Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING
March 24, 2017
Elihu M. Harris State Building
Oakland, California

In Attendance

2017 Chair, Daniel Bagan
Commissioners Doug Bloch, Christy Bouma, Martin Brady, Shelley Kessler, Sean McNally, and Angie Wei

Absent

No absences.

At-a-Glance Summary of Voted Decisions from the CHSWC Meeting

Approval of Minutes from December 9, 2016	**Approved**
Posting of "California's Janitorial Industry: Does Higher Compensation for Union Workers Lead to Greater Production Pressure and Higher Injury Rates" report for feedback and final posting in 30 days	**Approved**
Posting of "Workload in California's Janitorial Industry: An Emerging Health and Safety Concern" report for feedback and final posting in 30 days	**Approved**
Approve DRAFT report on the Return to Work Fund in response to a request by Senator Tony Mendoza	**Approved**
Return to Work Fund Study Request for Proposal	**Approved**

Approval of Minutes from the December 9, 2016, CHSWC Meeting

CHSWC Vote

Commissioner Kessler moved to approve the minutes of the December 9, 2016, meeting, and Commissioner McNally seconded. The motion passed unanimously.

DWC Updates

George Parisotto, Acting Administrative Director, Division of Workers' Compensation

Mr. Parisotto stated that the first topic for the DWC Updates is the formulary and updating the Medical Treatment Utilization Schedule (MTUS), and he will leave that for Dr. Raymond Meister and Jackie Schauer.

Lien Stays

- SB 1160 added Labor Code section 4615. Liens filed by a physician or provider criminally charged with workers' compensation fraud, medical billing fraud, insurance fraud, and Medicare or Medi-Cal fraud shall be automatically stayed, pending the disposition of criminal case.
- Work for the Division: Not only identify providers subject to stays but also the liens associated with the providers. Also IT to upgrade EAMS (Electronic Adjudication Management System) to automatically stay the liens.
- As of March 21: 275,000 stayed liens; 79 providers with about $1.2 billion claimed.

Provider Suspension

- AB 1244 added Labor Code section 139.21, which requires DWC to suspend any physician from participating in the workers' compensation system who is convicted of any crime involving fraud or abuse of the Medi-Cal or Medicare programs or workers' compensation system who is suspended from Medicare or Medicaid programs or who has had a license to provide health care services surrendered or revoked.
- Emergency regulations effective January 6, 2017 (sections 9788.1–4)
- 20 notices of suspension have been sent out to providers
- Six orders of suspension have been issued, with option of request for hearing
- Three hearings have been held; judge will issue decision and forward to Administrative Director's (AD) Office; if decision is determined appropriate, AD Office will send out final order of suspension or AD will determine the decision is not appropriate.
- Three hearings have been set
- For those suspended, lien consolidation process will begin. A special adjudication unit has been established by the Chief Judge to handle that process, anticipate the first consolidation will be set in April

Commissioner Kessler asked about the order of suspension and the opportunity to return to providing services. Mr. Parisotto explained that DWC does not yet have a procedure in place for "bringing someone back" into the system. It will have to look at that when it examines the emergency regulations and finalizes them. The statute says suspension from participation in the system and that is what the division is doing. Participation means no treatment, no sending bills, or getting paid on bills, essentially just cutting them out. Once there is an order of suspension, liens that are in the system will have a lien consolidation proceeding, and the Chief Judge has set up a special adjudication unit to handle them. They will have to go into EAMS and identify all the liens that are associated with that provider. The statute has a very interesting provision that shifts the burden of proof to the provider to show that the liens already in the system are not connected with that criminal fraudulent activity. If the provider can show that, then that lien can be processed normally. But if that evidence is not provided, then that lien will essentially be kicked out of the system. It hopes to get started with that process in April, as the Chief Judge has set up a unit for that.

Commissioner Bagan asked why the 79 providers with stayed liens were not also suspended, given only 20 notices of suspension. Mr. Parisotto explained that the way the statutes are set up in Labor Code sections 4615 and 139.21, if you are charged, you have your liens stayed. The

suspension process begins after the provider is convicted. The criminal charge has to work its way through whatever court it is in, and after there is a disposition, you can go on to the next step.

Commissioner Wei asked whether the division is reporting them to the medical board. Mr. Parisotto said that after orders of suspension are issued, it is required to post them and is in the process of doing so. It also sends them to the licensing agency of the health-care provider. He said it is a new process, and it is working out the kinks to see how it works, but so far the process is having an effect and so it will keeping moving forward on it.

IMR/IBR

IMR

- Application filings in 2016 about same as 2015
- 250,000 applications; 200,000 less 50,000 duplicates; 170,000 eligible
- February: 19,579 applications, 15,067 unique applications, and 13,656 eligible.
- Injured workers are given the opportunity to correct a defective application (signature or missing utilization review [UR] decision); examination of who is filing defective applications, the same people or new.
- Final Determination Letters issued in 2016: 175,993
- Timeliness of decisions trending downward. February: 27 days from assignment; 12 days from the date medical records received. (March: 10 days)
- Decision outcomes in 2016: 86.5% Upholds; 8.8% overturns; 4.7% partial overturns.
- Treatment categories: 43% pharmaceuticals (30% opioids); 16% diagnostic testing; 14% rehabilitation services; 8% durable medical equipment; surgery at 5%.

