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EXECUTIVE SUMMARY AND RECOMMENDATIONS

INTRODUCTION

The legislative reforms of the 1990's made significant modifications and additions to the health, safety and workers' compensation systems in California. Since its inception in 1994, the Commission on Health and Safety and Workers' Compensation, established by the reforms, has been engaged in ongoing evaluations of these critical programs.

CHSWC's efforts have been immeasurably assisted by its community of employees and employers and their representatives, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, government agencies and members of the public.

Information gathered through CHSWC meetings and projects indicate that the reforms have generally improved the system. Workers' compensation premiums and the number of claims have decreased; medical-legal costs have fallen sharply; and abusive claims practices have been reduced.

However, serious problems linger. Many stakeholders agree that the system remains excessively complex and delivers modest benefits at high costs. CHSWC and the community recognize that these difficulties adversely affect employers, employees and all parties involved with the system.

With extensive cooperation and participation from throughout the community, CHSWC has conducted or contracted with independent researchers for projects and studies of specific aspects of this wide-ranging system. These projects initially focus on identifying, describing and quantifying specific problems. Project findings are published and made available to the community and to the public.

CHSWC believes that further improvements can and need to be made to achieve optimum system performance to serve all of the employees, employers and taxpayers in California.

The following pages contain the Commission's recommendations for legislative or administrative changes and/or for further study. In some instances, where recommended changes have widespread support and do not require legislative action, the Commission and the community have continued their work together to develop and implement corrective actions. In addition, some project findings have formed the basis for community members to take action in the legislative arena.

CHSWC looks forward to continuing its work with the community in striving to fulfill these goals.



The administration of the workers' compensation program "...shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..."

*Constitution of the State of California
Article 14
(Labor Relations),
Section 4*

RECOMMENDATIONS

Consider Benefit Increases

The Commission wishes to ensure that workers sustaining industrial injuries and illnesses and their dependents, if the injury is fatal, receive adequate workers' compensation benefits in a timely manner. The Commission recognizes that the levels of workers' compensation benefits over the years may not have kept pace with the economic consequences incurred by industrially injured workers.

CHSWC recommends that the stakeholders and the workers' compensation community work together to address this issue.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Permanent Disability Study

Continue Review of Benefit Structure

The method by which California rates and compensates injured workers for permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, and the prompt delivery of benefits at the lowest cost to employers.

The Commission realizes that the rating of permanent disability is one of the most difficult tasks of the workers' compensation system. In concert with the community, CHSWC has engaged in several studies and hosted public forums to discuss and develop strategies to improve this complex program.

The Commission contracted with RAND to study the workers' compensation permanent disability system in California. The CHSWC study by RAND found that there was a significant uncompensated wage loss for permanently disabled workers of insured employers, particularly for workers with permanent disability ratings of 25% and under.

The CHSWC Permanent Disability Policy Advisory Committee – composed of CHSWC members representing employers and labor and interested members of the workers' compensation community – was formed to make recommendations on further action and future direction of the Commission's efforts. The PD Policy Advisory Committee adopted the following goals:

- Efficiently decrease uncompensated wage loss for disabled workers in California.
- Increase the number of injured workers promptly returning to sustained work.
- Reduce transaction and friction costs, including “costs” to injured workers.

The Commission makes the following recommendations in pursuit of those goals.

Engage in Further Study of Uncompensated Wage Loss

The CHSWC study of Permanent Disability by RAND showed that permanently disabled workers of insured employers sustained significant uncompensated wage loss. These findings were unexpected and have raised concerns throughout the entire community.

The Commission recommends further study of permanent disability, and has contracted with RAND for additional analyses to incorporate data on self-insured employers, and to determine the reasons for uncompensated wage loss sustained by permanently disabled workers.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Permanent Disability Study

Develop Empirically-Based Permanent Disability Rating Tool

The CHSWC PD study by RAND found that the current Permanent Disability Rating Schedule (PDRS) does not render benefits to injured workers commensurate with the level of wage loss sustained as a result of the industrial injury or illness.

The Commission recommends that cooperative work by the community continue to improve the permanent disability system. CHSWC has contracted with RAND to develop an empirically based tool for rating and compensating industrially injured workers who sustain permanent disability.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Permanent Disability Study

Enhance Return to Work Efforts

The Industrial Medical Council believes that an injured worker should return to work as soon as it is medically feasible. If the injured worker is unable to immediately engage in his/her usual occupation, the injured worker should be returned to modified or alternative work, provided that such work can be practically accommodated by the employer. The treating or evaluating physician should recommend appropriate and specific work restrictions.

CHSWC concurs with the IMC's position and recommends implementation of this concept at all levels throughout the system.

The Commission recommends and has engaged in further study to measure and assess return to work programs and to determine "best practices". The Commission further recommends that specific policies and strategies be developed from those findings.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Literature Review of the impact of modified work
 ↳ Summary of Methods to Predict/Evaluate Return-to-Work

Reduce System Complexity

Identify and Correct Discrepancies and Inconsistencies

The workers' compensation system operates pursuant to provisions in the law, regulations, and policies and procedures. This assemblage of various instructions is inconsistent and confusing in various areas.

CHSWC recommends that a task force be formed to review and correct discrepancies among the law, regulations, policy and procedures and other instructions. CHSWC urges that unnecessary regulations, policy and procedures, and instructions be identified and eliminated.

The workers' compensation community encourages the WCAB to take on a more active role in judicial oversight -- for example, by means of *en banc* decisions -- in an effort to achieve uniformity in the application of the law. CHSWC concurs and supports this recommendation.

Consider Paying All Benefits at a Single Weekly Rate

The industrially injured worker receives payment at different weekly rates for the various types of workers' compensation benefits: Temporary Disability (TTD), Permanent Disability (PD), and the Vocational Rehabilitation Maintenance Allowance (VRMA). Both the TD and the PD weekly rate can change several times over the life of the claim.

The CHSWC study of the DWC Audit Unit determined that these different and changing weekly rates are confusing to administrators and workers and contribute to errors and delays in benefit payments.

The Commission recommends that further study be given to the proposal that an injured worker receive payment for all types of workers' compensation indemnity benefits at a single weekly rate. Under this proposal all workers' compensation benefits would be paid at the TTD rate regardless of the type of benefit. This would not change the total amount of benefits, only the rate at which they are paid out.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Study of DWC Audit Function

Consider Simplifying Permanent Disability Benefit Calculations

The calculation of workers' compensation Permanent Disability benefits is complex for the claims administrator and confusing for the injured worker. In part this is because the weekly payment amount factors in a changing multiplier of weeks of payment as the seriousness of the disability increases, and a changing maximum rate as the seriousness of the disability increases.

Consider simplifying the calculation of the amount of PPD due by eliminating the stepped maximums in the weekly rate. However, it is important to note that this may result in substantial changes in the level of compensation paid by employers or the distribution of compensation among different groups of workers.

This issue will continue to be discussed as part of the continuation of the Commission's study of permanent disability.

For further information – Please see discussions and reports on these CHSWC projects

- Permanent Disability Study
- Study of DWC Audit Function

Improve Quality of Physician Reports

Many disability evaluators in the Division of Workers' Compensation indicate that their largest problem is the inadequate information on medical reports from which to derive permanent disability ratings. The Commission is engaged in a study of medical reports produced by physicians – both treating and non-treating. Preliminary findings from that study indicate that legal decisions are being based on reports with inadequate data (those from treating physicians) without any apparent cost savings.

The Commission recommends that the Industrial Medical Council continue its efforts to train treating physicians to produce ratable medical reports. The Commission notes that the IMC has furthered this process by developing medical reporting forms for the final treating physician and QME evaluators, and recommends that the IMC continue to monitor their usage and effectiveness.

The Commission notes that the DWC has developed a primary-treating physicians' medical reporting form to be used to rate permanent disabilities, the "Primary Treating Physician's Permanent and Stationary Report" (DWC PR-3). CHSWC recommends that its usage and effectiveness be monitored.

The Commission recommends that the DWC, the IMC and the community review the statutory presumption given to the findings of the primary treating physician; this could involve recommendations to change the special authority, giving 'great weight' to the PTP report, rather than the presumption.

For further information – Please see discussions and reports on these CHSWC projects

- Medical/Legal Study
- Treating Physician Report Study

Review Official Medical Fee Schedule

The Official Medical Fee Schedule (OMFS) has been the subject of controversy and debate within the community for many years. Members of the community have indicated that the OMFS is cumbersome, overly complex, and difficult to update and administer.

The Commission supports the current efforts to explore alternatives for improving the fee schedule. The Commission notes that the Industrial Medical Council has contracted with the UCLA Center for Health Policy Research for a study of the resource based relative value scales (RBRVS) used by the Federal government and several states and the possible options of adopting an RBRVS-based schedule in California.

When a revised OMFS is adopted, the Commission recommends that DWC, with the assistance of the IMC, continue with its statewide educational training efforts to inform all parties on the appropriate use of the OFMS.

The Commission will follow the IMC studies and the adoption of a revised schedule by the DWC Administrative Director and provide whatever assistance appears warranted from time to time.

Review 'Baseball' arbitration

Labor Code §4065 provides that where either the employer or the employee have obtained evaluations of the employee's permanent impairment and limitations from a qualified medical evaluator under Section 4061 and either party contests the comprehensive medical evaluation of the other party, the workers' compensation judge or the appeals board shall be limited to choosing between either party's proposed permanent disability rating. The employee's permanent disability award shall be adjusted based on the disability rating selected by the appeals board.

However, with the use of such "baseball arbitration", the result is often perceived as unfair. Experienced triers of fact in the workers' compensation field believe that more often than not an applicant's true disability lies somewhere between the description of PD obtained by the applicant and that procured by the defendant. Under §4065, however, a WCJ may be 'forced' to award too much or too little.

The Commission recommends further study on this issue. At its May 1999 meeting, the Commission voted to incorporate this issue into the ongoing study of permanent disability. The Commission also recommends obtaining statistical data on the usage of baseball arbitration.

Clarify Labor Code Section 5814 – Unreasonable delays

Labor Code Section 5814 provides that "when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent." Section 5814 has been the subject of considerable litigation since its enactment in 1945, and its interpretation continues to be problematic.

With a 'call for information', the Commission requested input from the workers' compensation community and the public on the Labor Code Section 5814 penalty provisions. The community responded with great interest.

In light of the Supreme Court decision in *Stuart* and stakeholders' concerns, CHSWC recommends that Labor Code Section 5814 be reviewed to provide a more fitting penalty assessment, which is appropriate to the length and type of delay. The Commission has offered to serve as a clearinghouse for recommendations regarding Labor Code Section 5814. At its May 1999 meeting, the Commission decided to collect WCAB statistical data for further analysis of this issue.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Section 5814 Issue Paper

Review Vocational Rehabilitation

The 1993 workers' compensation reform legislation made major changes affecting the level and delivery of the vocational rehabilitation benefit. The Commission contracted for a study to help evaluate the impact of the workers' compensation reform legislation on the vocational rehabilitation system. The study is assessing whether the reforms reduced the cost of the rehabilitation benefit for employers and determining how those changes have affected outcomes for injured workers. Preliminary findings indicate that VR may not now be considered to be a completely successful program.

The Commission recommends that a Vocational Rehabilitation Roundtable, composed of interested members of the workers' compensation community and the public, be established to review the Vocational Rehabilitation benefit.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Vocational Rehabilitation Study

Consider Carve Outs Carefully

A provision of the workers' compensation reform legislation allows construction contractors and unions to collectively bargain over alternative workers' compensation programs, also known as Carve Outs. CHSWC engaged in a study that is identifying the various methods of alternative dispute resolution that are being employed in California carve-outs, and beginning the process of assessing their efficiency, effectiveness and compliance with legal requirements.

The Commission recommends that caution be exercised when considering the expansion of carve-out programs to other industries. Carve-out programs potentially offer labor and management opportunities to negotiate better arrangements for both. However, implementation of structures that take advantage of the opportunities offered by carve-outs have proved to be initially difficult and inconsistent in the construction industry. In addition, large cost savings have failed to materialize thus far.

The carve-out program should not be viewed as a panacea, but as an opportunity to attempt innovations that could lead to improvements in the statutory system.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Carve-Out Study

Change Mechanism for Commission Funding

In order to avoid the appearance of a conflict of interest, funding for CHSWC should not be totally dependent on the amount of the audit penalties collected by the DWC Audit Unit. Currently, audit collections are deposited into the Workplace Health and Safety Revolving Fund and the Commission's budget is appropriated out of that fund. If audit collections are not sufficient to meet the needs of the Commission, there is currently no recourse.

The Commission proposes that audit collections be deposited into the state's Workers' Compensation Administration Revolving Fund (see Labor Code Section 62.5) or into the State General Fund. An adequate amount for the Commission's budget could then be appropriated from the state's Workers' Compensation Administration Revolving Fund or from the State General Fund. If allocated from the state's Workers' Compensation Administration Revolving Fund, the Commission's budget would be included in the 80/20 funding ratio for workers' compensation programs.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Study of DWC Audit Function

Streamline Operations

Several studies, including KPMG, RAND, WCRI, and the CHSWC DWC Profile, have determined a need for improving the operations of the DWC district offices throughout the state. Inconsistency and lack of uniform procedures are often cited. RAND suggests that the system is poorly utilized and burdened by unnecessary paperwork and litigation issues.

The Commission recommends that DWC continue and enhance its efforts to streamline processes, establish and maintain uniform procedures, and review and evaluate its current organizational structure. CHSWC also recommends that DWC continue to invest in infrastructure, training and technology improvements.

Review the DWC Organizational Restructure

The Division of Workers' Compensation is in the process of implementing a revised organizational structure employing three regional centers with regional managers to provide information and assistance, designating that all district office staff report to the presiding judge, and establishing a Policy, Program Evaluation and Training Unit.

The Commission recommends that the implementation and operation of the new DWC organizational structure be followed and evaluated.

Implement Electronic Filing of Documents

The state's health, safety and workers' compensation systems in California necessarily require the transmission of a lot of information among various entities in the public and private sectors. The evolution of technology now enables the electronic transmission of such data, with savings in time and resources and with increased speed and accuracy.

CHSWC supports efforts by the DWC and the WCAB to implement procedures and methods for the electronic filing of documents among all parties. The capability for electronic filing would assist in the prompt delivery of proper benefits in a cost-beneficial manner.

Consider Concept of the "Paperless Office"

In December 1998, the State Compensation Insurance Fund conducted a walk-through of the operations of their Sacramento office for CHSWC members and staff, who were very impressed with SCIF's 'state of the art paperless claim file system'.

The Commission believes that this approach may be helpful to the Division of Workers' Compensation in the management of their many case files and recommends that the Division of Workers' Compensation evaluate utilizing the concept of the 'paperless' office for its district office operations.

CHSWC recommends that the DWC continue its efforts to develop and implement the electronic storage of paper files. This could result in significant savings in State Records Center charges and DWC storage space.

The Commission recommends that the Workers' Compensation Appeals Board review the applicable statutes and regulations and recommend changes to eliminate unnecessary retention of paper documents while retaining full legal protections for all case parties.

Manage DWC Lien Workload

One of the most persistent administrative problems facing the DWC in recent years has been the development of a continuous backlog of lien claims at some DWC district offices.

CHSWC acknowledges the past efforts and accomplishments of the DWC in directing resources to and reducing the backlogs of lien claims. CHSWC recommends that DWC continue monitoring and addressing this problem.

CHSWC recommends the continuation of its "Lien Resolution Roundtable", comprised of interested members from the workers' compensation community. The Roundtable is discussing a proposal developed by CHSWC staff with legislative and administrative recommendations to address lien issues. CHSWC recommends continuing evaluation of this ongoing problem. The Commission and DWC will begin statistical analysis of liens.

Reconsider Delegation of Hearing Notice Issuance

It has been reported that in newer WCAB cases, many of the lien claimants are not receiving proper notice of upcoming hearings, primarily due to the delegation by DWC of the responsibility for issuing the hearing notice to the parties. This has resulted in costly rescheduling, unused court time, churning of cases and delays in resolution.

The Commission recommends that the Division of Workers' Compensation review the cost-benefit and the impact on the timeliness of case resolution by the delegation of hearing notice issuance to the requesting party.

CHSWC recommends that DWC continue its efforts to identify reasons for improper notice and to train the DWC staff to update the address records as needed.

The Commission also recommends that the DWC pay particular attention to updating its online system database of addresses of the various parties. Some lien claimants, such as small medical groups in the Los Angeles basin area, change addresses frequently.

Eliminate 'Local' Forms and Procedures

CHSWC has received allegations that some WCAB district offices and workers' compensation administrative law judges are using forms and procedures that have not been established by the Appeals Board. Such actions would be in violation of Labor Code Section 5500.3, which provides that the Appeals Board establish uniform court procedures and forms and prohibits local offices and workers' compensation judges from requiring other forms or procedures.

CHSWC recommends that efforts be made to identify and eliminate the use of unauthorized forms and procedures. At the May 1999 meeting, CHSWC voted to initiate a 'call for information' to the community regarding local forms and procedures.

The Commission recommends that a task force be established to review the 'call for information' findings and each office's individual procedures. The purpose would be to develop proposed revisions to existing forms and procedures for use statewide.

The Commission recommends that the Workers' Compensation Appeals Board update and adopt standardized forms and establish appropriate procedures in regulation, pursuant to the task force recommendations.

Enhance Information/Feedback Systems

The Commission and the community recognize that timely and reliable information at all stages is vital to the optimum functioning of the workers' compensation system. Employers and employees need information before a work injury occurs, when an injury occurs, during the course of the claims process and, if applicable, the claims

adjudication process. Timely and accurate feedback on how the system is working is needed by administrators.

Workers' Compensation Information

CHSWC realizes that, if the injured worker is to be served by the system, he or she must be aware of his or her rights and obligations under the workers' compensation program. CHSWC studies have indicated that some injured workers receive inconsistent and inaccurate information.

To address this need, the Commission engaged in a project that developed prototype informational materials – fact sheets and a video - for use by the community and available to the public at no charge. At the urging of the community, the project was augmented to produce further fact sheets.

CHSWC recommends that the Division of Workers' Compensation and other community members use, promote and facilitate the distribution of the prototype workers' compensation informational materials.

CHSWC also recommends that members of the community continue to work together to develop, update, and distribute useful information for workers about the California workers' compensation system.

For further information – Please see discussions and reports on these CHSWC projects

- Injured Worker Experience Study
- Prototype Informational Material Project and Augmentation

Improve Benefit Notice Program

When an employee files a claim for worker's compensation, the employer or insurer is responsible for communicating the status of the claim to the employee by means of a series of benefit notices. The benefit notice program is intended to be a key communication tool between the claims administrator and the injured worker, keeping the worker informed about important changes in the status of his or her workers' compensation claim.

The workers' compensation community has long criticized the benefit notice system as confusing and ineffective. Through its various studies and analyses, the Commission has confirmed that:

- *The Benefit Notice system is complex, cumbersome, and not currently designed to provide meaningful information to injured workers regarding benefit levels or to collect appropriate data to monitor prompt delivery of proper benefits.*
- *Current benefit notices are not readily comprehensible and result in confusion to injured workers and all parties.*

CHSWC recommends that cooperative community efforts be undertaken to identify benefit notice problems that contribute to problems with claims and make needed

improvements to the benefit notice system. Benefit notices should transmit clear and concise information to injured workers.

Consideration should be given to an automated, simplified benefit notice system with initial key indicators to be submitted electronically to the State of California.

The Commission has contracted with the Labor Occupational Health Program to assess the needs and explore methods for improving benefit notices to injured workers. The project team will review and make recommendations on streamlining the Benefit Notice process, clarifying requirements, and ensuring that notices accurately and effectively communicate with injured workers in a format and language that is comprehensible.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Benefit Notice Study

Revise DWC Audit Program

The audit function of the Division of Workers' Compensation (DWC) was established by the 1989 Workers' Compensation reform legislation to monitor the performance of insurers and administrators to ensure that industrially injured workers receive proper benefits in a timely manner. At the joint request of the Senate Industrial Relations Committee and the Assembly Insurance Committee, the Commission undertook an evaluation of the DWC Audit Unit with respect to its effectiveness, its staffing level and whether or not audit penalties are adequate or appropriate.

The study determined that although much time and effort was being expended by the DWC Audit Unit in performing audits of workers' compensation insurers, a redirection of these activities would produce more effective outcomes. The research team found that the current audit procedure, as established by statute, 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.

The Commission recommends revisions to the workers' compensation audit function to:

- Reward good performers by eliminating administrative penalties and resource requirements,
- Increase incentives to improve benefit delivery by raising administrative penalties substantially on poor performers,
- Focus administrative penalties on important violations,
- Provide balance to the audit process:
 - Bad business practices by claims administrators mean that injured workers are not receiving proper indemnity payments and appropriate medical services in a timely manner.
 - Excessive audit penalties and regulation mean employers are paying higher costs to deliver the same benefits.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Study of the DWC Audit Function

DWC Information Systems

Labor Code Section 138.6 directs the Division of Workers' Compensation to develop a cost-effective workers' compensation information system (WCIS) compatible with the IAIABC's Electronic Data Interchange (EDI) system:

- *to help the Department of Industrial Relations manage the workers' compensation system more effectively,*
- *to help evaluate the efficiency and effectiveness of the benefit delivery system,*
- *to help measure how adequately injured workers are indemnified, and*
- *to provide statistical data for research.*

CHSWC recommends that DWC continue its efforts to develop this information system, contingent upon appropriate and effective security and confidentiality measures.

