staff prepare a background paper addressing some of the emerging issues, including Trust Fund access by injured workers and contributions to the Trust Fund by self-insured and insured employers.

Ms. Baker stated that she would skip the brief history of the Trust Fund and the studies done, as that information is covered in the report. She stated that since 2004, the Trust Fund has been funded by:

- An annual assessment on all insured employers and self-insured employers.
- Fines and penalties imposed on illegally uninsured employers when they get caught.
- Recoveries from illegally uninsured employers when the Trust Fund has paid benefits and is able to obtain reimbursement from responsible employers.

The total program budget for the Trust Fund in the current Fiscal Year 2006-2007 is $37.6 million, most of which will come from assessments on all California employers. Over the past three fiscal years, there have been increasing demands on the Trust Fund:

- The number of uninsured claims paid increased 64 percent, from 1,348 in Fiscal Year 2003-04 to 2,205 in Fiscal Year 2005-06.
- The cost of claims increased 57 percent, from $18.6 million to $29.2 million per year over the same period.
- Administrative costs associated with the claim-payment activities increased 27 percent, from $6.8 million to $8.6 million per year during that time.
- New claims on the Trust Fund increased 42 percent, from 1,263 in Fiscal Year 2003-04 to 1,794 in Fiscal Year 2005-06.

Ms. Baker stated that concerns have been raised about the Trust Fund from both employers and workers. Employers are concerned about the cost of the Trust Fund and the distribution of that cost among law-abiding employers. Workers are concerned about the difficulties in obtaining benefits from the Trust Fund. Trust Fund costs are driven primarily by the number of claims, which are a result of the prevalence of uninsured employers. Ms. Baker stated that in the 1998 Commission study on Illegally Uninsured Employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. The Commission is planning to update that study this year if data can be obtained from the EDD.

Ms. Baker stated that there are a few cases where a worker obtains disability benefits based on improbably high earnings claimed, and the Trust Fund is unable to refute the claim because the employer is unavailable or uncooperative. In some cases, substantial indemnity costs for temporary disability or vocational rehabilitation maintenance allowance may accrue before the Trust Fund ever gets notice of a claim. Whatever the ultimate costs of the Trust Fund program, those costs are shifted to law-abiding insured and self-insured employers through assessments.

Ms. Baker stated that employee concerns with the Trust Fund involve the difficulty in obtaining benefits when an employer is uninsured. Representatives of injured workers have suggested that it should be possible to make a claim to the Trust Fund as simply as making a claim to an insurer. They report that the additional procedural steps are complicated, difficult to understand and time-consuming and that benefits are seldom paid voluntarily prior to award.

Ms. Baker stated that the findings of the study include:

- The identification and location of uninsured employers along with proper enforcement would reduce the costs to the stakeholders of the workers' compensation system. This is the Proof of Coverage database that has been studied by CHSWC and recommended. Many states have this available.

- The surest way to reduce the long-term cost of the UEBTF is to reduce the prevalence of illegally uninsured employers.

- Labor Code Section 90.3 provided for a program to identify illegally uninsured employers. Due to lack of resources, this program was never implemented.

- There is a lack of knowledge of UEBTF and civil procedure.

- Unrepresented applicants lack easy access to the UEBTF. Of some 1800 claims filed during the past fiscal year, only four or five were filed by unrepresented applicants. It takes a lawyer to navigate that system. Injured workers will probably continue to require attorneys if they wish to pursue any of the additional remedies available against illegally uninsured employers.

- Applicants' attorneys have consistently complained about the many technicalities and formalities with which they must comply to file a valid claim. However, the process cannot be greatly streamlined because it is necessary to build a case that can ultimately lead to a civil judgment against the illegally uninsured employer.

- Medical providers incur increased losses on liens while waiting to get paid:
    - The UEBTF does not get involved early enough in the claims. According to UEBTF, it learns of a claim on average ten months after the injury.
    - Frequently, the claim is not promptly pursued by the injured worker because the employer pays bills directly for a while and then things go sour.

- Other times, the injured worker goes without treatment until a critical situation arises or he or she initially receives treatment from Medi-Cal or another program.