Commissioner Bouma asked about the UR decision not being attached and asked about a pilot that was supposed to attach it electronically. Mr. Parisotto said that was correct, and Maximus is working on a pilot program that involves several UR organizations. After a UR decision is issued, data are transferred to Maximus to be held. When an IMR application is filed, it can take that information and just move it. He said that is where the division is going in terms of electronic records. It wants to move into the twenty-first century as much as anybody, for example, by having medical records filled out electronically. If those records can be completed and held electronically, then it can easily get to the point that people can go online, fill out basic information, and have an IMR application filed; not just filed, but with the medical record available. Timeframes would be shortened tremendously.

Commissioner Bloch asked about the notice sent to the worker if there is a problem with eligibility and how much time the worker has to correct it. Mr. Parisotto said that after a UR decision to deny or modify is received by the injured worker, the IMR application is sent along with it. They have 30 days to send in the application. The application is submitted either by mail or fax, and if Maximus receives it and finds a problem—for example, that it is not signed—it sends it back to the injured worker, giving that person 15 days to correct it. When the DWC first started the process, they told workers that they could correct it but within the 30-day timeframe. He said he did not think that worked very well, so what the division is doing—the 30-day

timeframe aside—the worker is given some time to correct it. He said that has worked pretty well, with a good response. But every month it still has 400-500 applications that are not corrected. Commissioner Bloch said it would be great to have the statistics; he appreciates the February breakdown and finds it useful to know that 1,000 or 2,000 were ineligible. He said he would be curious to know how many of the ineligible were able to be corrected. Mr. Parisotto said he spoke with one of the researchers in the Medical Unit, and it will take a look at that. He said he wants to know whether first-time injured workers to the system are the ones filing ineligible applications or it is receiving the same ones from people who have filed before. He said that would be a very interesting thing to find out.

Commissioner Kessler asked about the February 2017 numbers and the total number of requests for authorization. Mr. Parisotto said he did not collect that information. He said that he hoped with SB 1160 and when the UR collection process starts, it can get a better idea and actually compare that with the number of IMR applications. Commissioner Wei asked whether they knew the percentage of the requests for authorization that are going to IMR; Mr. Parisotto said that they did not. Commissioner Wei said that it would be helpful to know. Director Baker said that of the overall requests, given all the treatment that is out there, there are 60 million treatment billings per year, so this is a fraction. Commissioner Wei said she wanted to see whether the February numbers were the same as the overall numbers. Director Baker said that it could pull that data.

Commissioner Kessler stated her concern about contacting workers about problems with their filings and whether there are language provisions for people who are not proficient in English. Mr. Parisotto said that it has not come up but that it is an excellent point. Commissioner Kessler added that when people go on the website they should have the opportunity to use a language that is easier for them to navigate. Mr. Parisotto said that that is already available. Commissioner Kessler continued by asking whether when there are problems when people are contacted and when they are injured and may not be living in the same place—they may be more transient—is there a way to track whether workers have received notice of a problem with their application. Mr. Parisotto said that he did not know, but that it is sent by certified mail to the address on the application shortly after it is sent in. He said that he hope that injured workers would look carefully at the IMR application and correct any information that they find inaccurate. The turnaround is fairly quick. He noted that the timing for decisions to go out has shrunk dramatically over the past few months. From the time the case is assigned to Maximus—that is, determined to be eligible—and it sends out a request for information, it sends decisions out within 27 days. After medical records are received, the time frame is ten days, well below the statutory time limit. He credits this to Maximus making systems that allow people to send in medical records electronically. He said that it has also been fairly diligent in the past few months and going to claims administrators who have been late and filing Orders to Show Cause and seeking administrative penalties, and people have come around. He said he thinks the institutional feeling about sending records has changed. He said what it wants to do with IMR is ensure that people look at these decisions; if people have problems with decisions, that is where we want the discussion to be, not with the process.

IBR

- 2016: 2,332 applications filed; 1,944 decisions issued.
- 75% overturned; 25% upheld (1,442 v. 502)
- Physician services and Hospital Outpatient/Ambulatory Surgery Center dispute make up about 2,000 of the applications.

SB 1160

- Complete the rulemaking process for the suspension regulations (from emergency regulations)
- Drafting regulations to implement the fast track procedure, the provision for no UR for most routine treatment 30 days after injury
- IT is working on mandatory electronic reporting of UR data by claims administrators to DWC and electronic Doctor's First Reports and medical records
- Other regulations to be put in place: fix the attorney disclosure form; home health regulations; interpreter fees
- Will review audit regulations and Qualified Medical Evaluator and Medical Legal Fee Schedule.

Commissioner Bouma asked about the IBR process overturns at an inverse rate to the IMR process, with IBR in favor of the doctor. Mr. Parisotto said it was a good question. He said the IBR applications he has seen have been well supported and documented by the physician. Commissioner Bouma followed up by asking about the number of upholds of the IMR treatment for failure to adequately document the reason for the treatment. Mr. Parisotto said it was a good question and something it should take a look at.

Commissioner Bouma asked whether the IBR work is largely contracted out by the doctors or whether it is done in-house. Mr. Parisotto said that he did not know.

Update on Workers' Compensation Medical Issues/Formulary

Dr. Raymond Meister, Executive Medical Director, Division of Workers' Compensation
Jackie Schauer, Attorney, DWC Legal Unit

Dr. Raymond Meister provided the topics for discussion:

Online Education
MTUS
QME

MTUS Updates and Changes
Treatment Guidelines
Formulary

Online Education

Instruction on how to use the MTUS.
Available online without charge.
Free Continuing Medical Education credit.
Examples of cases.
http://www.dir.ca.gov/dwc/CaliforniaDWCCME.htm
Demonstrated where to click to access the course, as well as the option to access using a smartphone.
Next education module will be for Qualified Medical Evaluators.
DWC hopes some medical providers will be interested in becoming QMEs as well addressing some of the more common issues that DWC sees in terms of education and current QMEs.