CHSWC notes that the language of Labor Code Section 138.6 may be inadvertently restrictive in that the WCIS system must be 'compatible' with the IAIABC's system. Since the IAIABC's system design is not yet finalized, CHSWC recommends that some flexibility be allowed in the language of Labor Code Section 138.6.

CHSWC encourages the Division of Labor Statistics and Research to revise its regulations to enable data from Form 5020 (Employer's Report of Injury) and Form 5021 (Doctor's Report of Injury) to become part of the DWC Information System. This would eliminate duplicate filings with the State of California and eliminate duplicate data entry.

CHSWC also urges DWC to improve its current computer systems to provide basic data needed for ongoing program administration.

Ensure Effective Health and Safety Programs

Review California Loss Control Program

The Loss Control Certification Unit (LCCU) was established by the 1993 workers' compensation reform legislation to ensure that the insurance industry was appropriately engaged in assisting employers to protect workers' safety and health and to enable businesses to benefit from cost savings and productivity gains resulting from improved workplace safety.

Insurers report that they have had to divert a reported 50% of their loss control resources to address expensive administrative requirements – including targeting employers -- rather than address substantive loss control challenges. Additionally, the regulations have imposed a structure that discourages the flexibility required to help employers who actually want assistance.

Commission recommends that the California loss control program be reviewed with respect to its efficiency and effectiveness.

Review Targeted Inspection Programs

The reform legislation directed the Division of Occupational Safety and Health to begin a program targeting especially hazardous employers for consultations and inspections, to be funded by assessments upon employers with higher than average workers' compensation costs.

CHSWC has begun a study on statutorily required safety efforts, including the federal OSHA mandate for implementation of targeting and intervention directed at the most hazardous employers.

Promote Health and Safety of Young Workers

The Commission has engaged in several projects designed to assist in the health and safety of young workers. It is funding a statewide task force -- known as the California Study Group on Young Worker Health and Safety -- charged with coordinating strategies to protect young people from work related illness and injury. The study group is composed of groups and individuals dealing with California youth employment and education issues, as well as others who can play a role in educating and protecting young workers. The Commission also funded the development of a video to be used in the schools to educate young workers on workplace health and safety and their rights and responsibilities under the workers' compensation system.

The Commission recommends that ongoing efforts and focus need to continue in the area of young worker health and safety.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ California Study Group on Young Worker Health and Safety

Ensure Compliance with Requirements

Illegally Uninsured Employers

CHSWC has become aware that some California employers -- particularly in certain industries such as construction, restaurants, and trucking -- fail to secure required workers' compensation coverage. Employers that are not covered for workers' compensation impose a burden on injured workers, on employers that comply with the workers' compensation insurance requirements, and on the state's taxpayers.

The Commission engaged in pilot projects designed to test matching-records and notification methods to identify illegally uninsured employers and bring them into compliance. The purpose is save monies from the state's Uninsured Employers Fund and General Fund, assist injured workers, and reduce the current competitive disadvantage and the tax burden on responsible employers.

The Commission's pilot project methodologies proved to be efficient and effective in identifying illegally uninsured employers and bringing them into compliance. The Commission recommends that these and other efforts to secure workers' compensation coverage for all workers continue.

The Commission further recommends that coordinated multijurisdictional efforts be continued to identify and bring into compliance those employers who are in the "underground" economy – employers that are unknown in the system, do not have the required business licenses or permits and do not pay the proper taxes.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Illegally Uninsured Employers Study

Illegally Uninsured/Underinsured Employers in the Trucking Industry

Section 34633 of the California Vehicle Code (CVC) requires that certain commercial motor carriers report annually to the Department of Motor Vehicles (DMV) with information on their employees and owner-operator drivers including arrangements for workers' compensation. The DMV is required to submit the reported information to the identified workers' compensation insurer or to DIR's Self-Insurance Plans (SIP). However, DMV had not been contacting SIP for verification of self-insurance status.

Representatives from the Commission and the Illegally Uninsured Employer Project Advisory Committee met with DMV staff in June 1999 to examine the current procedures to fulfill the provisions of CVC Section 34633. The participants agreed that CVC Section 34633 and PUC Sections 1043, 5230, and 5374.6 are not currently serving any useful purpose.

The Commission recommends that DIR, DLSE, CHP and DMV continue efforts to identify illegally uninsured or underinsured employers in the trucking industry and bring them into compliance.

Continue Anti-Fraud Efforts

The Commission believes that fraud in the California workers' compensation system has decreased since the implementation of the reform legislation. Traditional fraud claims are down and some blatant medical mills have been put out of business. However, CHSWC and the workers' compensation community recognize that fraudulent activities continue.

CHSWC recommends that anti-fraud efforts be directed at all types of fraud, including employers who willfully fail to secure workers' compensation coverage, large medical-mill cases and small injured worker cases.

The Commission recommends that the community continue to identify and reduce fraudulent activities perpetrated by anyone and everyone in the system, including but not limited to employers, employees, insurers, and providers.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Commission also recommends an ongoing, independent evaluation of the effectiveness and cost-benefit of these anti-fraud programs.

For further information – Please see discussions and reports on these CHSWC projects

 ➤ Fact-Finding Hearing on Anti-Fraud Activities

INTRODUCTION

The California Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to present the fifth annual report of its activities to improve vital programs affecting nearly all Californians.

CHSWC was established by the 1993 workers' compensation reform legislation to oversee the health and safety and workers' compensation systems in California and recommend administrative and/or legislative modifications to improve their operation.

Since its inception in 1994, the Commission has directed its efforts towards projects and studies designed to identify and assess problems and to provide an empirical basis for recommendations and/or further investigations. The Commission contracts with independent researchers to insure objectivity, incorporate a balance of viewpoints, and produce the highest quality analysis and evaluation.

CHSWC activities involve the whole community – employees and employers, labor organizations, insurers, attorneys, medical and rehabilitation providers, administrators, educators, government agencies and members of the public. These individuals and organizations have participated in CHSWC meetings, fact-finding hearings and have served on advisory committees to assist CHSWC and independent researchers on projects and studies.

CHSWC projects have dealt with several major areas, including informational services to injured workers, alternative workers' compensation systems, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the reform legislation on the medical-legal process and the vocational rehabilitation program.

The most extensive and potentially far-reaching project undertaken by the Commission is the ongoing study of workers' compensation permanent disability in California. Incorporating public fact-finding hearings and discussions with studies by RAND, the CHSWC project is dealing with major policy issues regarding the way that California workers are compensated for permanent disability incurred on the job.

In its oversight capacity, CHSWC focuses on various aspects of the workers' compensation system in response to concerns raised. These include multi-jurisdictional areas such as anti-fraud activities as well as certain operations of the Division of Workers' Compensation such as the lien case workload in DWC's district offices. At the joint request of the Senate Industrial Relations Committee and the Assembly Insurance Committee, the Commission has undertaken a study of the operations and effectiveness of the DWC audit program.

INTRODUCTION

These concerted efforts, combining rigorous analytical approaches with real world data and experience, have yielded insightful findings on important programs. The Commission's recommendations for system improvements are based upon the results of these activities.

The common goal of all the parties in these efforts is to achieve a system that delivers the proper benefits to injured workers in a prompt and cost-effective manner.

About CHSWC...

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

Serving all Californians...

- Created by the 1993 workers' compensation reform legislation.
- Composed of eight members appointed by the Governor, Senate, and Assembly to represent employers and labor.
- Charged with overseeing the health and safety and workers' compensation systems in California and recommending administrative or legislative modifications to improve their operation.
- Established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases, and to examine those programs in other states.
- Works with the entire health and safety and workers' compensation community – employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various programs critical to all Californians.
- Serves as a forum whereby the community may come together, raise issues, identify problems, and work together to develop solutions.
- Contracts with independent research organizations for projects and studies designed to evaluate critical areas of key programs. This is done to insure objectivity, incorporate a balance of viewpoints, and to produce the highest quality analysis and evaluation.

INTRODUCTION

CHSWC Members Representing Employers



Kristen Schwenkmeyer

1999 Commission Chair

Secretary-Treasurer,
Gordon and Schwenkmeyer, Inc.

Appointed by: Senate Rules Committee
Representing: Employers



Jill A. Dulich

Regional Director,
Marriott, International

Appointed by: The Governor
Representing: Employers



Robert B. Steinberg

Senior Partner,
Law Offices of Rose, Klein and Marias

Appointed by: Speaker of the Assembly
Representing: Employers



John C. Wilson

Executive Director
Schools Excess Liability Fund

Appointed by: The Governor
Representing: Employers

CHSWC Members Representing Labor

Tom Rankin

1998 Commission Chair

President,
California Labor Federation, AFL-CIO

Appointed by: Senate Rules Committee
Representing: Labor



Leonard C. McLeod

Finance Committee Chair,
California Correctional Peace Officers' Association

Appointed by: The Governor
Representing: Labor



Gerald O'Hara

Director,
California Teamsters Public Affairs Council

Appointed by: Speaker of the Assembly
Representing: Labor



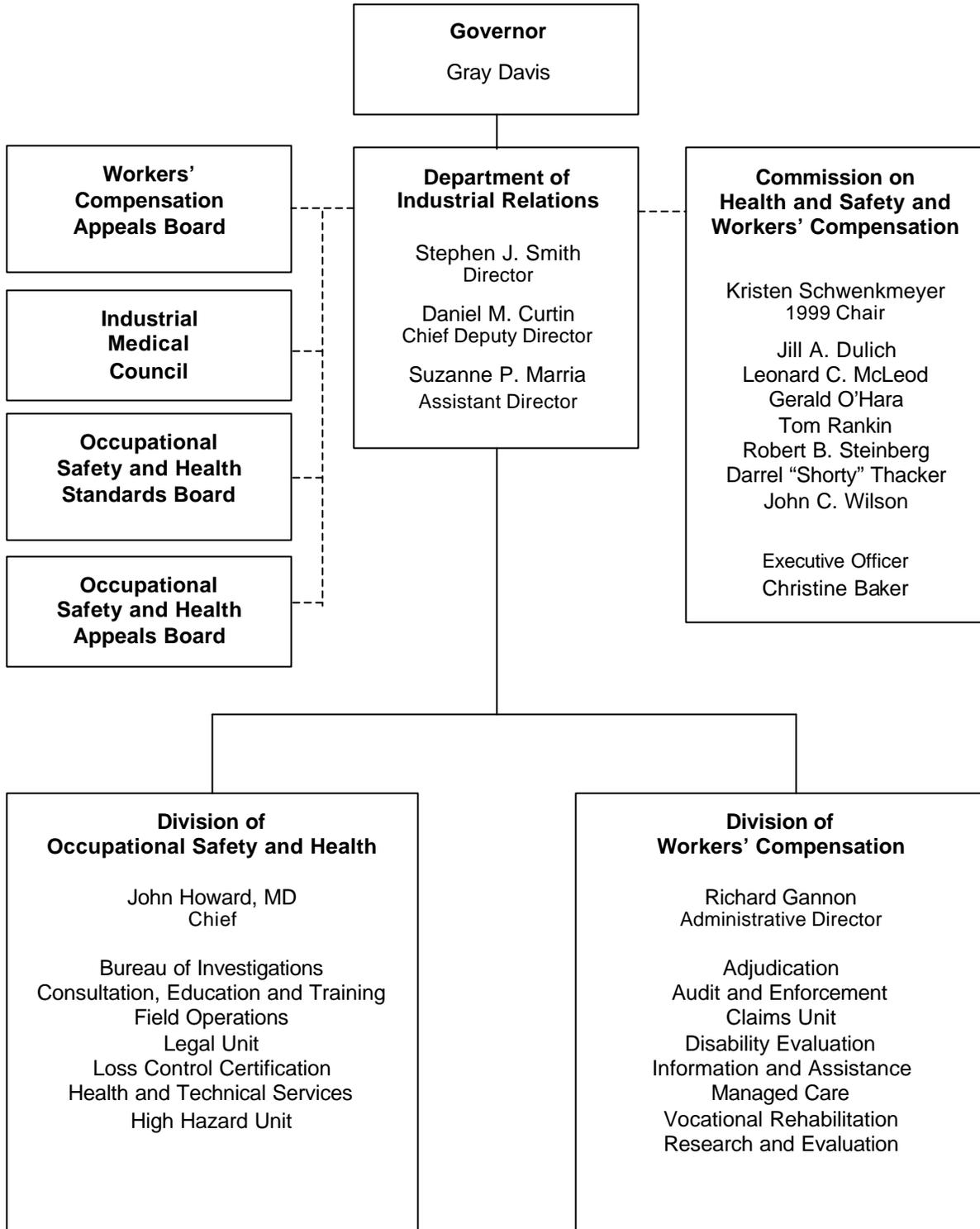
Darrel "Shorty" Thacker

Director, Field Support Operations
Bay Counties District Council of Carpenters

Appointed by the Governor
Representing: Labor



State of California
Health and Safety and Workers' Compensation Functions



For Information about CHSWC and its Activities

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Internet:

Check out **www.dir.ca.gov** for

- ✓ Reports of CHSWC studies and projects
- ✓ Information bulletins
- ✓ Meeting notices
- ✓ Workers' Compensation Fact Sheets
- ✓ Workers' Compensation Video

CHSWC Publications

CHSWC Annual Reports

1994-95, 1995-96, 1996-97, 1997-98, 1998-99

Audit Report

"CHSWC Report on the Workers' Compensation Audit Function" (December 1998)
"... Executive Summary" (December 1998)

Costs and Benefits Report

"CHSWC Report on Costs and Benefits After the Implementation of Reform Legislation" (August 1999)

Fraud Report

"Workers' Compensation Anti-Fraud Activities - Report on CHSWC Fact-Finding Hearing" (September 1997)

Illegally Uninsured Employers Report

"Issue Paper-Employers Illegally Uninsured for Workers' Compensation" (April 1997)
"CHSWC Recommendations to Identify Illegally Uninsured Employers and Bring Them Into Compliance" (December 1998)

Injured Worker Report

"Navigating the California Workers' Compensation System: The Injured Workers' Experience" (July 1996)

Labor Code Section 5814 Issue

"Background and Request for Recommendations on Labor Code 5814 Issue" (March 1999)

INTRODUCTION

Medical-Legal Report

“Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey” (Updated July 1997)
“... Executive Summary” (Updated July 1997)

Modified Work Literature Review

“Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? Review of the Literature and Annotated Bibliography” (August 1997)

Permanent Disability Study Report (RAND)

Report: “Compensating Permanent Workplace Injuries – A Study of the California System” (1998)
Executive Summary: “Findings and Recommendations on California’s Permanent Partial Disability System” (1997)

Treating Physician Report

“Report on the Quality of Treating Physician Reports and Cost-Benefit of Presumption in Favor of the Treating Physician” (August 1999)

Vocational Rehabilitation Interim Report

“Interim Report - Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of 1993 Reforms” (August 1997)

Young Worker Report

“Protecting and Educating California's Young Workers: Report and Recommendations of the California Study Group on Young Workers' Health and Safety” (March 1998)

Hand-Outs

CHSWC Brochure (containing information about the CHSWC members and staff, mission, purpose, activities, projects, publications, web site) (Rev. 1999)

CHSWC Fact Sheets (English and Spanish)

What Every Worker Should Know

After You Get Hurt on the Job

Temporary Disability Benefits

Permanent Disability Benefits

For More Information

Hurt on the Job? Information Alert for Teens

Facts for Employer: Safer Jobs for Teens (English only)

Are You a Working Teen?

Are You a Teen Working in Agriculture?

Video

“Introduction to Workers' Compensation”

PROGRAM OVERSIGHT

To address its mandate for overseeing the health, safety and workers' compensation systems in California, the Commission requests that the system administrators provide updates of key aspects of their programs.

This section of the CHSWC Annual Report incorporates the status updates of the administrators on critical program components with analyses derived from CHSWC studies and observations.



California Labor Code Section 77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases."

Division of Workers' Compensation

District Office Operations

Concern has been expressed in the past regarding the operations of the DWC district offices throughout the state. Specifically mentioned were the following:

- Lack of staff available to respond to in-person and phone inquiries and requests.
- Lost or misplaced case files.
- Inconsistencies in service of hearing notices.
- Inadequate equipment
 - insufficient numbers of computer terminals
 - personal computers are too old
- Hiring freezes have caused unnecessary workload backlogs.
- Calendars need to be set far into future due to hearing backlogs.
- Case "churning" leading to delays in case resolution.

Efforts are being made by the new DWC administration to address these problems.

The 24-Hour Care Pilot Project

Labor Code Section 4612, adopted in 1992 and amended in 1993, established three-year pilot programs of 24-hour health care in California. These programs were set up to test the administrative efficiencies, cost control potential, and service capabilities of having a single system provide health care for occupational and non-occupational injuries and illnesses. Implemented in 1994 with the participation of five employers in San Diego County, the pilot once included over 65 employers in four counties.

The 24-hour health care pilot project was terminated as of December 31, 1997. DWC issued an interim report in March 1997 and reports that it is currently working on a final report which will include

- An analysis of claims filings and claims costs, comparing firms participating in the pilot program with control firms.
- An analysis of patient outcomes and patient satisfaction.
- An analysis of responses from employers who participated in the pilot program to gauge their level of satisfaction with the project.

Health Care Organization Program

The Health Care Organization (HCO) program, established by the 1993 Workers' Compensation reform package, expanded the use of managed care techniques in the workers' compensation system. This was viewed as a means of reducing medical costs and facilitating better management of workers' compensation cases.

HCOs are a relatively new type of health organization, providing medical care to employees with job-related injuries or illnesses in a managed care setting. Insurance carriers and self-insured employers may contract with a certified HCO as a way of reducing workers' compensation costs while at the same time helping to ensure that injured workers receive quality medical care for their injuries.

An employer in an HCO gains additional medical control over the care of the injured employee, ranging between 90 days (if no group health insurance coverage is offered) to 365 days (if the employee's provider of non-occupational healthcare is also in the HCO network).

Revisions to DWC's HCO regulations, effective May 17, 1999 clarify that employers gain the additional medical control by offering non-occupational health coverage, even if the employee does not enroll in a general health plan. The new rules also clarify a notification requirement. Employers must inform

Current HCOs and Year Certified	
1999	Comp Partners (Access) Comp Partners (Direct) CorVel Priority Comp Net 2
1998	Medical Group at City Center
1997	Kaiser Foundation Health Plan, Northern California MedEx Health Care
1996	Priority Comp Net US CompCare
1994	PacifiCare HCO (Formerly FHP Life Insurance Co.)
Source: Division of Workers' Compensation	

employees annually that they may choose at least once a year to continue enrollment in an HCO, change to another HCO, or be treated by their own physician.

The effort to certify health plans as HCOs and monitor their provision of care to injured enrollees is an ongoing function within DWC. Health care plans interested in certification apply to DWC, which reviews their provider network access, quality of care and grievance systems, as well as their capacity to work with carriers on promoting return to work and health and safety.

Administration of the HCO program is funded through an enrollment fee paid by certified HCOs and applicants. Under legislation passed last year amending Labor Code Section 4600.7, future funding and a full repayment of the original start-up loan from the state General Fund is assured by providing an additional per enrollee surcharge over the next five to eight years.

DWC reports that financial uncertainties in the commercial health care business have recently impacted the HCO program. Several certified HCOs owned by large health care companies have withdrawn from the HCO programs as the parent companies refocus on their core business. Simultaneously, however, there is some evidence of renewed interest in the HCO program among claims administrators as DWC certified four new HCOs during the last fiscal year. There are currently 10 certified HCOs.

Alternative Workers' Compensation systems ("Carve-Outs")

The Commission is monitoring the alternative workers' compensation benefit delivery system or "carve-out" program established by the Legislature under Labor Code Section 3201.5 and administered by DWC.

In 1995, the program covered 242 employers, about 6.9 million work-hours (equivalent to 3,450 full-time employees at 2,000 person-hours per employee-year) and \$157.6 million in payroll.

During 1996, the program covered 277 California employers and over 11.6 million work-hours (equivalent to 5,822 full-time employees) with \$272 million in payroll.

In 1997, the carve-out programs covered 550 employers, a total of 10.3 million work-hours (equivalent to 5,186 full-time employees) and \$242.5 million in payroll.

DWC reports that preliminary data from 1998 indicates that the size of the program has grown from the previous year, with increases in the numbers of employers and in the amount of payroll.

A listing of employers and unions in carve-out agreement is presented on the following page.