Ms. Baker stated that the report recommendations include:

- Publicize and enforce the workers' compensation coverage requirement:
  - Continue and expand efforts to ensure that all employers comply with the requirement to provide workers' compensation coverage.
  - Conduct outreach to workers, employers, medical providers, clinics, and social service programs regarding workers' compensation coverage requirements and reporting or uninsured employers.
  - Establish and fund a systematic enforcement of coverage program.
- Provide workers' compensation coverage information:
  - Continue the effort to provide convenient and rapid public access to workers' compensation insurance coverage information.
  - Ensure that proof of coverage data are presented in a standardized, uniform format so as to be easily utilized.
  - Provide rapid access to coverage information without processing written requests to the Workers' Compensation Insurance Rating Bureau (WCIRB).
  - Ensure that non-confidential information on Division of Labor Standards Enforcement (DLSE) investigations is publicly available and accessible online.
- Improve methods to help workers access benefits from the UEBTF:
  - Develop a simplified guide on the UEBTF claims process for injured workers; CHSWC staff has prepared a line item proposal for that purpose.
  - Educate Information and Assistance Officers on UEBTF procedures to improve access for injured workers.
- Encourage reporting of suspected illegally uninsured employers:
  - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, require medical providers to report suspected uninsured employers to the California Department of Insurance (CDI).
  - Require UEBTF to report suspected uninsured employers to CDI and other enforcement agencies.
  - Establish a "hotline" number for employees, employers and others to report uninsured employers and trigger an investigation of coverage by the DLSE.

- Protect and improve the UEBTF:
  - Improve UEBTF procedure while preserving the authority of UEBTF to recover funds from the illegally uninsured employers.
  - Create a presumption of earnings, not to exceed the average wage of the occupation, so that UEBTF is protected from workers' uncorroborated claims of weekly wages that were not reported by the employer.
  - Research ideas to measure performance, identify double billing, and identify opportunities for earlier identification of likely UEBTF claimants.
- Further educate the workers' compensation community:
  - Information and Assistance Officers may benefit from additional training on advising workers on how to handle the UEBTF claim process.
  - Education for practitioners would facilitate their handling of basic civil procedures.
  - Information and Assistance Officers, attorneys and the community would benefit from briefings regarding the UEBTF process. While the UEBTF process is necessarily different from the process of submitting an insured claim, it can be manageable if the participants understand the requirements.

Ms. Baker stated that next steps would be to possibly develop legislative language as determined and create a roundtable for discussion on UEBTF issues. It is recommended that the report on the UEBTF go out for public comment and feedback.

Chair Wilson stated that he would encourage members of the public to review the report and provide comments. He asked if it would be a one-month period for feedback, and Ms. Baker responded that it would.

CHSWC Vote

Commissioner Wei moved to approve the release of the CHSWC Report on the DWC Audit Process for distribution and feedback, and Commissioner Salazar seconded. The motion passed unanimously.

24-Hour Care

Ms. Baker stated that in December 2006, the Commission conducted a roundtable on 24-hour care. Approximately 30 stakeholders were present. The viability and feasibility of integrating workers' compensation and group health were discussed. A number of questions were posed and statistics were needed to be able to address some of the questions and concerns. Those questions are included in the recommendations section of the 24-Hour Care Roundtable Report. At this time, it is recommended that the roundtable paper go out for public comment for a one-month period, and at the next meeting, it can be decided whether to follow up on the recommendations.

CHSWC Vote

Commissioner Wei moved to approve the release of the 24-Hour Care Roundtable Report for distribution and feedback, and Commissioner Thacker seconded. The motion passed unanimously.

Carve-out Conference

Ms. Baker stated that the CHSWC is planning to hold a carve-out conference some time in August. CHSWC staff is working with different constituencies, including Kaiser and the Labor Occupational Health Program (LOHP) at UC Berkeley and the Labor Occupational Safety and Health Program (LOSH) at UCLA, to plan a large educational conference on carve-outs.

AMA Conference

Ms. Baker stated that the DEU of the DWC conducts training on American Medical Association (AMA) *Guides* by a doctor who is a member of the American Board of Independent Evaluators. CHSWC has been approached by the manager of the DEU to co-sponsor a training conference on the AMA *Guides* through the American Board of Independent Evaluators. There would be no expense to the CHSWC. Co-sponsorship would mean that CHSWC would provide the CHSWC mailing list and staff support. This co-sponsorship would allow for more consistency of AMA *Guides* training, which would also be more consistent with DEU training. The training would be held in Northern and Southern California

Chair Wilson asked if the training conference would be similar to the training conference on AMA *Guides* a year ago that was very successful, and Ms. Baker responded that it would be.