Will update all MTUS evidence-based treatment guidelines.

- Updates to current MTUS topics; plan to delete all the chapters and replace with the more current versions of the American College of Occupational and Environmental Medicine (ACOEM) guidelines.
    - General approaches
    - Neck and upper back
    - Shoulder
    - Elbow
    - Forearm, wrist, and hand
    - Lower back
    - Knee
    - Ankle and foot
    - Stress (mental health)
    - Eye
    - Chronic pain
    - Opioids

- New topics to be added. ACOEM has developed new treatment guidelines, and DWC plans to add the additional topics to the MTUS.
    - Hip and groin
    - Interstitial lung disease
    - Occupational asthma
    - Traumatic brain injury

Commissioner Kessler asked whether hearing could be added as a new topic. Dr. Meister explained that ACOEM does not currently have a hearing treatment guideline. He said that OSHA and Cal/OSHA have regulations on hearing and that ACOEM is interested in any input. He agreed that it is an important occupational issue.

Commissioner Bloch commented that he was happy to see that the guidelines were being updated. He said at previous meetings they said that ACOEM was not necessarily the quickest at updating its treatment guidelines. Dr. Meister said that DWC also has a process in place that will make it easier and a more expedited process when ACOEM comes out with a new guideline

DWC will be able to incorporate the new guideline quickly. Dr. Meister added that ACOEM has gone through a paradigm shift away from waiting five years before doin g a major update; it now envisions doing more frequent updates as the evidence dictates.

Jackie Schauer continued with an update on the formulary. She said that after receiving public comments from the DWC Forum on draft regulations, rulemaking had been officially launched.

Rulemaking Procedure/Timeline

- Adopt the formulary pursuant to the Government Code Administrative Procedure Act
- Notice of Rulemaking published March 17, 2017
- 45-day comment period and Public Hearing on May 1, 2017
- 15-day written comment period

Update Procedure

Labor Code section 5307.29

- At least quarterly updates (to the drug list)
- Adopted by an Administrative Director posting order, allowing a more formal procedure to keep the drugs up to date, along with input from the Pharmacy & Therapeutics (P&T) Committee

Commissioner Wei asked about the process or methodology used to decide how or what to update. Ms. Schauer said it will be a multipronged approach: ACOEM will be doing continuous review and updates, and the P&T Committee will likely give input on the process.

Goals and Structure of the Formulary (in the draft proposal)

- Goal in implementing AB 1124: Adopt an evidence-based drug formulary, consistent with the MTUS, to augment provision of timely and high-quality medical care, while reducing the administrative burden and cost
- Accomplished through the formulary structure with various components and not just a drug list
    - MTUS Treatment Guidelines: the backbone
    - MTUS drug list
        - Preferred drugs: no prospective review if in accordance with MTUS
        - Non-preferred and unlisted drugs: prospective review required
        - "Special fill" and "perioperative fill" of specified non-preferred drugs
    - Ancillary formulary rules

Ancillary Formulary Rules (third component)

- Intended to support the provision of appropriate, cost-effective, high-quality medical care
    - Access to non-preferred and unlisted drugs
    - Off-label use
    - Generic drug preference; requirements for brand-name drugs
    - Compounded drugs
    - Physician dispensing

Refinements to Proposal after DWC Forum Comment Period

- MTUS drug list changes
  - Changed "first fill" to "special fill"
  - Added more special fill drugs (mostly corticosteroids)
  - Added perioperative fill column (mostly pain meds, anticoagulants)
- Reference in Guideline "legend" ties the drug back to the source guideline at a high-level indication for the prescriber to the chapters where the drug is discussed to ensure the drug is appropriate for the condition and phase of care. DWC added the legend (to the list) to make it more useful in terms of whether a drug is recommended or not recommended or has no recommendation for use.

Commissioner Wei asked about the example of one drug (acetaminophen) and said it looks as if it is marked "recommended" and "not recommended" for elbows and wrists. She asked how the formulary addresses that. Ms. Schauer said the guidelines are what govern appropriate care. The elbow chapter includes various conditions related to the elbow, so there may be some conditions for which acetaminophen is recommended and some conditions for which it is not.

Commissioner Bagan asked whether if the drug is on the preferred list it is not subject to prospective review. Ms. Schauer said it is a preferred drug with the caveat that it is recommended when used in accordance with the guidelines. It is not a blanket rule; only if it is used in accordance with the guideline does it not need prospective authorization. Commissioner McNally commented that almost no drugs were blanket preferred. Ms. Schauer said that was true. She said that is why DWC keeps emphasizing "used in accordance" or "in conjunction" with the MTUS treatment guidelines.

Commissioner Bloch said he was looking at a drug called baclofen on the second page of the proposed MTUS drug list, which is non-preferred but is allowed a four-day supply under special fill for perioperative use and for the treatment of chronic pain; it has a check mark, an "x," and a circle with the line through it. He asked whether the MTUS guidelines specify the source of chronic pain for which it would direct the prescribing physician to ask for a special fill four-day supply of baclofen—for example, for chronic pain from a lower back injury vs. the wrist? Dr. Meister said that you always start with the diagnosis and go to the guideline to see under the diagnosis what the recommendation is for that medication. It could be that any medication under the guideline chapters could be recommended for certain things and not recommended for other things, and have no recommendation for another set of diagnoses. The health-care provider needs to start with the diagnosis, go to the guidelines, and see whether a drug is recommended for that condition and then, based on the recommendation, they can invoke the need for a special fill or perioperative fill, as appropriate.