For further information – Please see discussions and reports on these CHSWC projects
 ↳ Carve-Out Study

Employers and Unions in Carve-Out Agreements

(As of March 31, 1999)

1. An agreement between the California Building & Construction Trades Council and the Metropolitan Water District of Southern California for the Eastside Reservoir Project. [Expires November 7, 2000]
2. An agreement between the District Council of the International Brotherhood of Electrical Workers and its 20 local unions and a multi-employer group called the National Electrical Contractors Association, consisting of about 300 contractors. Each individual employer chooses whether to sign the master carve-out agreement. [Expires August 14, 2001]
3. An agreement between the Southern California District of Carpenters and its 19 local unions and six different multi-employer groups consisting of about 1000 contractors. Each individual contractor chooses whether to sign the master carve-out agreement. [Expires August 14, 2001]
4. An agreement between the Southern California Pipe Trades District Council No. 16 and a multi-employer group called the Plumbing & Piping Industry Council, Inc. Each individual contractor chooses whether to sign the master carve-out agreement. [Expires August 24, 2001]
5. Two agreements between the Cherne Contracting Corporation and Steamfitters Local 250 covering two projects at different oil refineries. [Completed in 1996]
6. An agreement between TIMEC Co., Inc., and TIMEC Southern California, Inc., and the International Union of Petroleum and Industrial Workers. [Expires December 31, 1999]
7. An agreement between the Contra Costa Building & Construction Trades Council and the Contra Costa Water District for the Los Vaqueros Project. [Completed in 1998]
8. An agreement between the Southern California District Council of Laborers and four different multi-employer groups: the Associated General Contractors of California, Inc., the Building Industry Association of Southern California, Inc., the Southern California Contractors' Association and the Engineering Contractors' Association. Each individual contractor chooses whether to sign the master carve-out agreement. [Expires July 31, 1999]
9. An agreement between the California Building & Construction Trades Council and the Metropolitan Water District of Southern California for the Inland Feeder Project. [Expires March 11, 2000]
10. An agreement between the Building & Construction Trades Council of Alameda County and Parsons Constructors, Inc. for the National Ignition Facility at Lawrence Livermore National Laboratory. [Expires 2000 - date uncertain]
11. An agreement between the District Council of Painters No. 36 and the Los Angeles County Painting and Decorating Contractors Association. Each individual contract chooses whether to sign the master carve-out agreement. [Expires October 28, 2000]
12. An agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 342 and Cherne Contracting Corporation for the construction of an oil refinery. [Expires October 18, 2000]
13. An agreement between the Los Angeles Building and Construction Trades Council, AFL-CIO, and Cherne-ARCO. [Expires July 31, 2001]
14. An agreement between the Operating Engineers Local 12 and the Southern California Contractors Association. [Expires April 1, 2002]
15. An agreement between the Sheet Metal Workers International Association and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA). [Expires April 1, 2002]

Source: Division of Workers' Compensation

DWC Information System

The California Workers' Compensation Information System (WCIS) was mandated as part of the 1993 reforms to provide comprehensive data and a means to evaluate how the state's workers' compensation system is performing. DWC reports that in 1998 it was in the development phase and is now in the testing phase.

The regulatory phase to mandate the electronic filing of information is also in process. DWC is proposing additional amendments to its draft regulations and the public comment period ends July 19, 1999. This will complete a 10-month process of gathering and responding to public input in order to balance the WCIS mandate against the interests of the regulated community. The final step will be to forward the adopted regulations to the state Office of Administrative Law for review and approval.

The proposed changes will move the mandatory date for claims administrators to submit electronic reports into the system to March 1, 2000 from September 1, 1999. Many carriers had indicated that resolving "Y2K" issues would prevent them from implementing any new computer systems over the balance of this year. DWC has temporarily removed the medical data reporting requirements in response to public concerns that the statutorily mandated model -- EDI standards adopted by the International Association of Industrial Accident Boards and Commissions -- were not yet finished.

DWC reports that it will be prepared to begin accepting electronic first reports on September 1, 1999, so claims administrators may choose to do so on a voluntary basis. Many multi-state organizations already experienced in electronic reporting in other states have indicated that they are looking forward to participating in the California system as rapidly as possible.

Fee Schedules

Labor Code §5703.1 requires the Administrative Director to adopt and revise a medical fee schedule every two years. Section 139(e)(7) calls upon the IMC members to "recommend reasonable levels of fees for physicians performing services" in providing medical care for injured workers. Section 77 mandates that CHSWC conduct a continuous examination of the system and recommend administrative or legislative modifications to improve the system.

The Division of Workers' Compensation updated the Official Medical Fee Schedule (OMFS) by adopting changes to the schedule effective April 1, 1999. The process required several rounds of public comment and extensive fiscal analysis. DWC reported that the planned implementation date of January 1, 1999 was delayed due to the lack of approval from the Department of Finance on the economic impact of the proposed regulations. Approval from the Department of Finance was received in December 1998, which did not allow enough time to implement the changes by the January 1, 1999 date. The In-Patient Fee Schedule and changes to the Medical Legal Fee Schedule were adopted and implemented as part of the overall package of medical regulations.

DWC provided training to the workers' compensation community on the new fee schedules at the 6th annual educational conference, and free of charge to the community in March 1999. Training sessions were held in San Francisco, Sacramento, Santa Ana, Los Angeles, and San Diego. More are scheduled later in 1999 to meet the needs of the community.

There were no substantive changes in the Utilization Review regulations or program during 1998. In the new version of the Official Medical Fee Schedule, there is a protocol such that health care providers can request verbal pre-authorization prior to providing services. Claims administrators are not required to respond to verbal (e.g. telephone) requests, but if they do grant such authorization, the provider may request that the claims administrator give written confirmation of the approval, or give a confirmation number indicating an electronic record of the approval.

DWC's plan to update and integrate its computer systems

DWC reports that its feasibility studies of data base integration have been disapproved by the state control agencies, the most recent of which was denied pending completion of the state's Y2K problems. A recent executive order was also issued by Governor Davis delaying all non-mandated technology efforts pending the resolution of the Department's Y2K efforts. Once this is resolved, DWC will again submit a Feasibility Study Report to integrate its computer systems.

In spite of these setbacks, DWC had commenced with updating its computer equipment by moving to server-based computer systems which could access the fragmented databases and which would support any future data base integration. Within current resources, DWC has now completely upgraded the computers in the following offices: San Bernardino, Riverside, Walnut Creek, San Francisco, Pomona, and Los Angeles. Santa Barbara will be added when they are moved to new quarters later this year. In San Bernardino and Walnut Creek, the workers' compensation administrative law judges have been provided with laptop computers that go from courtroom to chambers on a pilot basis.

In addition, the Uninsured Employers Fund Claims Unit has upgraded all four claims offices with network server-based computers. The Division will focus next on the Audit Unit upgrade, as well as the Fresno, Bakersfield, Long Beach, Van Nuys, and Sacramento district offices.

DWC Reorganization

DWC reports that its first major reorganization since 1965 was implemented on November 2, 1998. This restructuring is the culmination of years of planning beginning in 1996 with the KPMG Peat Marwick's *Business Process Reengineering Report*. The Division contracted with KPMG to assist with determining ways to more efficiently handle the workload in the areas of claims adjudication, rehabilitation, disability evaluation, and information and assistance. This report was helpful in identifying the areas where efficiencies could be obtained, and while the technology improvements were

PROGRAM OVERSIGHT

unsuccessful with the governmental oversight agencies, DWC continued to refine the restructuring recommendations until September 1997.

The new structure implements three major changes:

1. Informational calls to district offices will be routed to one of three regional centers where trained staff has access to all on-line case information at the division. This eases the burden on the district office staff, who can now focus on the resolution of disputed cases. The regional center staff can provide general information and assistance on workers' compensation, as well as other related governmental programs, and provide forms, guides or other printed material to callers.
2. District office staff, including permanent disability raters, rehabilitation consultants, and information & assistance officers, now report to the Presiding WC Administrative Law Judge and are dealing with litigated or disputed cases.
3. A Policy, Program Evaluation and Training Unit was created to insure continual oversight of program function, recommend policy and regulatory changes, and provide training of raters, rehabilitation consultants, information & assistance officers, program technicians, and the workers' compensation community.

On November 2, 1998, the reporting changes were implemented statewide. The first of three regional centers was launched in San Bernardino and consists of 8 professional consultants, 8 program technicians, a Supervising Workers' Compensation Consultant and clerical support. The center is receiving calls distributed from Pomona, San Bernardino, Riverside and Santa Ana. Four more will be added by the end of the year, completing the call distribution in Region III.

The second center will be in Walnut Creek and is expected to open in the summer of 1999. The facility has been modified for this purpose and the computer equipment purchased.

The third center is to be located in Van Nuys, and will be the last to be launched.

Status of liens in DWC district offices

In early 1998 DWC announced that its backlog of unresolved liens, once considered one of the major problems facing the Division, had essentially been eliminated. Two special units of workers' compensation referees -- one in Santa Ana and the other in Van Nuys - - which had been specifically set up to handle these medical lien disputes in an expedited manner, have been closed and the workers' compensation referees reassigned.

Beginning in January of 1998, DWC states that all of their district offices are handling their own lien disputes pursuant to the Uniform Lien Policy, which mandates that a good faith effort be made at the mandatory settlement conference to resolve all lien issues. Separate proceedings are not allowed unless a bona fide dispute remains after a good faith effort to resolve it.

The Commission commends the diligence and perseverance of the DWC district office staff who are making great efforts to deal with this workload, but recognizes that significant backlogs of lien cases remain to be resolved. From observations at several on-site visits to district offices and through conversations with DWC personnel, the Commission concludes that lien filings continue to utilize a significant portion of DWC resources. The Commission and DWC plan a joint effort to conduct a systematic review of the lien process to ascertain the reasons why so many liens continue to be filed.

Division of Occupational Safety and Health

High-Hazard or Targeted Inspection and Consultation Program

The 1993 reform legislation directed the Division of Occupational Safety and Health (DOSH) to create a program targeting especially hazardous employers for consultation and inspections. The program – High Hazard Employer Program (HHEP) – was designed to reduce preventable occupational injuries and illnesses and workers' compensation losses.

The statute requires HHEP to:

- Identify employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis.
- Establish and maintain regional plans for allocating the division's resources for the targeted inspection program in addition to other inspections required or authorized by statute.
- Coordinate its education, training, and consulting services with the priority established in the regional plans.

In early 1995 DOSH began notifying employers that they have been identified as high hazard places of employment because of a high score on a frequency-based formula based on their experience modification for insured employers or on a severity-based formula for self-insured employers. DOSH offered consultation services to the employers to help them address the occupational safety and health issues that cause them to be high hazard.

As required by statute, DOSH submitted its "1998 Report on the Loss Control Certification Unit and the Targeted Inspection and Consultation Programs" to the Legislature in January 1998. The report is available by selecting "DOSH" under "Occupational Safety and Health" on the DIR web site at www.dir.ca.gov.

Assessment for High-Hazard Program

The HHEP program is paid for by employers who experience higher than average workers' compensation losses. The statute permits the Director of the Department of Industrial Relations to levy an assessment on all employers with an experience modification (ex-mod) or its equivalent for a self-insured employer of 125 percent or more.

Since the program's inception, the methodology for making the assessment has been subject to much concern and discussion within the community. DOSH's "1998 Report" discusses five alternatives to using the ExMod as a method for selecting employers for TICF assessment.

Preliminary Findings

DOSH reports that employers who received targeted consultation assistance or a targeted inspection during the years 1995 and 1996, saw their establishment's workplace injury and illness incidence rates and their workers' compensation indicators improve as a result of the consultation or inspection.

The loss workday case incidence rate (LWDI) decreased by 23.9% for targeted consultation employers and by 18.5% for targeted inspection employers, while the LWDI decreased an average of 7.3% for California employers in general.

DOSH's "1998 Report" concluded that the targeting of establishments with elevated rates of workplace injuries and illnesses, and the application of consultation and inspection resources to those establishments, is an effective way to reduce injury and illness incidence rates and workers' compensation loss indicators.

Program Sunset

The statutory provision for the Targeted Inspection and Consultation Fund "sunset" on January 1, 2000, unless a later enacted statute deletes or extends the date.

There is currently a bill pending before the Legislature, which would eliminate the sunset provision and extend the program.

Loss Control Certification Unit

The Loss Control Certification Unit (LCCU) in the Division of Occupational Safety and Health (DOSH) certifies the loss control capabilities of insurers. The loss control certification program was created in January 1994.

As of December 1998, a total of 117 insurer group plans – representing 276 insurers – have been recertified.

PROGRAM OVERSIGHT

DOSH reports that their evaluations of insurers' Annual Loss Control Plans show that California workers' compensation insurers are making good faith efforts to understand and comply with the statutes and regulations governing the provision of loss control consultation services to their insureds.

Plan evaluations also indicate that most carriers have provided loss control services to a majority of the insureds they selected for their annual plan. Only on rare occasions has the LCCU discovered that an insurer failed to provide any loss control services to a targeted insured and usually such an outcome resulted from an insurer's failure to understand the regulatory requirements fully.

Ergonomics standard

A provision of the 1993 reform legislation required the Occupational Safety and Health Standards Board (OSHSB) to adopt workplace ergonomics standards by January 1, 1995, in order to minimize repetitive motion injuries.

DOSH and the Cal-OSHA Standards Board have worked for years on modifications to Title 8, General Industry Safety Orders, Section 5110 of the California Code of Regulations to establish those "ergonomic standards." As shown in the timeline, such regulations were implemented effective July 3, 1997, but are still subject to legal challenges and further court action.

For the latest information on the Ergonomics Standard—

→ Please see DIR web site at **www.dir.ca.gov**

(From the DIR home page, select "Occupational Safety and Health", then "Cal-OSHA Standards Board", then "Ergonomics Standard.")

Ergonomics Standard in California: A Brief History

January 18 and 23, 1996

OSHSB holds public hearings on proposed ergonomics standards and receives over 900 comments from 203 commentors. The proposed standards are revised.

July 15, 1996

OSHSB provides 15-day public comment period on revisions to proposed standards.

July 15, 1996

California Labor Federation, AFL-CIO, and the American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

September 19, 1996

OSHSB discusses proposal at its business meeting and makes further revisions.

October 2, 1996

OSHSB provides a 15-day public comment period on the further revisions.

October 2, 1996

California Labor Federation, AFL-CIO, and the American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

November 14, 1996

OSHSB adopts proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

January 2, 1997

OAL disapproves proposed regulations based on clarity issues.

February 25, 1997

OSHSB provides 15-day public comment period on new revisions addressing OAL concerns.

April 17, 1997

OSHSB adopts new revisions and resubmits proposal to OAL.

June 3, 1997

Proposed ergonomics standard approved by OAL.

July 3, 1997

Ergonomics standard becomes effective.

September 5, 1997

Sacramento Superior Court hearing to resolve the legal disputes filed by labor and business industries

October 15, 1997

Judge James T. Ford of the Sacramento Superior Court issued a Peremptory Writ of Mandate, Judgement, and Minute Order relative to challenges brought before the Court. The Order invalidated the four parts of the standard.

December 12, 1997

OSHSB appealed Judge Ford's Order with their legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

January 30, 1998

Judge Ford further ruled that his Order will remain in effect and not be stayed until the Court of Appeal hears the case.

March 13, 1998

The Third District Court of Appeal ruled that Judge Ford's Order to eliminate parts of Section 5100 will be stayed until the Court of Appeal issues a decision on the appeal filed in December 1997. The Standard is currently in effect and will remain in effect until the case is decided by the Court of Appeal. No date has been set by the Court of Appeal to issue its decision.

In the future...

Decision by Court of Appeal.

[Source: Occupational Safety and Health Standards Board]

Industrial Medical Council

The Industrial Medical Council (IMC) regulates physicians, called Qualified Medical Evaluators (QMEs), who examine injured workers to evaluate disability and write medical/legal reports. These reports are used to determine an injured worker's eligibility for workers' compensation benefits in California.

Physicians who may be QMEs include medical doctors, doctors of osteopathy, doctors of chiropractic, dentists, optometrists, podiatrists, psychologists and acupuncturists. The IMC certifies qualified physicians to be QMEs, helps educate the candidates, administers the QME competency exam, and holds QME disciplinary proceedings when necessary. Staff is available via a toll-free 800 telephone number to answer questions that may arise from workers, physicians, or companies.

The IMC also provides unrepresented injured workers with a choice of one of three randomly chosen QMEs in a specialty of the worker's choice, regulates courses provided as continuing education for QMEs, provides advice to the Administrative Director of the Division of Workers' Compensation on medical fee schedule issues, and regulates advertising by QMEs.

Since the IMC's creation in 1990, 6,658 QMEs have been certified. In the intervening years, many new eligibility requirements have been added. By year-end in 1998, there were approximately 4,500 QMEs in active practice in California.

Treatment Guidelines

Of interest to treating physicians, the IMC adopted and plans to continuously update guidelines for treatment of common industrial injuries. Currently, treatment guidelines exist for treatment of low back problems, occupational asthma, contact dermatitis, post traumatic stress disorder, as well as for injury to the neck, shoulder, elbow, hand & wrist, and knee. These treatment guidelines are advisory, and intended to assist health care providers in the California workers' compensation community in making decisions about appropriate medical treatment for specific industrial injuries. Using CQI (Continuous Quality Improvement) the IMC plans to periodically review, update and revise the treatment guidelines to reflect current medical practices. The text of each guideline is available on the IMC website, as well as upon request to the IMC office.

Improving QME Report Quality

In 1996, the IMC staff designed a medical/legal report quality review system, in order to evaluate the quality of QME reports on both an "as referred" and on a random basis. The reviewer first checks each report for the presence or absence of 25 essential elements. The next level of review evaluates the physician's discussion of more complex subjects, including apportionment and the factors of disability. The third level of review evaluates the QMEs adherence to the IMC's disability evaluation guideline for that type of report. The IMC then sends the physician who wrote the report a letter congratulating the physician on passing the review, or summarizing the deficiencies and directing the physician to educational resources. When necessary, reports with

PROGRAM OVERSIGHT

egregious or unlawful problems are referred to the IMC discipline section. The IMC reviewed 1000 reports in 1998 and plans to review a similar number in 1999. The results of the review are reported annually to the Administrative Director and are available on the IMC's web page.

QME Complaint Tracking and Discipline

The IMC Investigations Unit made a qualitative change in 1996 by hiring a Senior Special Investigator able to conduct in field investigations. The Investigations Unit uses the cross-disciplinary expertise of a supervising attorney, staff physician, investigator and support staff. The IMC established an '800' number complaint hotline. Between July 1997 and June 1998, 607 complaints were received by the IMC.

Fee Schedule Advisory Committee Meetings

The Industrial Medical Council advises the Administrative Director on medical reimbursement issues in accordance with its Labor Code mandates in Section 139(e)(7)&(8). In 1998, the IMC consulted with the Administrative Director to finalize the revision of the Official Medical Fee Schedule (OMFS) which is effective April 1, 1999. Recognizing that the federal government and many states now use relative value scales based on resource costs for their workers' compensation medical treatment fee schedules, the Council proposes to undertake a study to explore the options for adapting a resource based relative value scale for use in the OMFS. This Resource Based Relative Value Scale Study will be an initial step in the next biennial revision of the OMFS.

Education to Improve Quality - IMC Focus in 1999/2000

The Council believes that communication and education are keys to quality in both medical treatment and disability evaluations in the workers' compensation system. Through guidelines and educational work, the IMC's work has been shifting to more focused program areas. In an effort to enhance the quality of medical evaluations and treatment, the IMC is emphasizing its educational work through the medical/legal reports quality review, dissemination of The Physician's Guide to Medical Practice in the California Workers' Compensation System, a quarterly newsletter entitled "The Industrial Medical Council's Medical Examiner", and hosting the Educational Conference for Treating Physicians in the fall of 1997 and 1998. These one-day seminars presented the 'nuts and bolts' training needed by physicians to work effectively as treating doctors in workers' compensation. The IMC website also offers a variety of educational articles and provides a gateway for physicians to obtain answers to questions without going through 'bureaucratic' hurdles.

PROGRAM OVERSIGHT

PROJECTS AND STUDIES

Introduction

In response to its Labor Code mandate, CHSWC has engaged in many studies to examine health, safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of concern to the community.

CHSWC studies are conducted by independent researchers, under contract with the State of California. Advisory Committees, composed of interested members of the workers' compensation community and the public, provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990's and to assess the impact on workers and employers. While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies, and to concerns and interests expressed by the Legislature and the workers' compensation community.

CHSWC projects have dealt with several major areas -- informational services to injured workers, alternative workers' compensation systems, anti-fraud activities, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the reform legislation on the medical-legal process and the vocational rehabilitation program.

The most extensive and potentially far-reaching project undertaken by the Commission is the ongoing study of workers' compensation permanent disability in California. Incorporating public fact-finding hearings and discussions with studies by RAND, the CHSWC project is dealing with major policy issues regarding the way that California workers are compensated for permanent disability incurred on the job.

This section starts with a discussion of the Commission's comprehensive study of permanent disability and continues with descriptions of CHSWC's other ongoing studies.



California Labor Code Section 77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may contract for studies it deems necessary to carry out its responsibilities."

PROJECTS AND STUDIES

CHSWC Permanent Disability Project

Background

The Commission realizes that the rating of permanent disability is one of the most difficult tasks of the workers' compensation system, often leading to disputes and litigation.

The manner in which California rates and compensates injured workers for total and partial permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, the smooth operation of DWC's adjudication system and the cost of the workers' compensation system to employers.

RAND's initial report, "Compensating Permanent Workplace Injuries: A Study of the California System", indicated that there was significant uncompensated wage loss for workers of insured employers who suffer permanent disability.

A CHSWC Permanent Disability Policy Advisory Committee was established to review the RAND report and the community's responses, and recommend further action. The committee began meeting in November 1997 and continues to date.

CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee

Co-Chairs:

Tom Rankin, CHSWC and
California Labor Federation

John C. Wilson*, CHSWC and
Schools Excess Liability Fund

Members:

Julianne Broyles
California Chamber of Commerce

Richard W. Gannon*
Division of Workers' Compensation

Brian Hatch
California Professional Firefighters

D. Allan MacKenzie, MD
DIR Industrial Medical Council

Theresa Muir
Southern California Edison

Dianne Oki
State Compensation Insurance Fund

Merle Rabine
California Applicants' Attorneys Association

Stephen J. Smith*
Department of Industrial Relations

Edward C. Woodward
California Workers' Compensation Institute

**New member in 1999*

The Policy Committee established the following policy goals:

1. Efficiently decrease uncompensated wage loss for disabled workers in California.
2. Increase the number of injured workers promptly returning to sustained work.
3. Reduce transaction and friction costs, including "costs" to injured workers.