CHSWC Vote

Commissioner Thacker moved that the Commission should co-sponsor training on the AMA *Guides* with the DEU and the American Board of Independent Evaluators, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Medical Study

Ms. Baker stated that the CHSWC has contracted with RAND for a study of the workers' compensation medical system post-reform. Discussions are ongoing with both the CWCI and the DWC regarding data needs. The study may be restricted due to the unavailability of data to the CHSWC. Discussions will continue, and Ms. Baker stated that she will keep the Commissioners posted on the results of those discussions.

Return to Work Post-Reform

Ms. Baker stated that the CHSWC is conducting a study of wage loss and post-reform return to work through RAND. Discussions continue with the EDD for acquisition of the appropriate data. Mrs. Baker stated that she would keep the Commissioners posted on delays.

Fraud Studies

Ms. Baker stated that she is pleased to report that a number of studies are underway in the area of fraud. CHSWC staff is working closely with the Fraud Assessment Commission. The study on over payments and underpayments is being conducted for the Fraud Assessment Commission, and CHSWC staff is serving as staff to that Commission. Data have been made available from the DWC, and CHSWC staff is working with the Department of Insurance.

Ms. Baker stated that other studies are underway, which will probably be discussed at the next Commission meeting, including under-reporting of premium. Another study that Les Boden spoke about is under-reporting of claims, and another study is updating uninsured employers and the underground economy. Ms. Baker stated that there is a proposal to look at fraud in the area of split codes and the use of split codes. This was suggested by the Chair of the Fraud Assessment Commission as there is tremendous abuse in this area. There is a proposal for UC Berkeley to evaluate split class code abuse, and CHSWC staff recommends approval of that proposal.

Chair Wilson said that the Chair of the Fraud Assessment Commission, William Zachry, is present and the Commission appreciates his attendance.

Comments by Chair of the Fraud Assessment Commission

Mr. Zachry stated that he would like to thank CHSWC for continued support in the research that is necessary to determine the nature and the extent of fraud within the workers' compensation system. By having this research, the Fraud Assessment Commission should be better able to better focus resources to ferret out and remove fraud from the system and make it better for all parties concerned.

On the issue of uninsured employers, he stated that currently, it is a felony for an employer to lie about its premiums to the insurance company, and it is a misdemeanor not to get workers' compensation insurance. The Fraud Assessment Commission has voted that this should be addressed at the Legislature. He stated that he believes that the California District Attorneys Association has some wording on this issue, but he does not know if anyone is carrying the bill. He stated that the Fraud Assessment Commission can not promote it further.

Mr. Zachry stated that it takes an average of two years from the date of injury to the date of the first check by the UEBTF and that as a safety net, that is pretty poor and that needs

to be fixed. He stated that he understands that the UEBTF is working diligently to try to make it easier for injured workers to get benefits, but there still is a problem in making it a workable safety net. He stated that the Fraud Assessment Commission is working with a pilot program and analysis through the Watsonville Law Center to try to solve some of these problems or bring them to the attention of the appropriate people. He also stated that he believes that there are a lot of people who are very committed to making this work, so he is optimistic that they will be successful on this issue. He again thanked the CHSWC for its support with research to do a better job with fraud in the system.

CHSWC Vote

Commissioner Salazar moved that the Commission approve the Proposal to Review Possible Abuse of "Split Class" Codes in Workers' Compensation Insurance, and Commissioner Wei seconded. The motion passed unanimously.

Public Comment

Steve Zeltzer from the California Coalition for Workers' Memorial Day discussed several concerns about aspects of the workers' compensation system including: the decline in workers' compensation claims and the corresponding increase in DI claims; cost-shifting because of UR and the use of ACOEM Guidelines; SB 899 and exclusion of compensation for pain and suffering when a worker is injured on the job; the composition of the Fraud Assessment Commission; and the need for a study on the handling of workers' compensation by self-insured employers.

Richard Lewis, a claims administrator for the North Bay schools, discussed several concerns including: that education of employers is critical on issues involving return-to-work programs and what employer obligations are under state and federal laws, the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA); and that the laws have gotten more complicated and administrators are finding it more difficult to manage and understand the process.

Adjournment

The meeting was adjourned at 1:05 p.m. The next CHSWC meeting is scheduled for Thursday, April 19, 2007, in Oakland.

Approved:

Chair — Date: 4/27/07

Respectfully submitted:

Christine Baker, Executive Officer — Date: 4/27/07