Regulation Proposal Changes

- Refinements and clarifications to definitions and rules
- Added perioperative fill provisions
  - Defines perioperative period, exemptions from prospective review
- Added provision to special fill for AD to evaluate effect on injured worker use of opioids, including public input

- Added provision does not invalidate or lessen any health and safety regulations, such as California occupational blood-borne pathogens standard
- Added section stating that the AD may maintain and post a listing from the National Drug Codes of drug products on the MTUS drug list (a cross-walk)
- Added Forms: P&T Committee Application and conflict of interest (COI) form

Presently in Rulemaking

- Comments on the proposed formulary are welcome and encouraged
- Public may follow the rulemaking on the DWC rulemaking page: http://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html
- Public may sign up to be on the AD's Newsline list (the section "Stay current on DWC activities," on http://www.dir.ca.gov/dwc/ContactDWC.htm)

Long-Term Opioid Use Following Treatment of Acute Pain

Dr. Meister discussed opioids related to the special fill policy, particularly since several members had expressed interest in the topic and concern that the four-day supply be extended to a longer period.

- Recent Centers for Disease Control and Prevention (CDC) Morbidity and Mortality Weekly Report (MMWR) Report, 3/17/17
    - In a representative sample of opioid naive, cancer-free adults who received a prescription for opioid pain relievers, the likelihood of chronic opioid use increased with each additional day of medication supplied, starting with the third day, with the sharpest increases in chronic opioid use observed after the fifth and thirty-first day on therapy (https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6610a1.pdf)

Commissioner Wei asked whether Dr. Meister expected ACOEM to update its guidelines on opioid use in view of the report. Dr. Meister said he knows ACOEM is aware of this information. Its opioid guideline came out in 2014, but it is undertaking a major review. Commissioner Wei said that the concern among some of the Commissioners is that this is the part of the formulary that does not track with the guidelines. She said she has accepted that and hopes that the treatment guideline will be iterated and that there will be conformity across the board.

Commissioner Bloch asked about some of the options, knowing that it depends on the source of chronic pain and the treatment guideline, but within the formulary they are looking at potentially up to four days of prescription for a special fill of opioids and narcotics to treat somebody who has chronic pain. He said that, based on the experience of his (union) members and what he has heard, and what they hear from doctors, that it is the best of what is out there for treating pain, and that doctors do not have as many good tools in their toolbox for treating pain as narcotics, knowing that many problems come with it. So after four days, will the formulary give physicians enough options to help an injured worker treat their pain? Dr. Meister replied yes. He wanted to first clarify that the special fill is a provision on the first visit of an injured worker. DWC envisions a very severe orthopedic injury, such as broken bones, in which workers are acutely

injured and have severe pain and need those opioids that day. For injured workers with one of the chronic pain conditions that has typically developed over period, the typical definition of a chronic pain period starts at three months. By that time, the injured worker would be treated under the opioid guidelines in conjunction with the treatment guidelines and while he cannot say what the new version of the ACOEM guideline will be, he can use the current MTUS opioid treatment guidelines as an example; an entire section on chronic pain has a very reasonable approach and allows the doctor and the patient leeway to use those medications as needed. It has suggestions for weaning and for decreasing the level of opioid use, but has no hard and fast rules that it cannot be used or has time limits. Commissioner Bloch said he did not have time to look at the entire drug list; he focused on baclofen because he was looking for medications for a truck driver who has cumulative injury from sitting on his rear end in a truck for decades and now is having lower back problems. He asked what the options are for somebody who has muscular-skeletal pain. Dr. Meister said if he came in with an acute injury that had been around for some time and had progressed to a chronic phase, the guidelines for lower back treatment and opioid use should indicate the appropriate medications.

Commissioner Kessler said that, after looking at the proposed regulatory text, she had some questions about timing. She asked whether prospective review and retrospective review had a set timeframe. Ms. Schauer said the timeframe was intended to relate back to UR regulations. Commissioner Kessler asked about the process of accessing some of these drugs that may not be in the formulary or were non-recommended if the insurer did not meet the timeframe, such as an appeal or an exception. Ms. Schauer said there is a structure for requesting authorization; if the doctor does not follow the structure, efforts to obtain the medication will probably be impeded. Director Baker explained that there is the normal process, a request for authorization where treatment would occur; the doctor requested it, it would go to a claims desk, which could authorize it. If it does not authorize it and wants to deny it, the request has to go to a doctor. The doctor could authorize it. If the doctor does not authorize it, it could go to IMR. Commissioner Kessler said that part of what was laid out in the documents they received is that people have to have these visits within seven days of an injury in order to get some of their issues addressed. She said her concern was that, especially for non-English speaking communities, immigrant communities, who go to their local clinics or community-based organizations, and some of these folks and their doctors are not familiar with workers' compensation issues. If this exceeds the seven days, what are the options in that moment? Ms. Schauer said that the preferred drugs are not subject to the seven-day limit; they can be dispensed at any time. Commissioner Kessler then asked if the same applied for the non-preferred drugs, and Ms. Schauer said yes. Commissioner Kessler asked what happens to someone who has been taking these drugs to manage their pain; if they get cut off at a certain time, would they have an opportunity to have their pain addressed? She mentioned Commissioner Bloch's question about being cut off and going through withdrawal. She said she noticed there were different drugs that can help people going through withdrawal, but those get cut off as well. She asked about the options in those moments for those injured people. Ms. Schauer said the guidelines are in place, for instance, the opioid guidelines and the treatment guidelines. So treatment should be rendered in accordance with those guidelines, and there are normal procedures now for someone who is receiving ongoing treatment; there is supposed to be a progress report in less than every 45 days, and if there are changes in the treatment regime, they should be set forth there. If there is a change and it is objected to, there would be an IMR to challenge the change in treatment. Director Baker said that

the opioid and the pain guidelines require tapering. Despite tapering requirements, if necessary a doctor can document the need for additional care if it is evidence based.