The CHSWC Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The workers' compensation community wanted additional information regarding how other factors such as demographics and local economic conditions affected the outcomes of the wage loss study. Observations were also made about the initial study parameters – the study lacked data about the employees of self-insured employers and data beyond the 1991-1993 period.

The PD Policy Advisory Committee urged the Commission to study those issues further. The Commission voted to continue the comprehensive study of workers' compensation permanent disability.

CHSWC Permanent Disability Project Team

Christine Baker
CHSWC

Robert Reville
RAND

Lauren Sager
RAND

Ellen Charles
RAND

Sue Polich
RAND

David Studdert
RAND

Leslie I. Boden, PhD
Boston University – Public Health

Edward M. Welch
Michigan State Univ – Labor and Industrial Relations

Frank Neuhauser
UC Berkeley

Charles Lawrence Swezey, Esq.
CHSWC Consultant

Continuation of the CHSWC permanent disability study will include:

- Enhancement of the initial wage loss analysis
- Return to Work (RTW) Analysis
- Permanent Disability Schedule Revision
- Analysis of wage loss and RTW in other states

Enhancement of the Wage Loss Study

The original wage loss study will be expanded to include analyses of wage loss sustained by employees of self-insured employers and analyses of the impact of local economic conditions on wage loss and return to work.

Return to Work (RTW) Analysis

The goal is to provide policymakers with all the information necessary to implement policies that encourage return-to-work, if such policies are found

to be effective and valuable. This phase will consist of three parts.

First, the study will estimate the value of improved return-to-work in terms of long-term uncompensated wage loss. While the impact of return-to-work programs on Temporary Disability costs are readily apparent and often estimated, the impact of improved return-to-work on long-term wage loss has never been estimated.

Second, the study will describe the programs used by California employers and identify the best practices encouraging return-to-work.

Third, a literature review and qualitative interviews will be conducted with selected administrators and firms in other states to assess the effectiveness of policies adopted by other states to encourage return-to-work.

Permanent Disability Schedule Revision

This phase will consist of a detailed evaluation of the disability rating schedule in order to provide empirical findings that can guide a revision that will be consistent with the economic losses experienced by permanently disabled workers. As part of its research,

the study will empirically identify the components of the schedule that contribute to inconsistency and make recommendations to reduce it. It will also analyze the usefulness of increased reliance on objective medical findings in disability ratings, including the extent to which such an approach can improve consistency and whether it can also improve the targeting of benefits.

Analysis of wage loss and RTW in other states

This phase will compare the wage loss experience of other states to the results for California. Estimation of the wage loss experience of other states can improve the ability to understand the causes of wage loss. Differences in wage losses across states can be analyzed so that reforms can be identified that will be effective. A focus of this analysis will be on differences across states in return-to work. In addition, the effectiveness of the policies of other states can be evaluated and the impact of other differences in the workers' compensation system can be examined

Status

The continuation of the CHSWC Permanent Disability study was initiated in November 1997 and is ongoing.

Data on wage loss of permanently disabled workers of self-insured employers will be available in August 1999 with a final report on that issue expected in the fall of 1999.

Further Information

The RAND report of CHSWC's study of the permanent disability system, entitled "Findings and Recommendations on California's Permanent Partial Disability System", published in 1997 may be obtained at no charge by writing, faxing or phoning the Commission office.

The Executive Summary of the RAND report of CHSWC's study of the permanent disability system is also available from the Commission office and on the internet at www.dir.ca.gov.

The CHSWC 1997-1998 Annual Report, published in September 1998, contains further discussion of the workers' compensation community's response to the RAND report.

**CHSWC PD Project
Self-Insured Advisory Subcommittee**

- Mark Ashcraft
DIR Self Insurance Plans
- Jill Dulich
Marriott International
- Luisa Gomes
California Assn. of Service Organizations
- Joseph E. Markey
California Self Insurers Association
- Theresa Muir
Southern California Edison
- John Robeson
State Compensation Insurance Fund

**CHSWC PD Project
Self-Insured Project Team**

- Christine Baker
CHSWC
- Frank Neuhauser
SRC, UC Berkeley
- Robert T. Reville
RAND

PROJECTS AND STUDIES

Study of DWC's Audit Function

Background

The Senate Industrial Relations Committee and the Assembly Insurance Committee jointly requested that the Commission undertake an evaluation of the effectiveness of the Audit Unit of the Division of Workers' Compensation.

Description

As requested by the Legislature, the Commission worked to develop recommendations:

- To make the DWC Audit program more effective.
- To determine whether or not the program is adequately staffed.
- To determine whether or not the penalty levels are adequate and/or appropriate to deter violations.
- To make the \$100,000 civil penalty for a pattern and practice of poor claims administration more effective.
- To consider whether or not the unfair claims settlements practice act (section 790.03 of the Insurance Code) should apply to workers' compensation.

Status

The CHSWC Audit Study Project team was formed to carry out the study.

As a result of the project team's analyses, the Audit Study report was prepared and submitted Chair of the Senate Industrial Relations Committee and the Chair of the Assembly Insurance Committee.

The study developed a proposal to address system shortcomings or failures. These include:

- Reward good performers by eliminating administrative penalties and resource requirements,
- Increase incentive to improve benefit delivery by raising administrative penalties substantially on poor performers,
- Focus administrative penalties on important violations,

Audit Project Advisory Committee

Saul Allweiss
Republic Indemnity

Julianne Broyles
California Chamber of Commerce

Mark Gerlach
California Applicants' Attorneys Association

Peter Gorman
Alliance of American Insurers

Mark Johnson
DWC – Audit Unit

Lori Kammerer
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CDI Consumer Services Division

Joseph E. Markey
California Self-Insurers Association

Lisa Middleton
State Compensation Insurance Fund

Clea Powell
Kaiser Foundation

Frank D. Russo
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Willie Washington
California Manufacturers Association

Mark Webb
American Insurance Association

Larry White
CDI Legal Division

Doug Widtfeldt
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Edward C. Woodward
California Workers' Comp. Institute

Former Administrative Director
Division of Workers' Compensation

PROJECTS AND STUDIES

- Provide balance to the audit process:
 - Bad business practices by claims administrators mean that injured workers are not receiving proper indemnity payments and appropriate medical services in a timely manner.
 - Excessive audit penalties and regulation mean employers are paying higher costs to deliver the same benefits.

The “CHSWC Report on the Workers’ Compensation Audit Function” was published and submitted to the Legislature in December 1998.

Audit Project Team

Christine Baker
CHSWC

Frank Neuhauser
UC Berkeley

Charles Lawrence Swezey, Esq.
CHSWC Consultant

Marie Wardell
Consultant

Kirsten Strömberg
CHSWC

Further Information

The “CHSWC Report on the Workers’ Compensation Audit Function” may be obtained at no charge by writing, faxing or phoning the Commission office. It is also available on the internet at www.dir.ca.gov.

Workers' Compensation Information Prototype Project

Background

The CHSWC-sponsored study on "Information Services to Injured Workers" showed that workers need to know what the workers' compensation program is, what steps they need to take if an injury occurs, what they can expect in the process, and how they can receive information and assistance.

Description

The Commission undertook a project to develop prototype informational materials on the workers' compensation program, benefits, and procedures.

The Advisory Committee worked closely with the project team in creating and refining the informational materials. The Executive Committee reviewed and approved the materials before they were submitted to the Commission for final approval.

These materials, consisting of six fact sheets and a video, are available to the public and are designed to be utilized by employers, employee organizations, and any others in the California workers' compensation community.

The fact sheets are entitled:

- "What Every Worker Should Know"
- "After You Get Hurt on the Job"
- "Temporary Disability Benefits"
- "Permanent Disability Benefits"
- "For More Information"
- "Hurt on the Job? Information Alert for Teens"

The video, entitled "Introduction to Workers' Compensation", follows the cases of three injured workers and describes the steps to take when an industrial injury takes place as well as available resources to get further assistance. The fact sheets are available in both English and Spanish and in black and white or in color.

Information Prototype Project Advisory Committee

Thom Donnelly

Piledrivers Local 34

Joe Enos

United Auto Workers, Local 2244

Mabel Fong

State Compensation Insurance Fund

John Friedberg

East Bay RSI Support Group

Larkie Gildersleeve

Newspaper Guild Local 52

Luisa Gomes

California Association of Service Organizations

Dorsey Hamilton

Compensation Alert

Marielena Hincapie

Employment Law Center

Robert Jaramillo, DC

Josie Jenkins

Service Employees International Union 949

Hai Lai

East San Jose Community Law Center

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California Medical Association

Joan Lichterman

East Bay RSI Support Group

Marc Marcus

California Applicants' Attorneys Association

Allan MacKenzie

DIR, Industrial Medical Council

Michael McClain

California Workers' Compensation Institute

Pete McMillan

Californians for Compensation Reform

Mark Miller

California Workers' Compensation Institute

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**Information Prototype Project
Advisory Committee**
(continued)

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Linda Rudolph, MD
DWC, Medical Unit

Peter Robertson
*Associated General Contractors
of California*

Lloyd Rowe
California Applicants' Attorneys Association

Anne Searcy, MD
DIR, Industrial Medical Council

Fran Schreiber
Kazan, McClain, Edises, Simon & Abrams

Sarah Shaker
Instituto Laboral de La Raza

Barbara Shogren-Lies
*California Association of Rehabilitation
and Reemployment Professionals*

Steve Siemers

Rich Stephens
Division of Workers' Compensation

Margaret Stevenson
East San Jose Community Law Center

Gail Walsh
DIR Industrial Medical Council

Willie Washington
California Manufacturers Association.

Lynn Wood
Wear & Wood, Inc.

Ed Woodward
California Workers' Compensation Institute

Rich Younkin
Division of Workers' Compensation

Harry Ysselstein
Calco Medical Management Corporation

**Information Prototype
Project Team**

Christine Baker
CHSWC

Juliann Sum
LOHP, UC Berkeley

Laura Stock
LOHP, UC Berkeley

Status

The fact sheets and video were completed March 1998 and subsequently distributed at meetings and conferences of the workers' compensation community statewide.

In June 1999, CHSWC distributed the factsheets to about 3,000 employers and labor organizations with a letter explaining how to use the material.

Further Information

These informational prototype materials may be obtained at no charge by writing, faxing or phoning the Commission office. The fact sheets are also available on the internet at www.dir.ca.gov

For further information about the CHSWC study on the injured worker experience which led to the development of the prototype informational materials, see the 1996 project report entitled "Navigating the California Workers' Compensation System", available from CHSWC and on the internet.

Next Steps

1. Prepare a memorandum for employers on how they can use the prototype educational materials to inform their employees and help meet their legal obligations.

2. Develop another factsheet, which will inform workers about working while recovering from a job injury, working even if you cannot recover fully, and vocational rehabilitation benefits. The factsheet, entitled "Working After a Job Injury", will be pilot tested with injured workers in the summer of 1999. Further revisions, advisory input, design, and translation into Spanish will be completed by October 2000.

3. Identify methods to update and improve the content, design, and distribution of the factsheets.

Study of Incomplete Physician Reports

The 1993 reforms increased the role of the primary treating physician (PTP). They require the PTP to render opinions on all medical issues necessary to determine eligibility for compensation, and when additional medical-legal reports are obtained, the findings of the treating physician are presumed to be correct. These legislative changes had the effect of reintroducing the importance of the treating physician that had been curtailed by the 1989 reforms and adding the additional authority of rebuttable presumption.

Incomplete physician reports have been cited as a major factor leading to inconsistency in permanent disability ratings. Many of DWC's disability evaluators have said that their largest problem with the current system is the poor quality of medical reports that have been submitted to them for rating.

Description

The Commission has undertaken a study to:

- Determine the nature and magnitude of the problem;
- Ascertain who is producing incomplete reports and why;
- Develop quantitative analysis
- Provide recommendations for improving the quality of reports;
- Calculate the cost-benefit obtained from the system.

A random sample of medical reports was drawn from the DWC Disability Evaluation Unit and evaluated by the project team and representatives from the Industrial Medical Council. The costs of the reports were estimated separately using data from bill review companies or carriers.

***Incomplete Physician Reports
Advisory Committee***

Blair Megowan
DIR DWC Disability Evaluation Unit

Ann Searcy, MD
Industrial Medical Council

***Incomplete Physician Reports
Project Team***

Frank Neuhauser
SRC, UC Berkeley

Status

This project is in process. The study report will be available in the summer of 1999.

Findings

Preliminary findings indicate that

- Treating physician reports are of substantially poorer quality than reports by Agreed Medical Evaluators (AMEs) and Qualified Medical Evaluators (QMEs) writing reports for the applicant or defense side or as QMEs selected from a panel by an unrepresented worker.

PROJECTS AND STUDIES

- Most PTPs whose reports are submitted to the WCAB are also QMEs
- However, most of the problems with PTP reports are on those reports where the PTP is not also designated as a QME by the Industrial Medical Council.
- The application of presumption to the PTPs' reports has not reduced the number of reports requested by parties on permanent disability claims at insured employers.

In summary, the preliminary findings indicate that the changes to the status of the PTP made in the 1993 reforms have resulted in medical-legal decisions based on poorer quality reports without any apparent cost savings.

California Study Group on Young Workers' Health and Safety

Every year about 70 adolescents die from work injuries in the United States and approximately 70,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

Description

To address this issue in California, the Commission convened a statewide Study Group on Young Workers' Health and Safety. The Study Group brings together key representatives from government agencies and statewide organizations that are involved with California youth employment and education issues.

The purpose of the Study Group is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce;
- Foster awareness and skills in safety and health that will remain with youths throughout their working lives, and allow them to take an active role in shaping safe work environments;
- Promote positive, healthy employment for youth.

Status

The Study Group was established in 1996 and has been funded by the Commission through 2000.

During the past year, the Study Group has continued to meet quarterly to develop and begin working on implementation plans in four key areas, selected from the recommendations in the report released by the Study Group in 1998.

Young Workers' Health and Safety Advisory Committee

Michael Alvarez
Cal/OSHA

Rob Atterbury
San Diego USD School-to-Career

Grace Bos
DIR Division of Labor Standards Enforcement

Neil Brosnan
Employment Development Department

Earl Brown
Youth Opportunity Limited

Margaret Brown
California Teachers Association

Sharon Brunson
US Dept. of Labor

William Callahan
DOE, Office of Regional Occupational Center

Celeste Carter
DOL, Wage and Hour Division

John Cottingham
Industry Education Council of California

Jerre Dahlen
UCLA-Labor Occupational Safety & Health

Linda Delp
California PTA

Walter Graze
Cal/OSHA

Paul Gussman
California Dept. of Education

Robert Harrison
California Dept. of Health Services

John Howard
DIR DOSH

Patricia Macias-Najar
EDD, School-to-Career

(continued on next page)

Accomplishments in each of these areas are described below.

Young Workers' Health & Safety Advisory Committee

(continued)

- Paul Meyers
Department of Education
- George Moton
California Apprenticeship Council
- Bob Reeves
California Chamber of Commerce
- Roger Rivera
UFCW Local 428
- Kelly Robinson
UCLA-LOSH
- Cindy Sato
Marriott - UC Davis
- C. Diane Silva
U. S. Dept. of Labor
- Rita Tsuda
DIR, Div. of Apprenticeship Standards
- Linda Tubach
California Federation of Teachers
- Dennis Turner
Department of Education
- Jan Vach
California Association of Work Experience Educators/Career Awareness Center
- Marie Wardell
Marie Wardell & Associates

Young Workers' Health & Safety Project Team

- Christine Baker
CHSWC
- Robin Baker
LOHP, UC Berkeley
- Diane Bush
LOHP, UC Berkeley
- Rhaneé Guzman
LOHP, UC Berkeley (intern)

1. Creation of a statewide resource center on young workers

After researching several resource center models and existing information networks, the Study Group developed a written description of the proposed resource network on young worker health and safety issues. Study Group members used this description to develop legislation, introduced this year that would establish such a resource center. In addition, LOHP has been able to pilot test and develop funding for a number of resource center activities, under the guidance of the Study Group:

- Curriculum and training workshops for 120 youth employment program staff (with OSHA funding);
- Health and safety training workshops for 90 work experience and school to career teachers;
 - Materials distribution, including curricula, fact sheets, and other teaching materials

2. Implementation of a pilot public information campaign: Safe Jobs for Youth Month

Study Group members worked with the Governor's office to declare May 1999 "Safe Jobs for Youth Month" in California, to help raise awareness among teens,

parents, employers and educators of labor laws and other safety protections for working teens. Some of the activities accomplished include:

- Press coverage of Governor Davis' proclamation;

PROJECTS AND STUDIES

- Cal/OSHA began distributing the fact sheet “Safer Jobs for Teens”, to selected employers
- Information for parents printed in at least 10 labor newsletters
- Information for employers printed in at least 5 newsletters for employers
- Health and safety was highlighted in youth job fairs and summer jobs programs (including Oakland, San Diego and Sacramento)

3. Enhanced coordination among state and federal agencies

Government agency representatives met separately three times this year to explore data sharing and better coordination of outreach and enforcement efforts.

4. Improvement of California's work permit system

Study Group members sponsored legislation, introduced this year, to improve training of work permit issuers, and to ensure that parents, employers and teens receive information about health and safety and child labor laws when work permits are issued.

Further Information

The 1998 study report entitled "Protecting and Educating California's Young Workers" may be obtained by calling, faxing or writing the Commission. The report is also available on the internet.

PROJECTS AND STUDIES

Vocational Rehabilitation Study

Background

In 1995, the Commission initiated a project to determine the impact of the workers' compensation reform legislation on the workers' compensation vocational rehabilitation program.

Description

The primary objective was to measure the impact of the reform changes on the vocational rehabilitation program.

A model was developed to get baseline information that will provide comparative data in future years regarding the number of workers undergoing vocational rehabilitation, the duration and costs of rehabilitation programs and services and the results produced by those programs and services.

Questions being addressed include:

- Did the reforms reduce the costs of the VR benefit for employers?
- How have changes affected outcomes for injured workers?

Status

The Vocational Rehabilitation project was initiated in 1995 and is ongoing. The Commission has funded the project through 1999.

An interim study report entitled "Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms" was published in August 1997.

Findings

Preliminary findings indicate that the cost of the vocational rehabilitation benefit declined by \$274 million (49%) between 1993 and 1994.

The decline in average cost per VR claim

Vocational Rehabilitation Project Advisory Committee

Tom Abrams
 Julianne Broyles
California Chamber of Commerce
 Otis Byrd
DWC, Rehabilitation Unit
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appears to be equally dramatic, dropping 40% from about \$14,200 in 1993 to \$8,600 in 1994. This downward trend appears to be continuing with 1995 costs declining an additional 10%.

Recent results indicate that the reform efforts apparently achieved one major goal, to encourage more employers to offer modified or alternate (M/A) work and to pay these workers at or near their pre-injury wage. Offers of M/A work increased by 50% to include nearly one third of qualified injured workers. At the same time, nearly 80% of these workers received wages that were at least 85% of the pre-injury level and nearly 60% received wages equal to or greater than the pre-injury level.

The costs of the rehabilitation benefit declined dramatically as a result of reform. At the same time, outcomes for qualified injured workers, as measured by work status and several income measures are virtually identical despite this decrease in overall benefit costs.

Further Information

A copy of the interim study report may be obtained by calling, faxing or writing the Commission and is also available at www.dir.ca.gov.

Next Steps

A final report is expected in the fall of 1999.

Literature Review of “Modified Work”

Background

CHSWC and the Industrial Medical Council jointly initiated a project for a literature review regarding the impact of modified work offers on the return to work outcomes of injured workers.

Some employers offer modified work to facilitate early return to work for temporarily or permanently disabled workers.

Description

Although many experts in the field regard modified work as a cornerstone in the rehabilitation process, little is known about the availability, structure, effectiveness and efficiency of modified work programs.

The objective of this literature review is to synthesize and critically appraise the scientific evidence in these four areas.

Status

The literature review of modified work has been completed.

Findings

The main finding of this review is that modified work programs are both effective and economically feasible. Injured workers who are offered modified work programs return to work about twice as often as those who are not offered such programs. However, methodologically more rigorous studies are needed to determine the magnitude of cost-savings and which program elements are most effective.

Further Information

The study report entitled “Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?” was published in August 1997.

A copy of report may be obtained by calling, faxing or writing the Commission and is also available on the internet.

Modified Work Literature Review Project Team

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PROJECTS AND STUDIES

Predictors and Measures of Return-to-Work

Background

and the National Institute for Occupational Safety and Health (NIOSH) sponsored a project for the development of a summary of the current knowledge of the predictors and measures of return to work after work-related injury or illness.

Description

The purpose of this project was to answer the following questions;

- (1) What are the primary factors that affect whether workers will return to work for their pre-injury employers, the time lost from work after the injury, subsequent employment spells, and changes in occupation?
- (2) What are the critical data and research needs in this area?

This project was a collaborative effort by researchers from different disciplines.

Predictors and Measures of RTW Project Team

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Status

The project has been completed.

A report entitled "Determinants of Return to Work and Duration of Disability After Work-Related Injury and Illness: Developing a Research Agenda" was presented at the Annual Conference of the National Institute for Occupational Safety and Health (NIOSH) held June 13-15, 1999 in Denver, Colorado.