Commissioner Brady commented that the vets have their Opioids and Heroin Conference in Atlanta this month, and that is usually a significant event every year, so some news should come out of that. He said that the Controlled Substance Utilization Review and Evaluation System (CURES) in California became operational this month, requiring physicians and pharmacists to check the database to ensure that no doctor is shopping for opioids. It will take time to get data from that, but it is a big step forward in trying to control abuse.

Public Comments

Diane Przepiorski with the California Orthopedic Association said her comments focus on the drug formulary. She said at the last meeting her association joined in the concern regarding pain medications, not so much for long-term chronic pain but for surgical patients. She said that they appreciate that the Division listens to its concerns and added the perioperative period and some preferred medications so that surgeons can better manage postsurgical pain, particularly when changes need to be made when a patient is not responding well to a particular pain medication, such as for blood clots. One area of anti-nausea medications is still not on the preferred list of drugs; it will continue to make that comment to the Division. She said she did not think it was an area of potential abuse but very important for a patient who cannot tolerate the medications. The definition of perioperative time—two days before and four days after surgery—might be a little on the short side. She is not certain that patients are getting back to see their surgeons within that period. With the limitation of a four-day fill, they do not see extending that time to be a big change to the drug formulary. With respect to the practice of how surgeons see their patients surgically, that would be a change. There are some indications that a four-day fill may not be enough; thinking again of the anti-nausea medications, the typical course of treatment is six or seven days. It seems like a waste of the UR process to get four days and then have to request another two days. She said that the COA is sensitive to what Dr. Meister raised with the new (CDC) report about how quickly a patient can become addicted to the opioid pain medications as well. She said she did not know whether people realized that previously but that it was good to start to look at that. It may not be possible for the opioid medications but maybe for some of the other medications—maybe a longer than four-day fill would be appropriate. She said that they heard during the meeting how important it will be for doctors to have access to the ACOEM treatment guidelines, and they continue to appreciate whatever the Division can do to make those guidelines readily available to the treating physicians online. They prefer that surgeons or physicians not have to subscribe to the ACOEM to have access to those treatment guidelines. ACOEM can get rather expensive, but she knows that there is a process to negotiate a discount that makes it more affordable, but it is critical for the treating physicians to have complete access to the treatment guidelines that are part of the MTUS. They are perplexed also by the column reference and guideline (the "x's" and checks, etc.) to the appropriate chapter, but she believes Commissioner McNally is on the right track in that it is true for all medications that they have to be consistent with the MTUS. She said she hopes it does not cause more confusion than clarity in which chapter one has to go to.

Melissa Cortez-Roth, with Helios, commented on the list of suspended physicians. For a pharmacy benefit manager (PBM), right now it is just a list of names. It would be very helpful for that list to be accompanied by some kind of identifying number; for example, she said she has a very common name, and they do not want to inadvertently block somebody with a similar name. At the same time, sometimes she gets mail under one way of spelling her name, and they do not want people to be able to alter their names to skirt the system. They encourage the DWC to include some kind of identifying numbers on that physician list.

Steve Cattolica, California Society for Industrial Medicine and Surgery, said he wanted to echo Diane Przepiorski's comments about access to the guidelines. He said that, more importantly, he wanted to ask for clarification on distinguishing first fill from special fill. He said if he heard correctly, it is a construct by the Division to avoid interfering with carrier and PBM requirements, which tells him that a carrier, preferred provider organization (PPO), or PBM contract will supersede what might be evidence-based medicine simply to comport with the SB 1160 requirement that they talked a long time about with respect to PBM contracts being in compliance with the formulary. Instead of making the PBM contracts comply with the formulary, they just changed the words, and the PBM contracts still stand. He asked how the UR companies and physicians are going to understand the differences, and where is the evidence that caused this all to take place?

Report on RTW Supplemental Fund Pursuant to Request by Senator Mendoza and Proposal for Further Research

Eduardo Enz, CHSWC
Glenn Shor, DIR Research Unit

Eduardo Enz introduced Glenn Shor, who would report on the Return to Work (RTW) Fund inquiry from Senator Tony Mendoza. Senator Mendoza asked the Commission to conduct a review of the RTW Fund to answer the following questions:

- Is there a gap between the number of workers who were awarded Supplemental Job Displacement Benefits (SJDB) and the number of workers who applied for the RTW Fund?

- If such a gap exists, is the gap growing or shrinking over time?

The DIR Research team analyzed Workers' Compensation Information System (WCIS) data to determine whether a gap exists between the number of workers awarded SJDB vouchers and the number who applied for payments from the RTW Fund. Glenn Shor, from the DIR Research Unit, presented the findings.

- Labor Code section 139.48 requires the Director of Industrial Relations to administer an RTW Fund for the purpose of making a one-time supplemental payment to workers who experience a disproportionate loss of earnings because of injury on the job.

- The program is funded by employers through the Workers' Compensation Administration Revolving Fund.
- Annual funding for the program is $120 million.
- Workers may be eligible for an RTW supplemental payment if their date of injury was on or after January 1, 2013, **and** they have received an SJDB voucher related to that injury.
- Regulations took effect in April 2015.

The SJDB fund is for:

- Workers injured on or after January 1, 2013, with injuries that result in permanent partial disability may qualify for an SJDB voucher of up to $6,000 for education and training, if the employer does not offer regular, modified, or alternative work. Upon receipt of the SJDB voucher, injured workers are also eligible to apply for a supplemental payment from the RTW Fund. Injured workers who receive the SJDB voucher have up to one year from the date of the SJDB voucher to apply.
- Applicants to the SJDB voucher are not required to use any SJDB payments prior to applying for the RTW Fund. Where SJDB payments are required to be used for education or training, RTW Fund payments to injured workers can be used for any reason.
- The online application is available in English, and instructions for filling out form are currently available in English and Spanish (http://www.dir.ca.gov/RTWSP/RTWSP.html). Per 124(b) the application itself should currently be in English and Spanish. Per Labor Code 124(c)(2) the application for RTW supplement under 139.48 must, by January 1, 2018, be in Chinese, Tagalog, Vietnamese and Korean.
- Under current regulations (8 CCR 17308) the RTW Fund will provide a supplement of $5,000 to each eligible individual who submits a complete application by the deadline.

To address Senator Mendoza's inquiry:

- Is there a gap between the number of workers who were awarded SJDB and the number of workers who applied for the RTW Fund? If such a gap exists, is the gap growing or shrinking over time?
    - The DIR Research team matched WCIS data on SJDB vouchers awarded with RTW claims reported from inception on January 1, 2013, until January 1, 2016.
    - A detailed breakdown of the data on a quarterly basis was conducted.
    - To analyze this gap, the DIR Research team matched all claims and benefits in the DWC, the WCIS, and the First Reports of Injury and Subsequent Reports of Injury (FROI/SROI) database, with the RTW Fund's application data to create a complete record for analysis.
    - DIR looked at RTW benefit applications by month to determine trends and magnitudes.
- The DIR Research team then identified all claims for which a $6,000 payment was made for SJDB and in the WCIS FROI/SROI database and calculated the total number of claims with SJDB payments of $6,000 that also have an RTW

Fund application and the total number of SJDB payments of $6,000 that have not had an RTW Fund application to date.

- Per RTW program the number of applications received by the DWC RTW unit from April 2015 through February 2017 was 19,540. The number has gone up considerably since that time. Per RTW program, the number of new applications in March 2017 was 1,623 plus there were 198 reopened cases that month.
- Under CCR 17308, the amount of the supplemental benefit can be adjusted based on further studies conducted by the director in accordance with Labor Code Section 139.48... $81 million dollars constitutes the amount that would be allocated in 2017 assuming that the rate of applications during January and February 2017 were projected out for full year. (There were 2,714 applications during Jan and Feb 2017, so multiplying that by six would give 16,284 which at $5000 per claim would equal ~$81 M).
- Mr. Shor stated that there was a gap between the number of people who received the benefit under the SJDB and those who have also applied for the RTW benefit.

DIR analysis indicates that of those eligible for SJDB with injury dates in first quarter 2013 who received a full $6000 SJDB benefit, approximately 50% received the RTW supplement. For those injured in 4th quarter 2015 who received a full $6000 SJDB benefit, approximately 86% received the RTW supplement.

The findings were:

- The proportion of those who received the SJDB application and subsequently applied for and received the RTW benefit increased greatly between 2013 and 2015. The gap has narrowed from 50% to under 15% during recent implementation.
- The remaining gap can be best addressed by looking at the characteristics of the claimants who have not yet applied for the RTW benefit and concentrating outreach on that group. They are looking at those characteristics and will be able to report back when more results become available.
- There is a website for the RTW program in addition to the SJDB program.

Comments by Commissioners

Commissioner Bouma asked: after the data from 2016 or the estimated data from 2017 were reviewed, if 100% of those who would have received the SJDB benefit had also applied for the RTW fund, what would have been the outflow of money? If the amount deposited in the fund was $81,420,000 (as estimated) for 2017, then would the applicants use this entire amount? As stated elsewhere, it is not known from analysis of WCIS how many SJDB vouchers were issued. Currently there is no requirement in WCIS or EAMS that the issuance of an SJDB voucher be reported to DIR. Thus we can only make estimates of expected payout based on other information that we do collect. The $81 million amount is an estimate of what would be paid out in 2017 if the application rate for January and February (2,714 applications in two months) were to extend through the full year. The latest data available is that the current RTW application rate

is 86% of those receiving an SJDB voucher, based on the number of fully paid SJDB vouchers ($6,000 in benefits). If RTW applications went up to 100% of those receiving an SJDB voucher, our calculation would be that the payout for 2017 would be $94,674,000. If a higher rate of SJDB vouchers were being used to apply for RTW benefits, or if we were to find that not all SJDB beneficiaries utilized the full $6,000 SJDB benefit, the amount would be higher.

Commissioner Bloch asked whether the $120 million could be adjusted. Mr. Shor replied that the $120 million is in the legislation and $5,000 is in the regulation; and the Director of DIR has the authority to adjust that under the regulations. Labor Code 139.48(a) says that the program is funded at $120 million annually. Regulations (8CCR 17308) indicates the RTW supplement program provides a supplement of $5000, and that the amount of the supplement may be adjusted by the Director based on further study.