Findings

(A) Multifactorial nature of disability and RTW.

Work disability and RTW are processes influenced by a variety of social, psychological, medico-legal, and economic factors and thus cannot be understood in biomedical or economic terms alone. About 80 different determinants of RTW outcomes were identified in this review. Future research needs to be interdisciplinary and develop a comprehensive conceptual framework to integrate this knowledge. The report suggests four criteria for prioritizing research in specific risk factor domains: risk factors under study are (1) amenable to change, (2) relevant to the users of research, (3) generalizable across health conditions, disability phases, and settings, and (4)

"promising" based on qualitative explorative studies. For example, availability of modified work is a research subject which meets all four criteria. Additional research is needed to improve measurement instruments for both risk factors and outcomes.

(B) Phase-specificity of risk factors and intervention programs.

"Phase specificity" refers to the fact that the impact of risk factors (or interventions for that matter) varies across different phases of the disablement process. Some influences on RTW occur only some time after the injury (e.g., litigation), change during the course of disability (e.g., mental health), or may exert a different impact at different phases (e.g., treatment regimes for acute versus chronic pain). The right timing of intervention programs in terms of time after the injury can be decisive for the effectiveness of the program. It is necessary to use appropriate study design and analytic techniques to handle these complexities.

(C) Selection of appropriate outcomes and databases in RTW research.

More researchers suggest combining primary data from injured worker and stakeholder interviews with secondary administrative databases. Such combined databases enrich our understanding of the full range of risk factors for delayed RTW, as well as the full burden on health, social and economic consequences of occupational illness and injury.

Further Information

A report entitled "Determinants of Return to Work and Duration of Disability After Work-Related Injury and Illness: Developing a Research Agenda" was published in June 1999.

A copy of report may be obtained by calling, faxing or writing the Commission and is also available on the internet.

Medical-Legal Study

Background

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission initiated a project to determine the impact of the workers' compensation reform legislation on the workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center at UC Berkeley to carry out this study.

Description

The study analyses are based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. The WCIRB data summarizes accident claim activity, including such measures as degree of impairment, the type and cost of specialty exams, whether the case was settled and, if so, the method of settlement employed.

Status

The Medical-Legal study was initiated in 1995 and is ongoing. The Commission has funded the project through 1999.

Findings

The study determined that

- the cost of medical-legal exams has declined dramatically since its peak in the 1991 accident-year.
- The number of partial permanent disability claims decreased significantly.
- The average cost of medical-legal exams has declined.

Further Information

The report entitled "Evaluating the Reforms of the Medical-Legal Process" contains details of the medical-legal study methodology and findings. The first edition of the

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PROJECTS AND STUDIES

report was published in July 1996, and subsequent editions in following years. Please note that later editions incorporate and update the data presented in previous ones.

“Carve Outs” – Study of Alternative Dispute Resolution Systems

Background

The 1993 reform legislation enabled the California construction industry to collectively bargain for alternative workers’ compensation programs, also known as “carve outs”. The Commission contracted for an independent, outside study of the carve-out programs in California.

Description

This independent study involves several concurrent efforts. Each of these efforts is meant to inform carve-out participants and other interested parties about the advantages and problems associated with these experiments in alternative dispute resolution and efforts to speed benefit delivery to workers. Much of the early research on carve-outs suggested that these alternatives saved employers substantially on workers’ compensation costs while reducing the level of litigation. However, there was considerable concern within the community over the protection of workers’ rights and benefits.

Administrative Survey of Carve-outs

All carve-out agreements were reviewed and the principal administrator for each program was interviewed concerning a number of important issues including length of medical control, construction of medical provider lists, restrictions on medical-legal evaluator lists, alternate dispute resolution processes, access of workers to legal representation, participation rates among eligible employers, costs of administration, and level of litigation.

Case Studies

Drawing on the information from the Administrative Survey, two case studies were conducted. The two carve-outs were selected based on two separate models of employer/union negotiation. One study was selected as a large project ‘wrap-up’ arrangement where a single owner negotiated an agreement with all trades involved in the project. The other study examines the

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experience of an agreement between an association of many employers and a number of union locals representing only a single trade. Each of these carve-outs was the subject of extensive interviews of many participants including employers, union leaders, workers, ombudspersons, mediators, arbitrators, medical providers, claims administrators, insurers, safety personnel and negotiators for both sides.

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*Analysis of Alternate Dispute Resolution/
Survey of Ombudspersons*

An analysis of the structure and functioning of the ADR process was conducted for all operating carve-outs. This involved analysis of documents and agreements, site visits, numerous interviews with participants, and a telephone and written survey of all current ombudspersons. These analyses focus on the way in which the ADR structures and implementation may affect the independence of the ombudspersons, the fairness of the process, and the protection of the rights of workers and employers.

Quantitative Methodology

Carve-outs are a new innovation and data is limited. This part of the project focused on the development of a methodology to reliably evaluate the impact of carve-outs on the costs to employers, litigation rates, and impact on worker benefits. The object was to develop reliable methods that can be implemented with currently collected data, reproducible in other jurisdictions, and straightforward to apply and interpret. This methodology was then used to analyze data on the NECA/IBEW carve-out, the largest carve-out operating anywhere in the country.

Findings

The study determined that while early data reported by DWC suggested that carve-outs resulted in substantial savings on both medical and indemnity costs, precipitous drops in litigation, and possible marked improvements in safety, these conclusions were drawn from limited data. As a result, that data may also have been misinterpreted.

Litigation rates on further evaluation appear similar between both systems, at least at this early stage. The number of claims resulting in some form of dispute resolution, a mediation or arbitration under a carve-out or a mandatory settlement conference or hearing in the statutory system were similar. However, the portion of seriously injured workers in carve-outs represented by attorneys was only half that of the statutory system.

Early data from the quantitative evaluation, currently in process, indicates that both medical and indemnity costs have declined for carve-out employers, but this decline mirrors a similar decline for noncarve-out employers, reflecting a general improvement in the California workers' compensation environment since the early 1990's.

Part of the reason that the carve-outs may have produced less dramatic savings than earlier predicted may be because the ADR processes and medical and medical-legal provisions are still evolving towards a best practice. With improvements in implementation, it is anticipated increased savings will occur. The draft report to the Commission made a number of recommendations on how carve-outs could develop structures that could improve protections for workers while increasing opportunities for employers to achieve additional cost savings.

Further Information

The study report entitled "California Carve-outs: Sea Change or Incremental Change?" will contain details of the carve-out study methodology and findings. This report is expected to be available in August 1999.

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PROJECTS AND STUDIES

Project on Illegally Uninsured Employers

Background

At its public fact-finding hearing on workers' compensation anti-fraud activities, the Commission determined that some employers do not comply with the requirement to secure workers' compensation coverage for their workers.

Commission staff and a research team developed an issue paper containing recommendations to identify illegally uninsured employers and bring them into compliance. This is intended to provide proper workers' compensation coverage for workers, to reduce the cost to the state's Uninsured Employers Fund and General Fund, and to level the economic playing field for insured employers.

Description

This endeavor consists of three pilot projects designed to identify illegally uninsured employers and bring them into compliance. Each pilot project targets a specific group of employers and involves data matching among DIR's Division of Labor Standards Enforcement, the Employment Development Department and the Workers' Compensation Insurance Rating Bureau (WCIRB).

The objectives were to determine the effectiveness of matching records to identify illegally uninsured employers and to estimate the cost-benefit of increasing compliance through targeted notification and inspection.

The first pilot follows-up on a sample of experience-rated employers that failed to identify policy coverage when notified by the WCIRB.

The second pilot targets several industries that are responsible for a disproportionate demand upon the state General Fund through claims to the UEF. These industries are also suspected of

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high rates of noncompliance with the requirement to secure payment of compensation. Such industries include Auto/Truck Repair and Restaurants/Bars.

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The third pilot tests methods of improving new employers' knowledge of the need for compensation coverage and identification of new employers who willfully avoid compliance.

The project is also focusing on improving the process of reporting to the Department of Motor Vehicles regarding workers' compensation coverage of employers in the trucking industry.

Findings

The results to date suggest that the percentage of employers that are operating without compensation coverage may be significant.

Preliminary findings indicate that this interagency proactive effort may be the most effective way of identifying employers illegally uninsured for workers' compensation and bringing them into compliance.

The pilot projects determined that the WCIRB was able to match employer to policy information 75% of the time on basis of name alone and that two-thirds of uninsured employers purchased coverage after notification by WCIRB and DLSE.

All pilot samples showed that substantial proportions of employers were out of compliance with respect to workers' compensation coverage. Across the 'all industries' sample, as well as the target sample for 'restaurants/bars', the uninsured rate was approximately 9%. This rose to 15%-20% for the target samples for 'new employers' and for 'auto/truck repair'.

Status

The illegally uninsured employer pilot projects have been completed with the assistance of the WCIRB and DLSE. Analysis continues on illegally uninsured employers in the trucking industry.

Further Information

The Report on the “CHSWC Public Fact-Finding Hearing on Workers’ Compensation Anti-Fraud Activities” discusses the problem of illegally uninsured employers.

The “Issue Paper on Illegally Uninsured Employers” discusses the pilot programs and proposed legislation.

Public Policy Recommendation

The Commission is recommending that the matching records project be implemented on a priority basis for targeted employers only and that notification and follow-up inspection for new employers be adopted.

**Illegally Uninsured Employer Project –
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CHSWC Roundtable on DWC Lien Workload

Background

One of the most persistent administrative problems facing the Division of Workers' Compensation in recent years has been the development of a backlog of lien claims at some DWC district offices.

Commission staff found that in many instances, liens for payments made over 10 years ago were being filed on workers' compensation cases. In other instances, liens on the same case are not being heard at the same time, leading to costly notification and scheduling, churning of cases and delays in resolution.

It is reported that in newer cases, many of the lien claimants are not receiving proper notice of upcoming hearings, primarily due to the delegation by DWC of the responsibility for issuing the hearing notice to the parties.

Description

The Commission convened a Lien Workload Roundtable of interested members of the Workers' Compensation community. The Lien Roundtable is discussing a proposal developed by CHSWC staff containing legislative and administrative recommendations to address lien issues.

Status

This project is ongoing. CHSWC and DWC are in the process of collecting data from district offices on the nature and extent of the problem.

Findings

CHSWC acknowledges the past efforts and accomplishments of the DWC in directing resources to and reducing the backlogs of lien claims. There appears to be an ongoing lien problem in the Division of Workers' Compensation and a potential for continuing backlogs. An additional concern is whether

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or not DWC can handle these liens, given that they will take up a significant amount of court time.

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Next Steps

CHSWC recommends that DWC continue monitoring and addressing this problem.

CHSWC and the DWC will work together to collect data from the DWC district offices regarding frequency and reasons for lien adjudication filings.

CHSWC Roundtable on DWC Lien Workload Project Team

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Benefit Notice Simplification

Background

When an employee files a claim for worker's compensation, the employer or insurer is responsible for communicating the status of the claim to the employee by means of a series of benefit notices. The benefit notice system, which is administered by the DWC, has undergone several changes over the past decade.

The benefit notice system has been cited as confusing and ineffective by the workers' compensation community. Many people, particularly injured workers, employers and claims administrators have expressed frustration over the benefit notices. The notices are often described as convoluted, legalistic, bureaucratic, vague, unclear, repetitive, impersonal, rude, inconsistent, inaccurate, sent too late, and/or sent too early.

Description

The Commission has undertaken a project to assess needs and explore methods for improving the benefit notices. This project aims to:

- Identify the most significant problems with benefit notices, from the injured workers' perspective, that contribute to problems with claims.
- Develop practical criteria for improving, from the injured workers' perspective, the benefit notices that are currently required by law and regulations.
- Identify the statutory and regulatory requirements that cause the greatest problems with benefit notices, from the injured workers' perspective.

Status

The benefit notice project was initiated in October 1998 and is in process. Individual claims administrators were interviewed about

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the notices used by their companies and five discussion groups of injured workers were convened to discuss workers' experiences with benefit notices.

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Next Steps

A report is expected in October 1999.

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Survey: Workers' Compensation for Public Safety Employees

Background

Few workers face more inherent job risk than public safety employees do. In California, the workers' compensation benefits for public safety employees are relatively more generous than benefits provided to other employees. On one hand, the higher benefits increase the chances that injured public safety employees can recover to full health, and reassures them that they will be taken care of when taking significant risks for the public good. On the other hand, compensation for public safety employees constitutes a large portion of the public employers (primarily counties) in California, and budget-conscious officials have sometimes argued that the policy encourages too much time off of work.

***Workers' Compensation for
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Description

This study will review current legislation in the United States regarding the treatment of injured public safety employees. Given the myriad of workers' compensation laws across the country, we expect significant variations across states in the treatment of these workers. A broad range of topics will be explored, but the focus is on identifying differences in maximum benefits, replacement rates, retirement policies, and the treatment of surviving dependents. We will also explore which occupations are included under the category of public safety. The project will provide a report that describes the various approaches to compensating injured public safety officials nationally.

Status

This project is in process. A report is expected at the end of 1999.

PROJECTS AND STUDIES

Evaluation of Targeting Methods—High Hazard and Loss Control

Background

The High Hazard and Loss Control programs in the California Division of Occupational Safety and Health were established by the 1993 workers' compensation reform legislation. In response to concerns about their effectiveness, the Commission decided to engage in an evaluation of statutorily required safety efforts in California and a survey of such programs in other states. In addition, this would form the basis for developing methodologies to evaluate such programs nationwide.

***Evaluation of Targeting
Methods-High Hazard and Loss
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Description

The project will be conducted in three phases:

The first phase is a survey of the targeted safety efforts in the fifty US states and the Canadian provinces, in cooperation with the International Association of Industrial Accident Boards and Commissions (IAIABC). The focus of the survey will be the implementation of the OSHA mandate for implementation of targeting and intervention directed at the most hazardous employers. The results of the survey will be assembled into a report identifying the various types of targeting and intervention undertaken by each state and province. A typology of approaches will be described and the estimated success, as evaluated by the states and provinces, will be identified, where possible, for each type of approach. Finally, states and provinces with approaches and data that allow reliable evaluation will be identified for possible inclusion in the third phase.

The second phase is an evaluation of the California program's impact on safety and health. The proposed methodology would compare the pre and post intervention experience of employers identified through the high hazard targeting or insurers regulated loss control efforts with similar employers who had nearly as poor safety records but were not targeted. This methodology is designed to assess both the efficiency of the targeting and the effectiveness of the intervention.

The third phase applies the methodology used in the second phase to evaluate programs in other states and provinces. The first phase survey will have identified each state's or province's program characteristics which may prove more or less efficient at identifying the most hazardous employers and intervening to improve their safety experience. The survey will also have identified which of these states/provinces have the data available to meet the requirements of the methodology in the second phase. Through the IAIABC and the Occupational Safety and Health State Plan Association (OSHSPA), states will be recruited to participate in a comparative evaluation of various approaches.

Status

This project is in process. A report is expected at the end of 1999.

PROJECTS AND STUDIES

Labor Code Section 5814 Issue – Clearinghouse

Background

The application of the "penalty" provisions of Labor Code Section 5814 has been problematic and an issue of debate in the workers' compensation community.

Labor Code §5814 provides that when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent. A WCAB judge ruled that a clerical error leading to a one-week delay in benefits for Adrienne Stuart was subject to this provision and assessed a penalty of 10 percent of the entire award. The State Compensation Insurance Fund appealed this ruling to the California Supreme Court, which reversed the WCAB decision.

Labor Code Section 5814 Issue Project Team

Charles Lawrence Swezey, Esq.
Legal Consultant

Thomas J. McBirnie, Esq.
Legal Consultant

Description

On October 28, 1998, the Commission requested suggestions from the public and the workers' compensation community whether and what changes should be made in the section. Responses were received from injured workers, attorneys, insurance companies, employers, doctors and others. The recommendations ranged from amending the statute to conform to current case law to limiting the amount of increased benefits that can be assessed. The response to the Commission's invitation clearly indicate a need for revision of 5814 to provide an adequate deterrent against unreasonable delay or refusal but at the same time provide penalties that bear some relationship to the claims administrator's culpability.

The Commission has requested that additional information and data be obtained regarding the number of incidents and types of Section 5814 penalties.

Status

Pursuant to the Commission's request at its May 1999 meeting, a survey has been completed of all appellate court petitions filed between November 1, 1998, and June 30, 1999, which requested review of WCAB decisions. The survey focused on the number and nature of cases involving penalty issues under Labor Code Section 5814. The survey results have been tabulated and a report to the Commission is being prepared which reviews and analyzes the current penalty litigation from several aspects.

PROJECTS AND STUDIES

Baseball Arbitration – Labor Code Section 4065

Background

Before the reforms, a workers' compensation judge had the authority to resolve divergent views of medical experts by a finding within the range of the evidence with respect to Permanent Disability. However, 1993 legislation eliminated this well-established rule with Labor Code §4065, which limits the WCJ or Board to choosing between a permanent disability rating proposed by either party. Reportedly some WCJs have complained that this statutory section sometimes necessitates choosing between an inordinately high or an inordinately low evaluation, when the WCJ believes the truth lies somewhere in the middle.

Baseball Arbitration Project Team

Charles Lawrence Swezey, Esq.
Legal Consultant
Frank Neuhauser
SRC, UC Berkeley

Description

The Commission is in the process of obtaining information in response to concerns expressed by members of the workers' compensation community:

- Other Labor Code sections provide an ability to avoid application of §4065.
- Some are concerned that §4065 could lead to unjust awards that are either too high or too low.
- A reasonable report may be ignored because the WCJ disagrees with one element of the report, such as apportionment.
- The section could drive a wedge between the applicant's attorney and the injured worker as the attorney looks for a report that the WCJ finds reliable.
- There are no statistics on how many workers' compensation cases use baseball arbitration.

Status

Data gathering is in process. This issue will also be considered as part of the CHSWC study of permanent disability.

PROJECTS AND STUDIES

Local Forms – Labor Code Section 5500.3

Background

The Commission has received allegations that some WCAB district offices and workers' compensation administrative law judges are using forms and procedures that have not been established by the Appeals Board. Such actions would be in violation of Labor Code Section 5500.3, which provides that the Appeals Board establish uniform court procedures and forms and prohibits local offices and workers' compensation judges from requiring other forms or procedures.

Description

The Commission issued a 'call for information' to the workers' compensation community requesting that interested persons provide any information they may have on the subject, including copies of unauthorized forms and detailed descriptions of local procedures, by June 30, 1999. The responses will be evaluated by the Commission's legal consultants to advise as to the nature and degree of the problem.

Local Forms Project Team

Charles Lawrence Swezey, Esq.
Legal Consultant

Thomas J. McBirnie, Esq.
Legal Consultant

Status

This project is in process.

PROJECTS AND STUDIES

S Y S T E M P E R F O R M A N C E

CHSWC wishes to monitor the overall performance of the entire system to determine whether it meets the Constitutional objective to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character ...”.

In this section, CHSWC has been attempting to provide performance measures to assist in evaluating the system impact on everyone, particularly on workers and employers.

Through its studies and from the community, CHSWC has compiled the following information pertaining to the performance of California’s systems for health, safety and workers’ compensation. Brief interpretations are provided with the graphical representations.

The first subsection deals with how well the system is operating, in terms of the volumes of workload and the timeliness of actions. This affects both employers and employees. The second subsection discusses the costs, of particular interest to employers. The impact on workers in terms of benefits and outcomes is the focus of the third subsection.

Administrative Operations

- DWC Incoming workload
- DWC Hearings
- DWC Decisions
- DWC Lien decisions
- Vocational rehabilitation plan approvals and disapprovals
- Vocational rehabilitation decisions and orders after conference

Costs

- Premium costs
- Insurer expenditures
- Indemnity
- Medical-legal costs

Outcomes

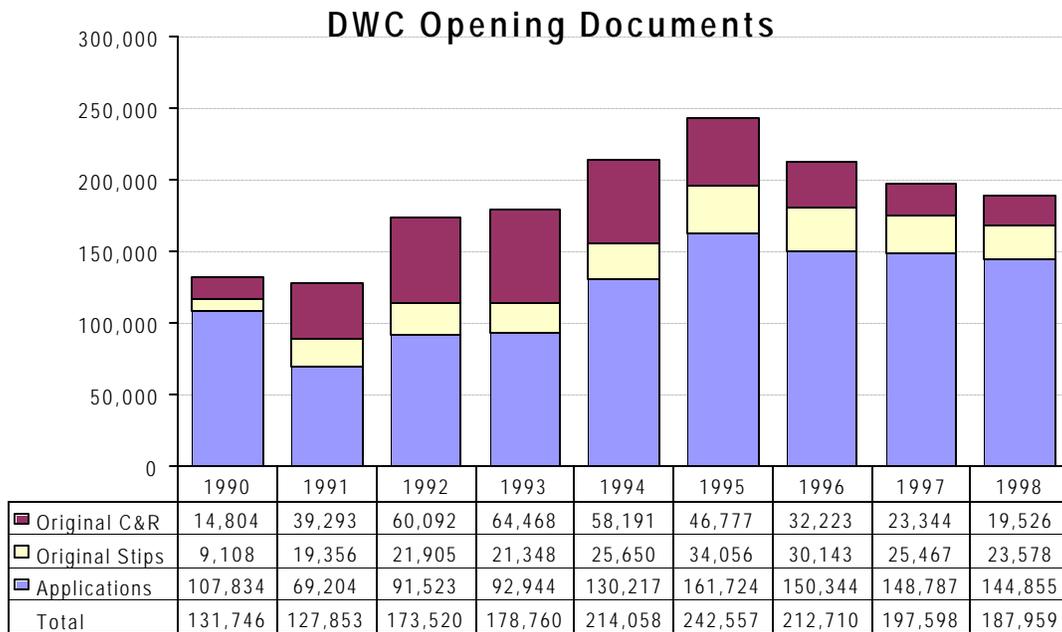
- Injury and Illness Rates
- Permanent Disability
- Vocational Rehabilitation

ADMINISTRATIVE OPERATIONS

DWC Opening Documents

Three types of documents open a WCAB case. The chart below shows the numbers of Applications for Adjudication of Claim (Applications), Original Compromise and Releases (C&Rs), and Original Stipulations (Stips) received by the Division of Workers' Compensation.