Commissioner Bloch commented that this seemed like a challenging research project because the information is in several different databases. His understanding was that all the workers who received the SJDB payments were in the WCIS FROI/SROI database. Mr. Shor replied that there is no direct data element in WCIS that would indicate whether someone has received the voucher. Mr. Shor inferred the information from the payments made for vocational rehabilitation under the standards of the WCIS that comes under the International Association of Industrial Accident Boards and Commissions (IAIABC) standard. There was no direct element that allowed him to extract the SJDB benefits received. They are imputing benefits from any payments made from the various elements that address payments for vocational rehabilitation services. Commissioner Bloch asked whether Mr. Shor also imputed payments based on vouchers issued and based on payments and applications made to the RTW Fund. Mr. Shor replied that the RTW Fund has its own database of all those who have applied and received the benefits.

Commissioner Bloch asked: when injured workers file a claim, are they assigned unique identifiers with this claim so that it is possible to track whether they receive a voucher and the payment—is there a way to follow injured workers' claim from beginning to end? Mr. Shor replied that this was an important part of the development of the WCIS and aligning it with other systems that DWC and DIR had. Commissioner Bloch commented that they have made great strides in electronics so that should help with the goal of being able to plot the progress of claims to ensure that the workers do not fall through the cracks.

Commissioner Bloch commented that it is important to plot their progress in a very complicated system. The second question is similar to Commissioner Bouma's question regarding a 100% participation rate. He was wondering how an injured worker is notified about the RTW Fund. Mr. Shor replied that the SJDB voucher is accompanied by a notice about eligibility for the RTW benefit. The regulations require this accompanying notice until DWC changes the form to add language with that notification. Commissioner Bloch stated that he is happy that in 2018 the form will be available in different languages.

Commissioner Bloch noted that when a worker cannot return to work, and no modifications are available, he/she would be able to get $6,000 for education and training. In his experience, some workers are "out of luck" and might use the $6,000 for training, but, he stated, we live in an economy that is not creating a lot of meaningful full-time employment opportunities. However, that is a bigger issue than the one they are currently dealing with. For injured workers, it is very difficult to find new employment. He could not imagine any situation in which a worker would not want access to an additional $5,000 or $6,000, or however much that benefit adjusted ended up being that they can spend on groceries or rent, and that was what the RTW Fund offered people. If they are at risk of having 100 percent participation in this annual fund, then why would they not automatically put in an application for the worker for the RTW Fund if they are getting the SJDB. Mr. Shor stated that he did not have an answer for that. Commissioner Bloch is also asking his fellow commissioners that question, and there may be a good reason for not doing so. Commissioner Bloch said he could imagine a scenario in which they spent too much of the $120 million, and if a worker had a very severe injury at the end of the fiscal year and not that much money was left in the fund, maybe he/she is entitled to get another $1,000 because the money has been spent. He would rather have that problem than have the money left that is not spent. The gap is closing, but one in five to one in eight workers who are potentially eligible for this benefit are not collecting it. Director Baker commented that they are in a fairly good economic period in which there is more RTW being offered. It goes in cycles, so more workers will be making a demand of this fund at some point. So we need to do an economic analysis, and there is a proposal to identify exactly what needs to be done.

Commissioner Bouma stated that there was discussion about whether the money in the fund would be rolled over to the next year because the best mitigation against economic ups and downs is to retain the money for the next time you need it when there are more voucher (RTW) applications than expected. In 2015, when only $18 million was spent from the fund, that did not mean that $102 million was held over, so in 2016 $222 million was available. Director Baker replied there was a lag between the date of injury and when workers realized that they were not going back to work. Therefore, it was not so straightforward in any of these years. The applicants' attorneys petitioned for a new regulation to retroactively identify workers who may not have received notice about the period of time, and they are allowing retroactive access for those periods in case some workers did not get funding. That effort is ongoing, and they will be tapping the funds as well; it is still in flux. It is effective in getting dollars to workers who do not receive an offer to return to work.

Commissioner Kessler asked whether funds can be rolled over when funds are not expended in previous years. She said she did not know that funds not used in the previous year cannot be added to ongoing funds for cumulative years, so that as there are dips, there is more money available in those years. Director Baker replied that there was a legislative counsel opinion, so it is $120 million per year. Commissioner Kessler asked whether the money returns to the general fund if it is not expended. Director Baker responded that the money does not return to the general fund. Commissioner Kessler asked for confirmation that they do not assess $120 million every year but, instead, just add whatever is necessary for the fund to be up to $120 million. Director Baker confirmed and said the funds get offset to the next year. Mr. Shor added that the general fund is an employer assessment. Per LC 139.48 the funds are from non-general funds of the

Worker's Compensation Administration Revolving Funds, which is comprised of assessments against insurers and self-insured employers (LC 62.5(a)(1)(B)).

Commissioner Wei stated that the money stayed to give the employers "a break." It replenishes the revolving fund and gives the employers a smaller contribution in the following year. Commissioner Kessler added that when SB 863 was enacted, many on the Commission expected that the spending for this RTW Fund would be $120 million every year. Someone asked for a legislative counsel opinion, and it was not beneficial; that stymied their efforts. The intentions were clear. The 86% take up rate is a source of relief and has increased dramatically. While she was not happy that 14% of those who get SJDB but do not get RTW benefits, and, given that they cannot do anything about rollover funds at this time, it is time for equity across the RTW Fund. The fund started with $5,000 vouchers, which was the amount that would aggregate to $120 million every year, but this is not happening. The Commission will consider a proposal at the meeting to adjust the individual benefit amount because it is worthy of study. The data compiled by the Commission staff and Glenn Shor clarifies what the questions are and what to ask for. The take up rate of 86%, while not perfect, at least indicates a trend in the right direction, and when looking at a lot of public programs, such as when Medi-Cal became available, the percentage of people who signed up for free health care was not high. These things are iterative, and the next iteration is to talk about the pending study.