The number of documents filed with the DWC to open a WCAB case on a workers' compensation claim has fluctuated during the 1990's. This variability in pattern is coincident with the implementation of the workers' compensation reform legislation of 1989 and 1993.



The chart above shows that although the number of applications for adjudication of claim dropped significantly, the substantial increases in original C&Rs and Stips made the total numbers filings relatively unaffected from 1990 to 1991.

The period from 1991 to 1992 shows growth in all categories of case opening documents. This was followed by a year of leveling off between 1992 and 1993.

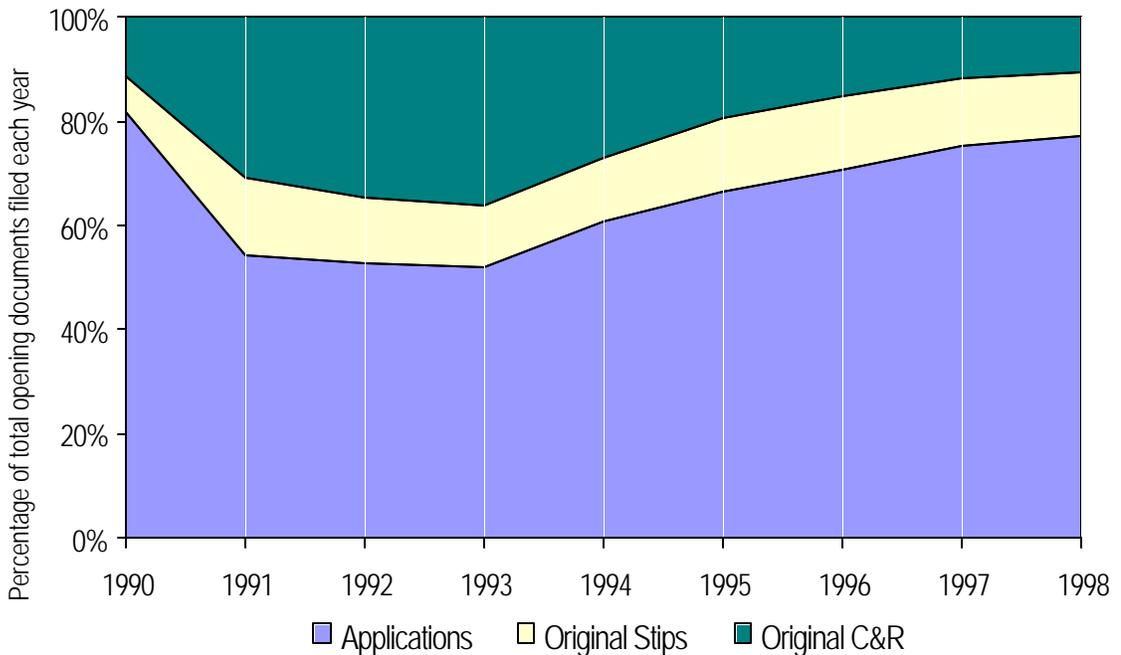
The period from 1993 to 1995 is one of substantial increases in applications, slight increases in Stips and significant decreases in C&Rs.

The numbers of opening documents in all categories declined from 1995 to 1998.

Mix of Opening Documents

As shown in the graphic below, the proportion or “mix” of the types of case-opening documents received by DWC varied during the 1990’s.

DWC Opening Documents
Percentage of each type by year



Source: Division of Workers' Compensation

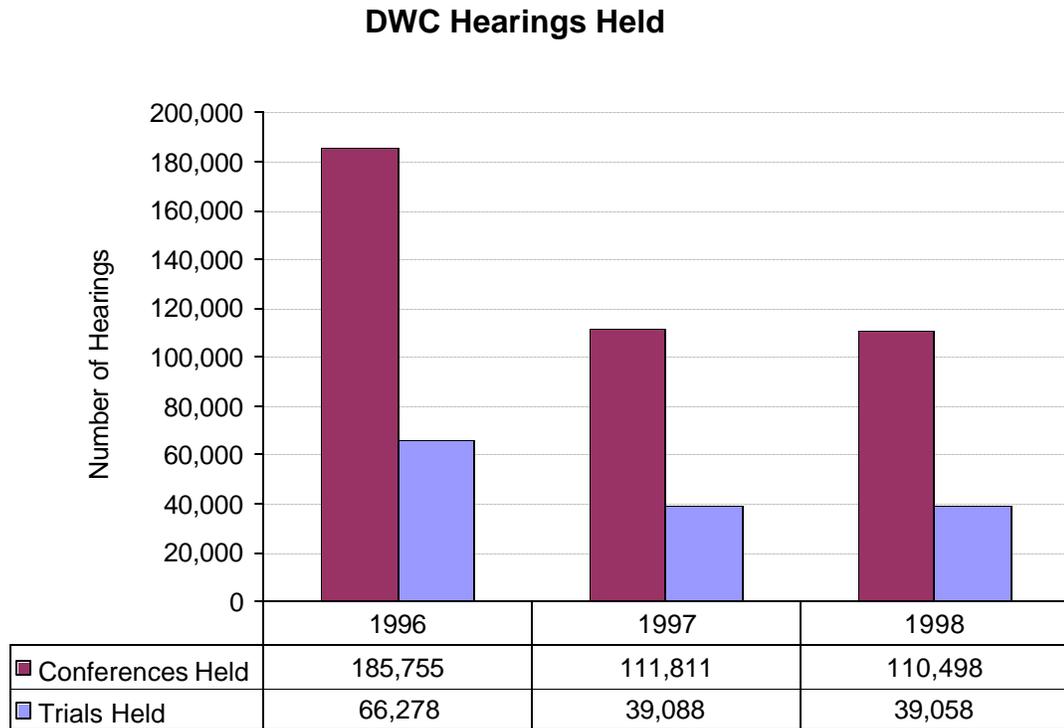
Applications for Adjudication of Claim initially dropped from about 80% of the total in 1990 to less than 60% in 1991, reflecting increases in both original Stips and C&Rs, The numbers of applications were steady from 1991 to 1993, then rose again through 1998.

The proportion of “original” (case-opening) Stipulations rose slightly from 1991 to 1992 then remained fairly constant.

The proportion of original C&Rs filed rose sharply from 1990 to 1991, increased slightly from 1991 to 1993, then declined during the period from 1993 to 1998.

DWC Hearings

As shown in the chart below, the numbers of both types of DWC hearings -- trials and conferences – declined sharply from 1996 to 1997, then remained constant from 1997 to 1998.



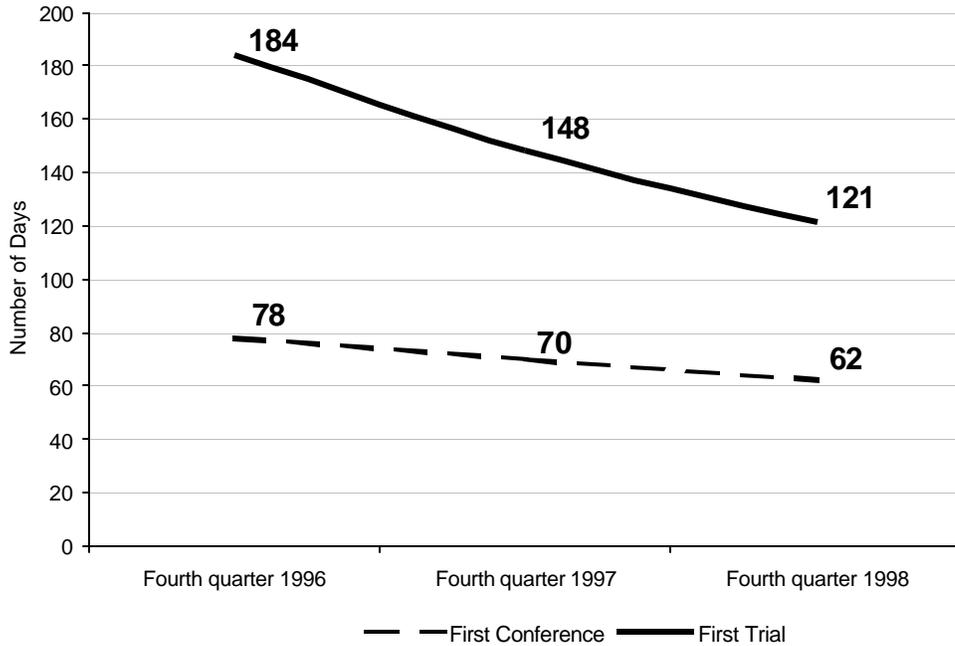
Source: Division of Workers' Compensation

California Labor Code Section 5502 specifies the time limits for various types of hearing conducted by DWC on WCAB cases.

In general, a conference is required to be held within 30 days of the receipt of a request in the form of a Declaration of Readiness. A trial must be held within 60 days of the request, or within 75 days if a settlement conference has not resolved the dispute. An expedited hearing must be held within 30 days of the receipt of the Declaration of Readiness.

SYSTEM PERFORMANCE

Elapsed Time in Days from Request to DWC Hearing



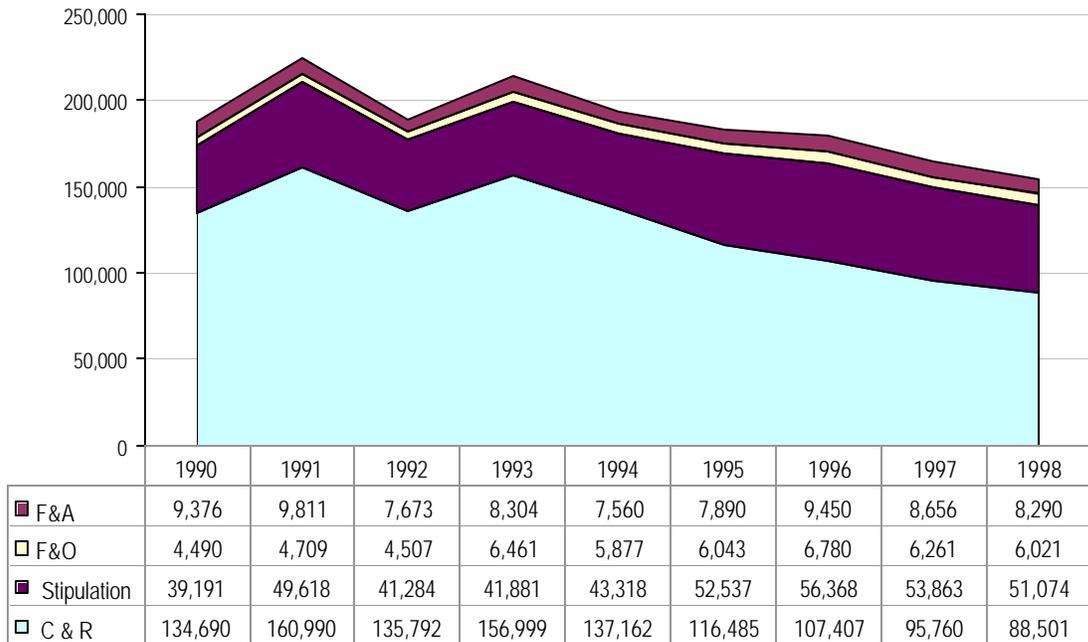
Source: Division of Workers' Compensation

As the above chart shows, although not meeting the statutory mandates, the average elapsed time from request to DWC hearing has decreased significantly over the past few years.

DWC Decisions

These data indicate that the number of decisions made by DWC that are considered to be case closing have declined overall during the 1990s.

DWC "Case-Closing" Decisions



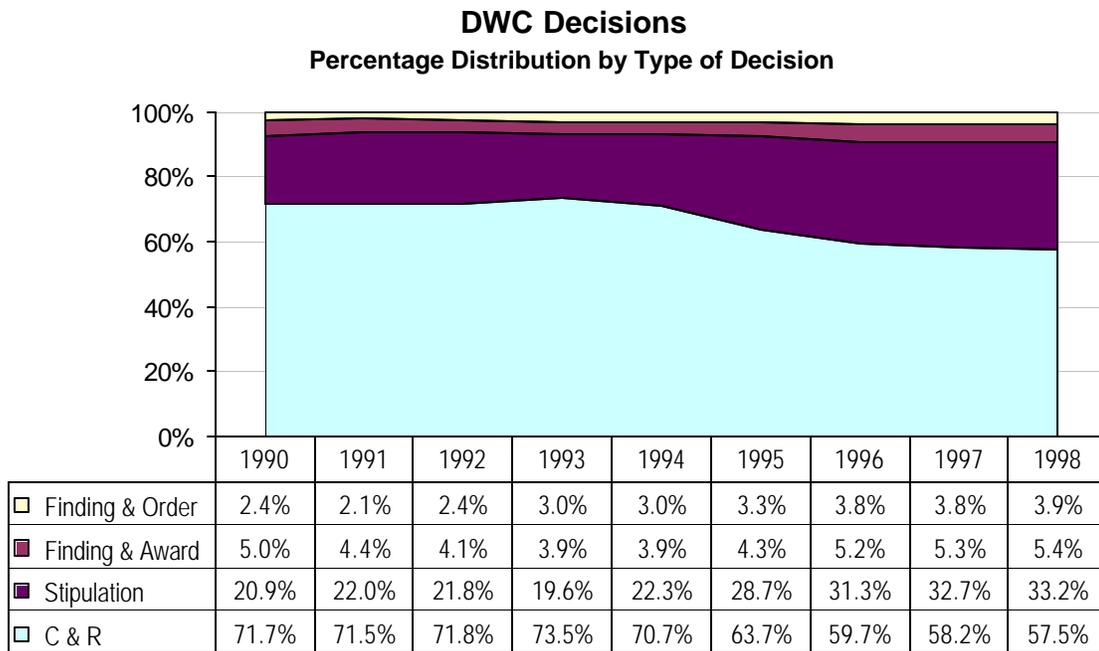
Source: Division of Workers' Compensation

- Findings and Awards (F&As) and Findings and Orders (F&Os) have fluctuated slightly during the 1990s. The numbers of F&As have declined, while the numbers of F&Os have increased.
- Stipulations rose slightly to 1996, then have declined.
- Compromise and Releases (C&Rs) rose from 1990 to 1991, declined from 1991 to 1992, rose again from 1992 to 1993 and then have declined steadily from 1993 to 1998.

Mix of DWC Decisions

As shown on the charts on the previous page and below, the vast majority of the case-closing decisions rendered during the 1990s were in the form of WCAB judge approval of Stipulations and Compromise and Releases which were originally formulated by the case parties.

Only a small percentage of case-closing decisions evolve from a Finding and Award or Finding and Order, issued by a WCAB judge after a hearing.



Source: Division of Workers' Compensation

The relative proportion of the types of decisions rendered by the DWC remained fairly constant from 1990 to 1993.

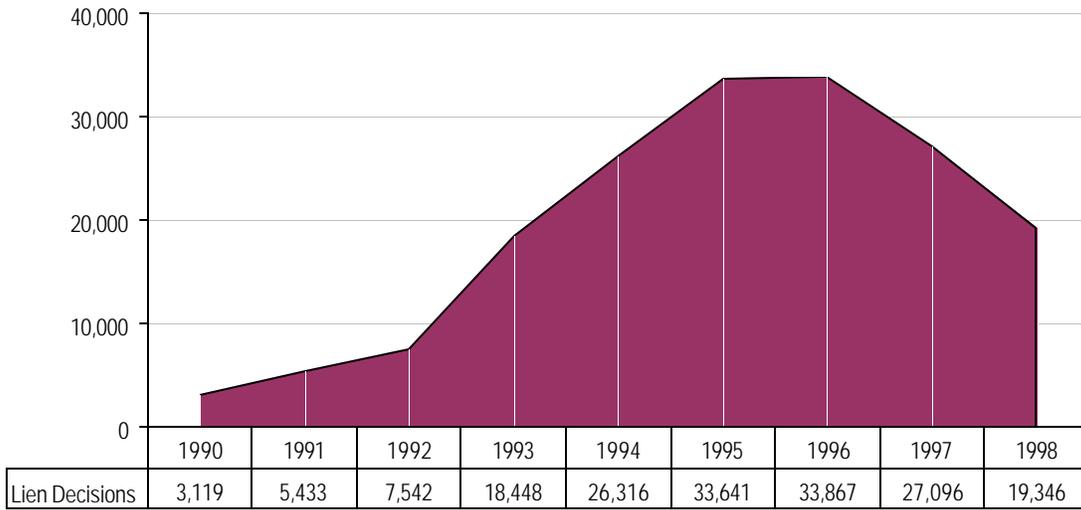
Then during the period from 1993 to 1998, the proportion of Stipulations rose while the proportion of C&Rs declined.

DWC Lien Decisions

The DWC has been dealing with a large backlog of liens filed on WCAB cases.

These data indicate a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

DWC Decisions on Liens



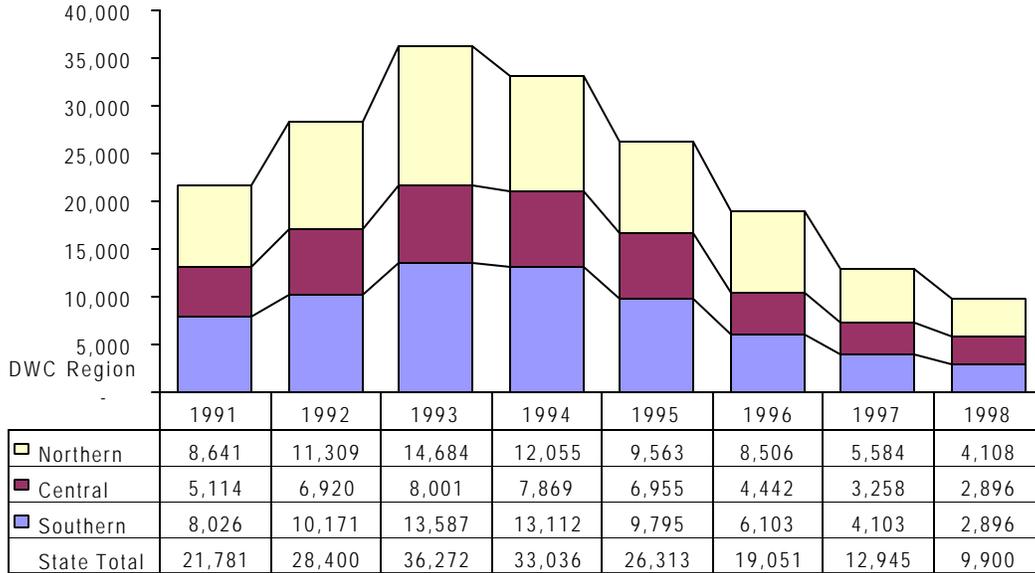
Source: Division of Workers' Compensation

SYSTEM PERFORMANCE

Vocational Rehabilitation Plan Approvals

The numbers of vocational rehabilitation plans approved by the DWC rose from 1991 to 1993, then have declined steadily and significantly from 1993 to 1998.

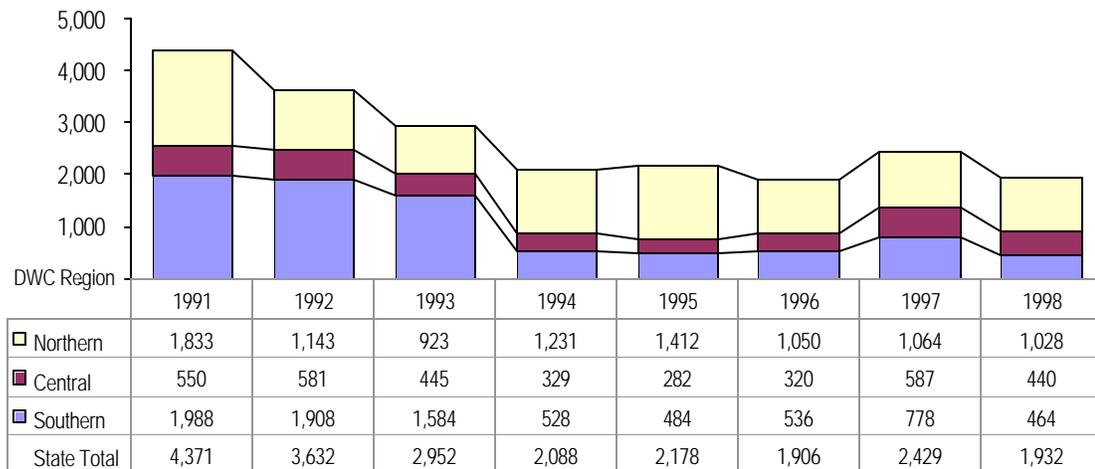
DWC Vocational Rehabilitation Plan Approvals



Source: Division of Workers' Compensation

Vocational Rehabilitation Plan Disapprovals

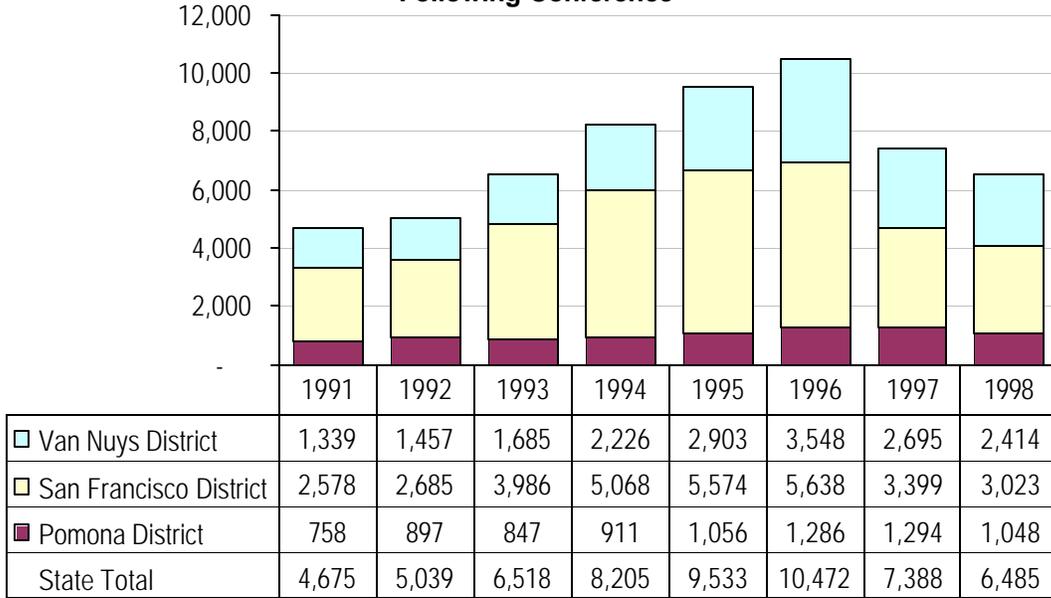
DWC Vocational Rehabilitation Plan Disapprovals



Source: Division of Workers' Compensation

Vocational Rehabilitation Decisions

**Vocational Rehabilitation Decisions and Orders
Following Conference**



Source: Division of Workers' Compensation

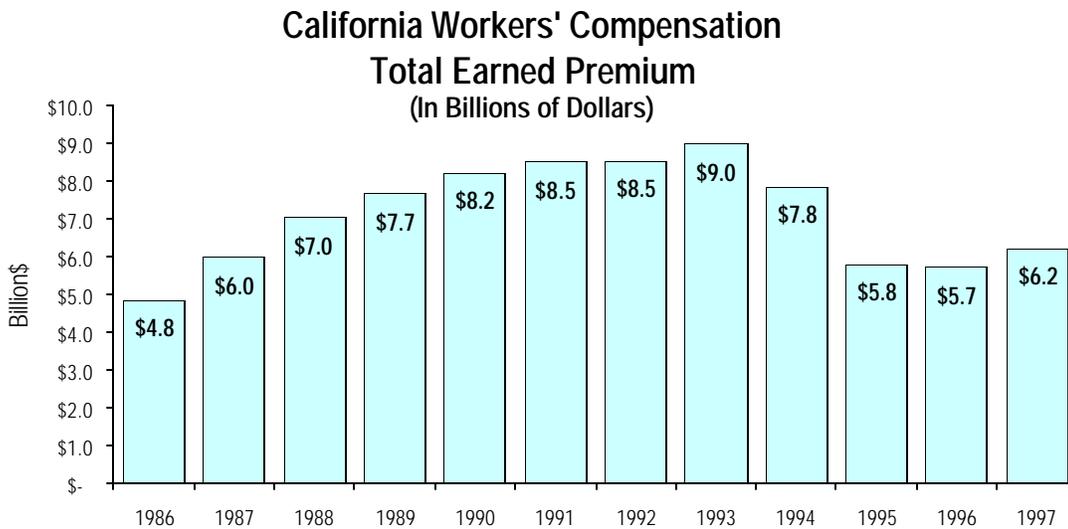
COSTS

Workers' Compensation Premium

While the overall rates charged for workers' compensation insurance have dropped an estimated 5%-6% since the high in 1993, the total amount of workers' compensation premium paid increased slightly to \$6.5 billion in 1998.

This increase in total premium appears to be reflective of

- movement from self-insurance to insurance,
- an increase in economic growth,
- wage growth and
- long-term movement from a manufacturing to a service economy.



Source: California Workers' Compensation Insurance Rating Bureau

The Workers' Compensation Insurance Rating Bureau of California (WCIRB) is recommending an 18.4% increase for policies beginning January 1, 2000. This recommendation is based upon predicted deficiencies in current workers' compensation reserves by insurers and higher than expected costs per case on workers' compensation injuries. The recommended increase does not include any adjustments for potential changes in benefit levels proposed by Senate Bill 320.

Advisory Workers' Compensation Pure Premium Rates

A History since the 1993 Reform Legislation

1993

Insurance Commissioner approved:

Pure premium rates reduction of 7% effective July 16, 1993 due to a statutory mandate.

1994

WCIRB recommendation: No change in pure premium rates.

Insurance Commissioner approved:

Two pure premium rate decreases: a decrease of 12.7% effective January 1, 1994 and a second decrease of 16% effective October 1, 1994.

1995

WCIRB recommendation:

7.4% decrease from the pure premium rates that were in effect on January 1, 1994.

Insurance Commissioner approved:

A total 18% decrease to the pure premium rates in effect on 1/1/94 was approved effective January 1, 1995 (Note: this included the already approved 16% decrease effective October 1, 1994).

1996

WCIRB recommendation: 18.7% increase in pure premium rates.

Insurance Commissioner approved: An 11.3% increase effective January 1, 1996.

1997

WCIRB recommendation: 2.6% decrease in pure premium rates.

Insurance Commissioner approved: A 6.2% decrease effective January 1, 1997.

1998

WCIRB recommendation: The WCIRB initially recommended a 1.4% decrease that was later amended to a 0.5% increase.

Insurance Commissioner approved: A 2.5% decrease was approved effective January 1, 1998.

1999

WCIRB recommendation: The WCIRB initial recommendation of a 3.6% pure premium rate increase for 1999 was later amended to a recommendation for a 5.8% increase.

Insurance Commissioner approved: No rate change was approved for 1999.

2000

WCIRB recommendation: A 18.4% increase in the pure premium rate for 2000.

Insurance Commissioner approved: Decision pending

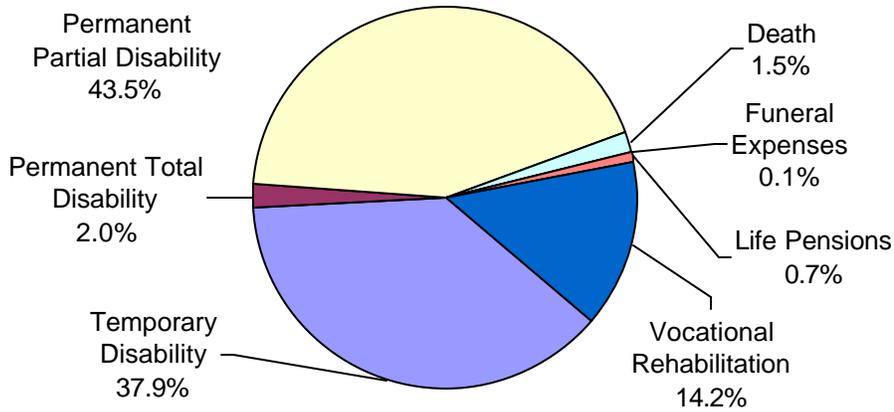
Workers' Compensation Expenditures – Insured Employers

Indemnity Benefits

According to the Workers' Compensation Insurance Rating Bureau of California (WCIRB), total of \$2.9 billion in workers' compensation indemnity benefits were paid during 1998 by insured employers:

Temporary Disability	\$1,098,689
Permanent Total Disability	\$59,006
Permanent Partial Disability	\$1,258,904
Death	\$43,963
Funeral Expenses	\$1,965
Life Pensions	\$21,078
Vocational Rehabilitation	<u>\$411,689</u>
	\$2,895,303

Indemnity Benefits Paid by Insured Employers - 1998



Source: Workers' Compensation Insurance Rating Bureau of California

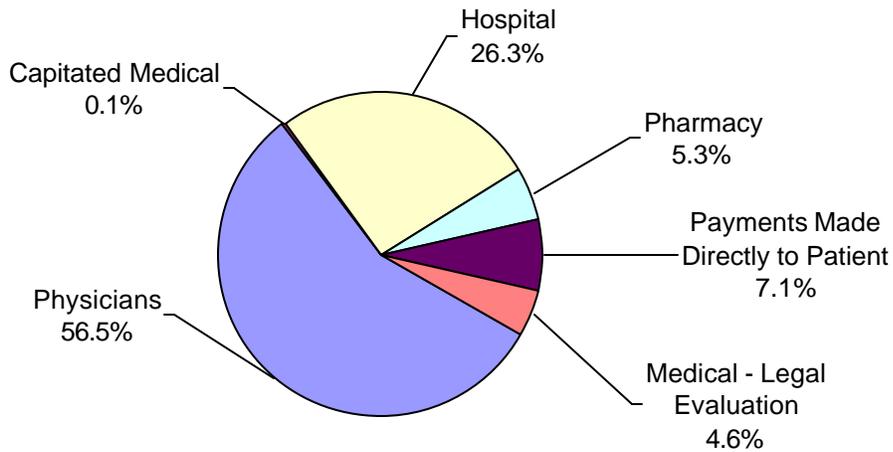
SYSTEM PERFORMANCE

Medical Benefits

As reported by the WCIRB, workers' compensation medical benefits paid during 1998 by insured employers totaled \$2.3 billion:

Physicians	\$1,278,388
Capitated Medical	\$3,193
Hospital	\$595,075
Pharmacy	\$120,651
Payments Made Directly to Patient	\$160,630
Medical - Legal Evaluation	<u>\$104,931</u>
	\$2,262,868

Paid Medical Costs for 1998



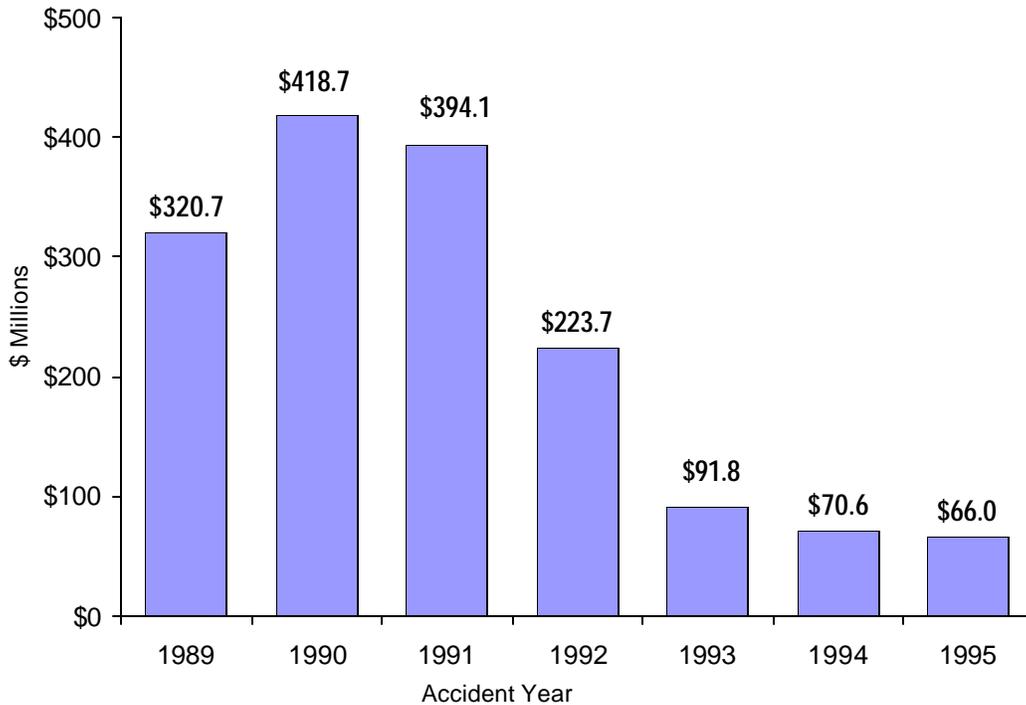
Source: Workers' Compensation Insurance Rating Bureau of California

Medical-Legal Costs on Permanent Disability Claims

During the 1990's the cost of medical legal exams has seen dramatic improvement.

For the insured community, the total cost of medical-legal exams performed on PPD claims by 40 months after the beginning of the accident year has declined from a high of \$418 million in 1990 to \$66 million for injuries occurring in 1995. This is an 84% decline since the beginning of the decade.

**Medical-legal costs (in million\$) on PPD claims
Insured employers, at 40 months after beginning of accident year**



Source: WCIRB PD Survey, 1992-98

Sources of Improvement in the Total Medical-Legal Cost

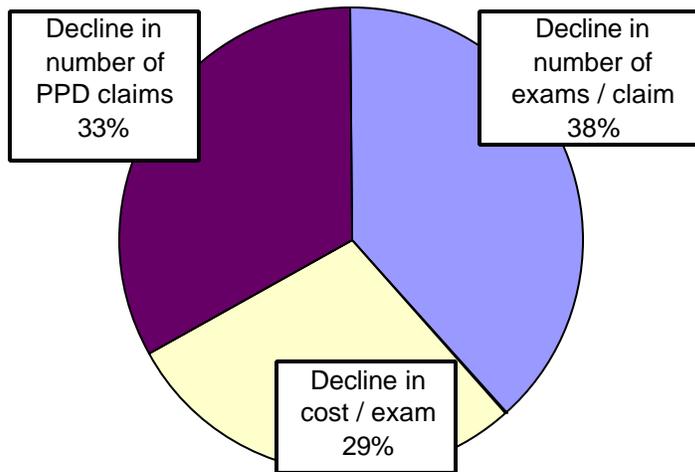
The decline in total medical-legal costs for insurers reflects improvements in all components of the cost structure.

Medical-legal costs on PPD claims are calculated as follows:

$$\text{Total Medical-Legal Cost} = \text{Number of PPD Claims} * \text{Average Cost/Claim} * \text{Average Number of Exams/Claim}$$

The following chart shows how the cost savings break down by component since the beginning of the decade. 38% of the cost savings is due to improvements in the medical-legal process that reduced the number of exams performed per claim. 29% of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of exams per claim. 33% of the improvement is simply a result of the overall decline in the frequency of PPD claims.

**Sources of Savings
Medical-Legal Costs on PPD Claims
1990-1995**



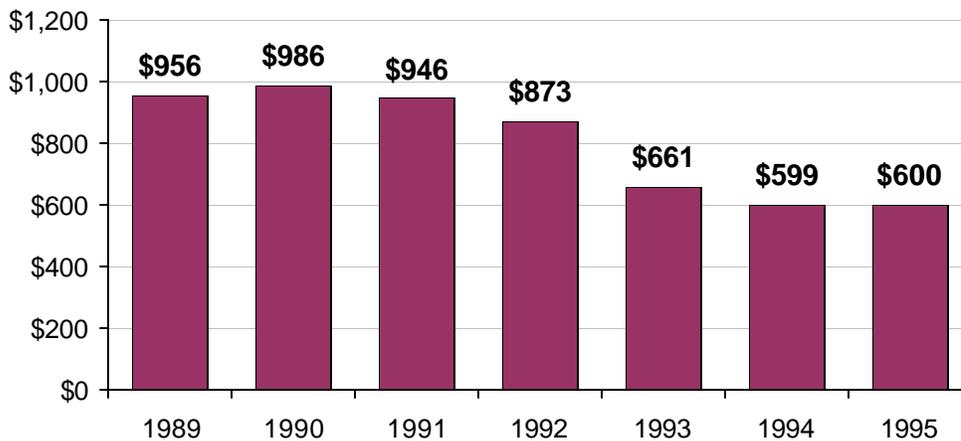
Source: Workers' Compensation Rating Bureau of California

Average Cost of Medical-Legal Exams

The average cost per exam has declined by 39% since its peak in 1990. The sources of this decline are two. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which exams are reimbursed. These restrictions were introduced in early 1993 and enforced after the start of August 1993.

During this period, the average cost of exams was also being affected by the frequency of psychiatric exams. On average, psychiatric exams are the most expensive exam by specialty of provider. The relative portion of all exams that are psychiatric exams has declined since hitting a high in 1990-91. This has led to a substantial improvement in the overall average cost/exam.

Average Cost per Medical-Legal Exam



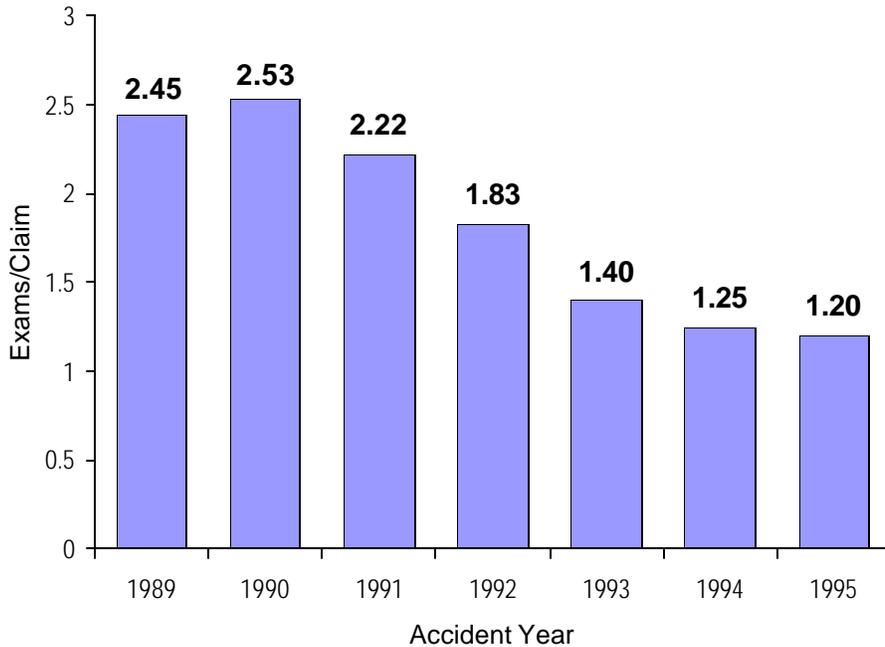
Source: Workers' Compensation Rating Bureau of California

Absent changes to the Medical-Legal Fee Schedule or changes in the mix of forensic doctors, it is likely that the average cost of exams will continue to be flat.

Medical-Legal Exams Per Claim

The following chart illustrates the decline in the average number of medical legal exams per claim. The 53% decline reflects a series of reforms since 1989 and the impact of efforts against medical mills. Reforms instituted in 1993 that advanced the role of the treating physician in the medical-legal process and granted the opinions of the treating physician a presumption of correctness were expected to reduce the average number of reports even more. Recent work by the Commission evaluating the treating physician did not find that these reforms had significant effect on the average number of reports per claim.

**Medical-legal exams/claim
at 40 months from beginning of accident year**



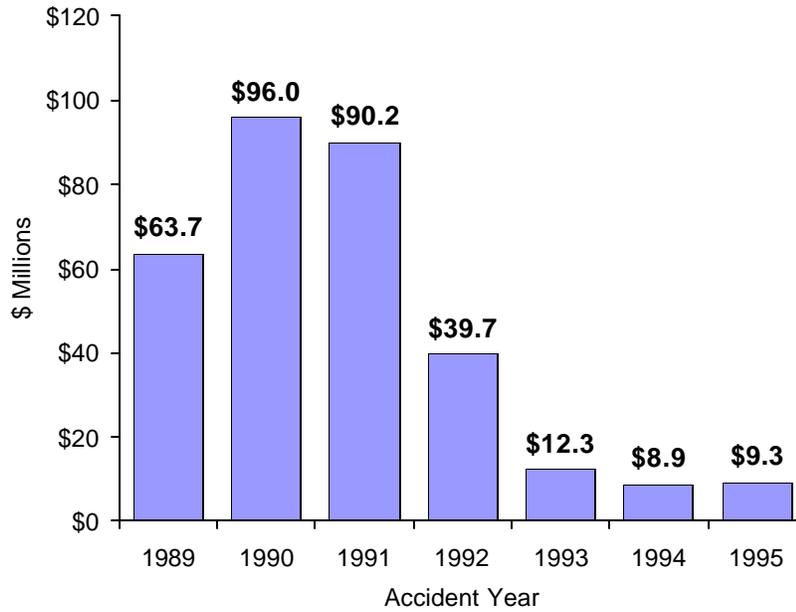
Source: Workers' Compensation Rating Bureau of California

The change in the average number of reports between 1993 and 1994 is entirely the result of improvements that occurred during the course of 1993 calendar year claims. The average number of exams/claim has remained constant each quarter since late 1993 at between 1.2 and 1.3.

Total Cost of Psychiatric Medical-Legal Exams

Much of the overall improvement in medical-legal costs can be attributed to the substantial decline in the frequency of PPD claims that involve a psychiatric evaluation. As the following chart demonstrates, the cost of psychiatric exams on PPD claims for insured employers has declined by 90% since its high in 1990.