Commissioner McNally commented that he agreed with Commissioner Wei, and they do not have enough information, and there was a lag. There was a lag in the development of the regulations and their interpretation. There was a lag with people who were injured and return to work, and two, three, or four years later, the injured workers realize that they may not return to work. Now they are getting enough information to intelligently consider whether $5,000 is an appropriate amount.

Commissioner Bloch commented that he would like to estimate what would happen to the fund if we asked claims administrators to automatically submit the application and took the burden off the injured worker who received the SJDB to apply for the RTW Fund. If there is good reason for that not to happen, he would like to hear it.

Public Comment
Rick Meechan, applicants' attorney, stated that the chart Mr. Shor presented at this meeting appears to be missing some data, such as for 2013 and 2014, in the Applications and Payments for RTWSP by Year data. He stated that they are in Year 5, before $120 million was spent. This study was good, but the rate of 86% (those receiving the full SJDB voucher benefit who also received the RTW supplemental benefit by date of injury) was not the real number. This study only measured people who got the voucher from the insurance carrier. What about the people who did not return to work and never received the voucher? That is where the gap is in the $120 million a year. They were looking at a piece of the pie or looking through a flashlight but needed to look at the whole problem and deal with it.

Commissioner Bagan asked Mr. Shor about a way to track the data. Director Baker stated that they have to take a look at that. They have heard anecdotal data that some of the vouchers are

getting settled in court, and the vouchers should not be settled. They will have to dig down deeper and find other ways of identifying patterns.

CHSWC Report

Eduardo Enz, Executive Officer, CHSWC

CHSWC Vote

Eduardo Enz, Executive Officer, asked the Commissioners about two action items for their consideration at this time.

- Does the Commission wish to approve the draft report on the Return to Work Fund inquiry in response to a request by Senator Tony Mendoza? The matter was moved by Commissioner Wei and seconded by Commissioner Bagan. All were in favor and none opposed. The motion carried.
- Does the Commission wish to approve further research regarding the RTW Fund and direct CHSWC staff to prepare a Request for Proposal to conduct a study on the RTW Fund? Commissioner Bagan offered the motion, and Commissioner McNally seconded it. All were in favor and none opposed. The motion carried.

Comments by Commissioners

Commissioner Kessler requested a copy of the draft proposal of RTW.

Draft EO Report March 24, 2017, Meeting

Mr. Enz gave an update on the status of action items approved at the December 9, 2016, meeting.

- First, the QME study "Evaluating the QME Process: Updating the 2010 Report to CHSWC" is in progress, and we anticipate a preliminary report on initial findings at the May 25, 2017, commission meeting.
- Second, the 2016 CHSWC Annual Report has been finalized and will be posted shortly, and hard copies will be available soon. The CHSWC staff is already working to prepare the 2017 CHSWC Annual Report. The 2016 WOSHTEP Annual Report has been finalized and posted on our website.
- Mr. Enz is anticipating a final draft report and presentation by RAND on the Evaluation of SB 863 Medical Care Reforms study at our next meeting, on May 25.
- Since the December meeting, our staff has been actively engaged in organizing and participating in a variety of meetings, including the annual Young Worker Leadership

Academy (YWLA) in late January and early February 2017 at UC Berkeley, the California Partnership for Young Worker Safety and Health Meeting on February 28 in Sacramento, and the School Action for Safety and Health (SASH) Advisory Committee meeting on March 13 in Oakland. The SASH Advisory Committee Meeting focused on discussing health and safety issues facing special education departments (including reviewing and discussing dissemination of factsheet for Para-educators on aggressive behaviors), a potential new school safety project (Whole School Climate Framework to address school safety issues presented by Rick Phillips of Community Matters), updating advisory committee members on activities since the last advisory meeting, and to obtain input to help plan for 2017 and beyond. Additionally, the staff is in the process of organizing the WOSHTEP Advisory Board meeting in May that will focus in large part on reviewing and beginning to implement a WOSHTEP Strategic Plan, which outlines goals and objectives for future directions from 2017 to 2021.

- Two additional action items were offered for consideration today. At the meeting in December, Frank Neuhauser and Suzanne Terán presented their draft reports on injury rates and workload issues in the janitorial industry, and they have now both finalized their reports for your consideration and approval.

CHSWC Vote

Does the Commission wish to post for feedback and comment and for final posting in 30 days the DRAFT report titled "California's Janitorial Industry: Does Higher Compensation for Union Workers Lead to Greater Production Pressure and Higher Injury Rates?" by Frank Neuhauser at UC Berkeley? Commissioner Bagan moved to post the report. Commissioner Kessler seconded the motion. All were in favor; none opposed.

Does the Commission wish to post for feedback and comment and for final posting in 30 days the DRAFT report titled "Workload in California's Janitorial Industry: An Emerging Health and Safety Concern," by Suzanne Terán of the Labor Occupational Health Program at UC Berkeley? Commissioner Kessler moved to post the report. Commissioner Brady seconded the motion. All were in favor; none opposed.

Comments by Commissioners

Commissioner Kessler asked whether other issues, such as sexual harassment, anti-immigrant pressures, or threats, were appropriate for inclusion in the report. Mr. Enz replied that Commissioner Kessler could send her comments to Suzanne Terán and discuss them with her during the 30-day comment period.

Public Comment

None.

Other Business

None.

Adjournment

The meeting was adjourned at 11:55 a.m.

Martin Brady, Acting Chair — 5/25/17 Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC — 5/25/17 Date