**Total Cost - Psychiatric Med-Legal Exams
40 months after beginning of accident year**



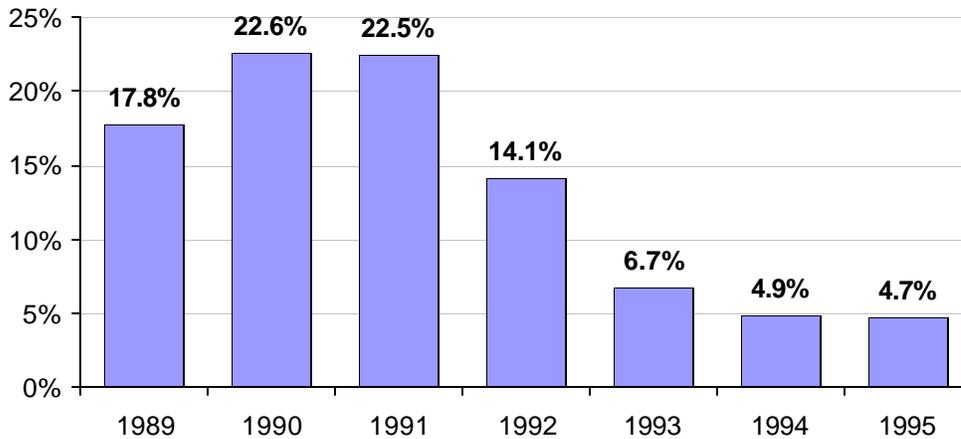
Source: Workers' Compensation Rating Bureau of California

PPD Claims with Psychiatric Medical-Legal Exams

The improvements in the total cost of psychiatric, medical-legal exams is driven almost entirely by the frequency of exams. Part of this can be attributed to the overall decline in the PPD claims. However, most of the improvement is driven by a decline in the portion of claims that involve a psychiatric evaluation.

As demonstrated in the table below, in 1990 and 1991 nearly a quarter of all PPD claims involved a psychiatric evaluation. By 1995 this portion had dropped to 1 in 20 claims.

**PPD Claims with Psychiatric Exam
by 40 months after beginning of accident year**



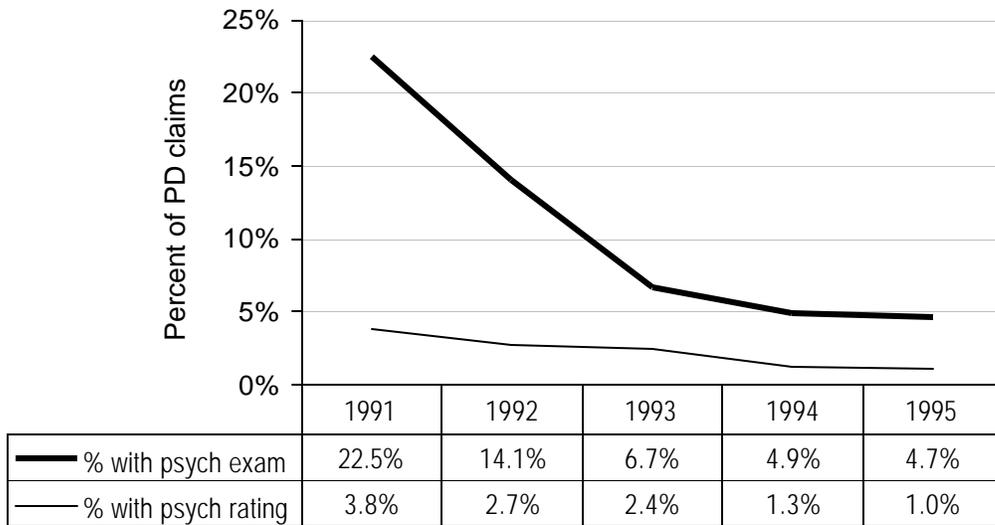
Source: Workers' Compensation Rating Bureau of California

Cost of Psychiatric Exams Relative to Indemnification

To a large extent, the costs and frequencies of psychiatric exams during the early 1990s was not associated with equivalent levels of indemnification to workers for psychiatric disabilities. Only a fraction of claims with a psychiatric medical-legal exam receive a rating that includes a finding of psychiatric disability.

The chart below shows the portion of PPD claims that received a rating that included a psychiatric disability. It compares this to the percent of PPD claims that had one or more psychiatric medical-legal exams.

**% of PD Claims with Psychiatric Exam
% of PD Claims with Psychiatric Disability**



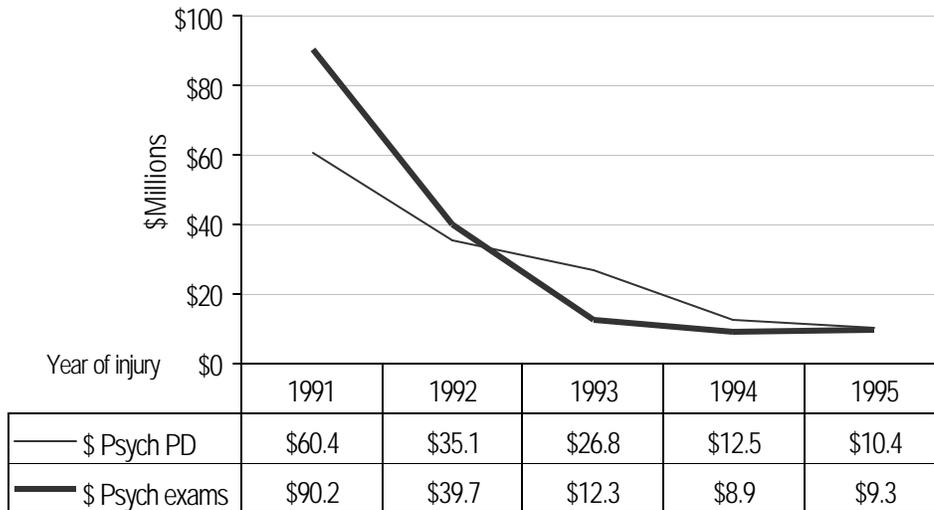
Source: Workers' Compensation Rating Bureau of California

Total Cost of Psychiatric Exams vs. Total Payments for Psychiatric Disability

Psychiatric exams are the most expensive exams. On average, they cost approximately twice as much as other exams. Also, as can be seen on the previous chart, they do not always result in a finding of permanent disability. This was especially true in the early nineties when a PD claim was six times as likely to have a psychiatric evaluation than it was to receive a permanent disability rating that included a psychiatric disability.

The result is that, system wide, psychiatric medical-legal exams can end up costing more than the indemnity payments workers receive for psychiatric disability. In terms of total dollars, the cost to insured employers of psychiatric exams in 1991 was 90 million dollars. The estimated permanent disability indemnity payments to injured workers at insured firms for psychiatric disabilities totaled 60 million dollars. The medical-legal process was 50% more costly than the indemnity payments. Even in 1995, the cost of the exams was about equal to the payments to workers.

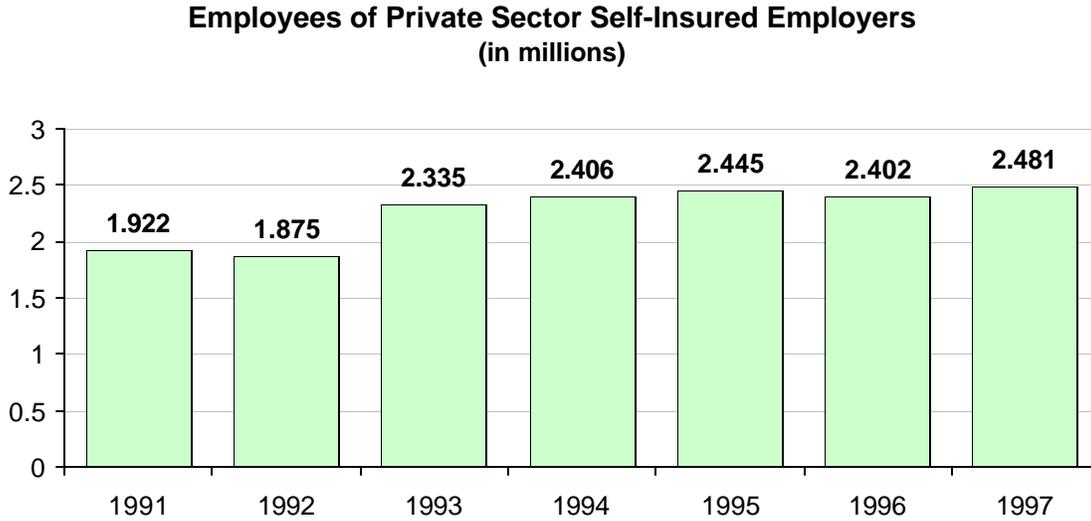
**Total Cost of Psych Exams
Total payments for Psych PD**
(In Millions of Dollars)



Source: Workers' Compensation Rating Bureau of California

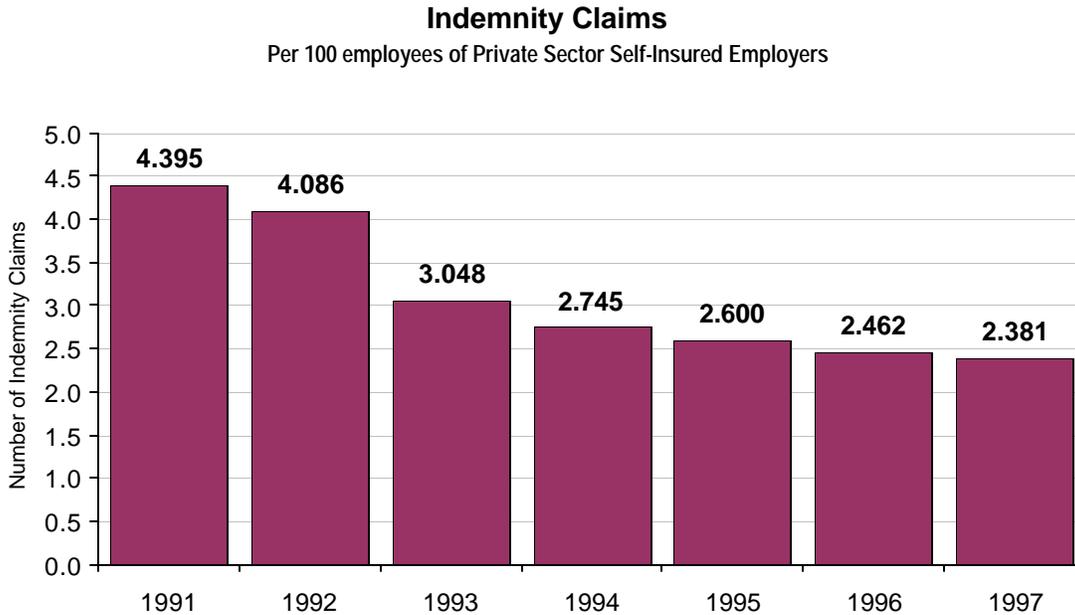
Workers' Compensation Expenditures - Private Sector Self-Insured Employers

Number of Employees



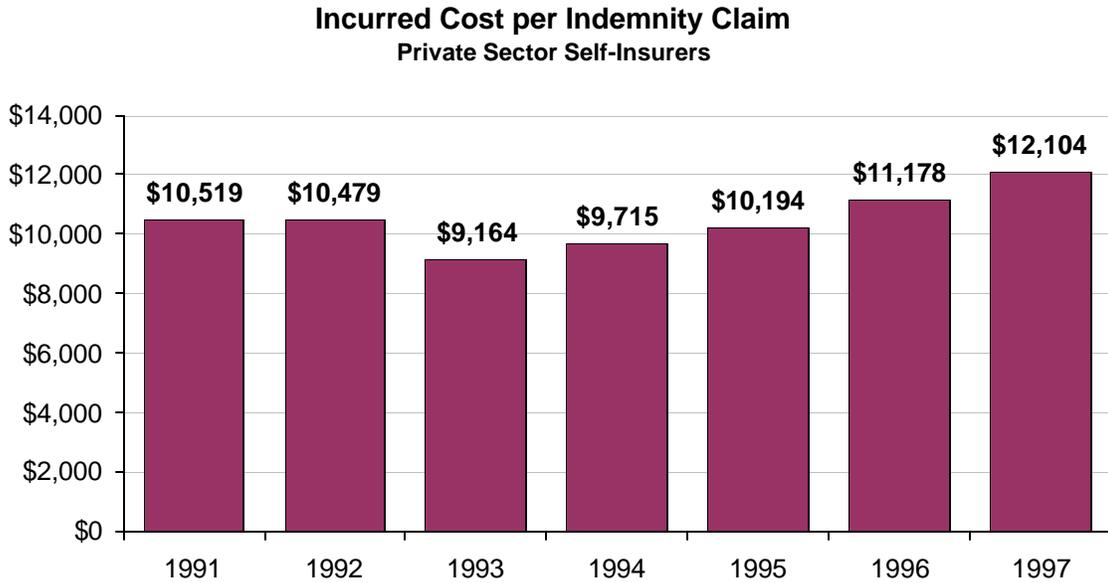
Source: Department of Industrial Relations - Self Insurance Plans

Number of Indemnity Claims



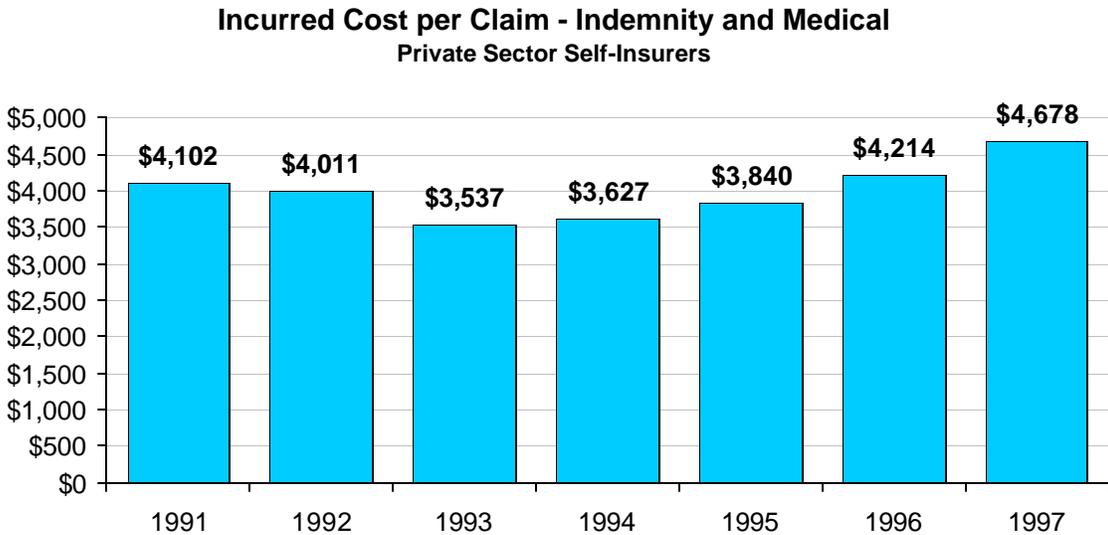
Source: Department of Industrial Relations - Self-Insurance Plans

Incurred Cost per Indemnity Claim



Source: Department of Industrial Relations - Self-Insurance Plans

Incurred Cost per Claim – Indemnity and Medical



Source: Department of Industrial Relations - Self-Insurance Plans

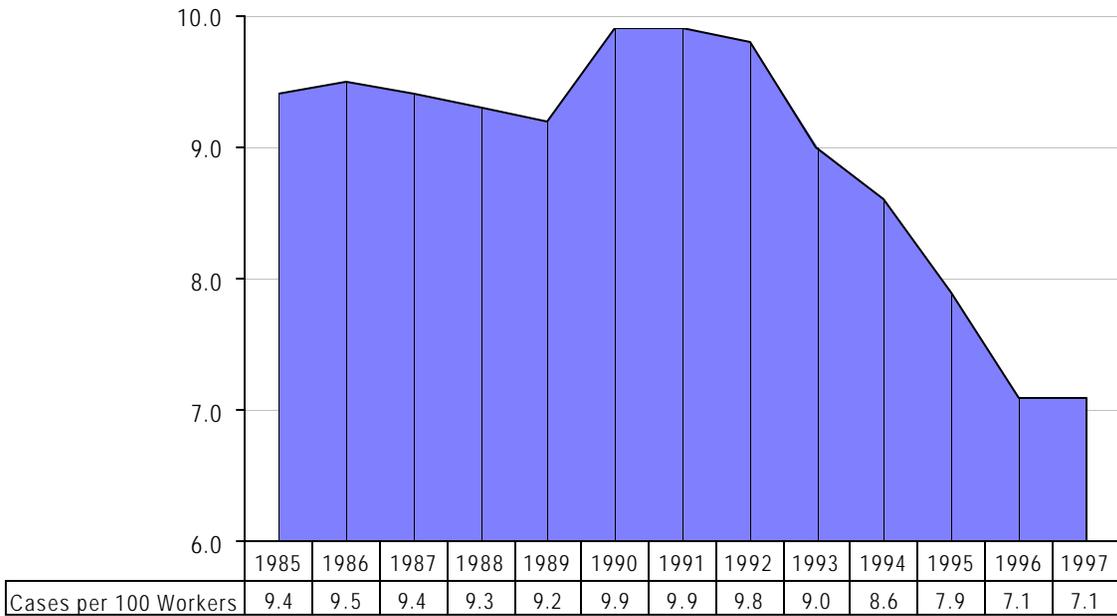
SYSTEM PERFORMANCE

OUTCOMES

Injury and Illness Rates

During the 1990's, the injury and illness rates in California have declined steadily and significantly, from a high of 9.9 cases per 100 employees in 1990 and 1991 to 7.1 cases per 100 employees in 1996 and 1997.

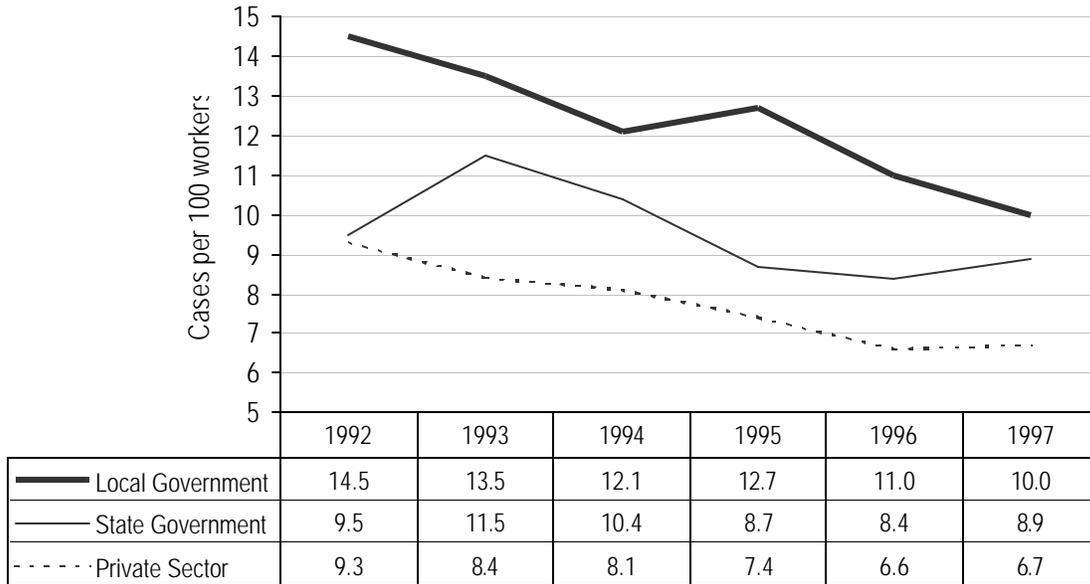
OSHA Injury and Illness Rates in California



Source: Division of Labor Statistics and Research

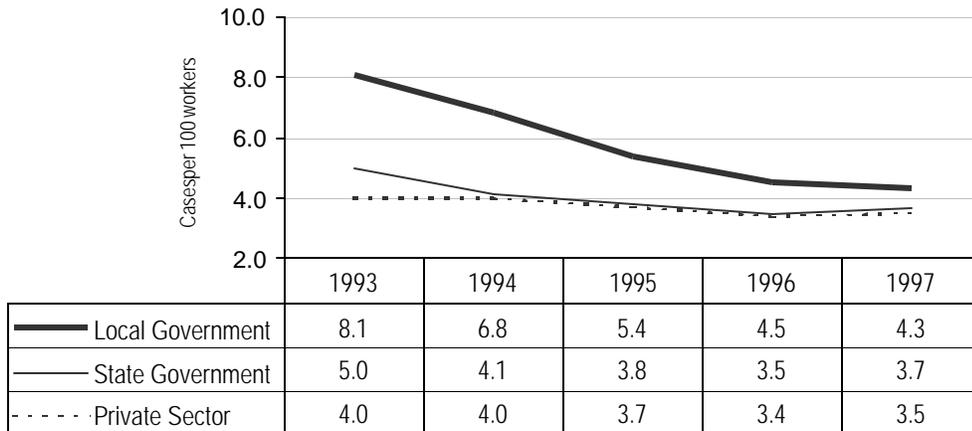
As shown on the following page, the injury and illness rates and the lost time injury rates for the public and private sectors are also declining.

Occupational Injury and Illness Rates in California by Sector



Source: Division of Labor Statistics and Research

Lost Time Injury and Illness Rates in California by Sector



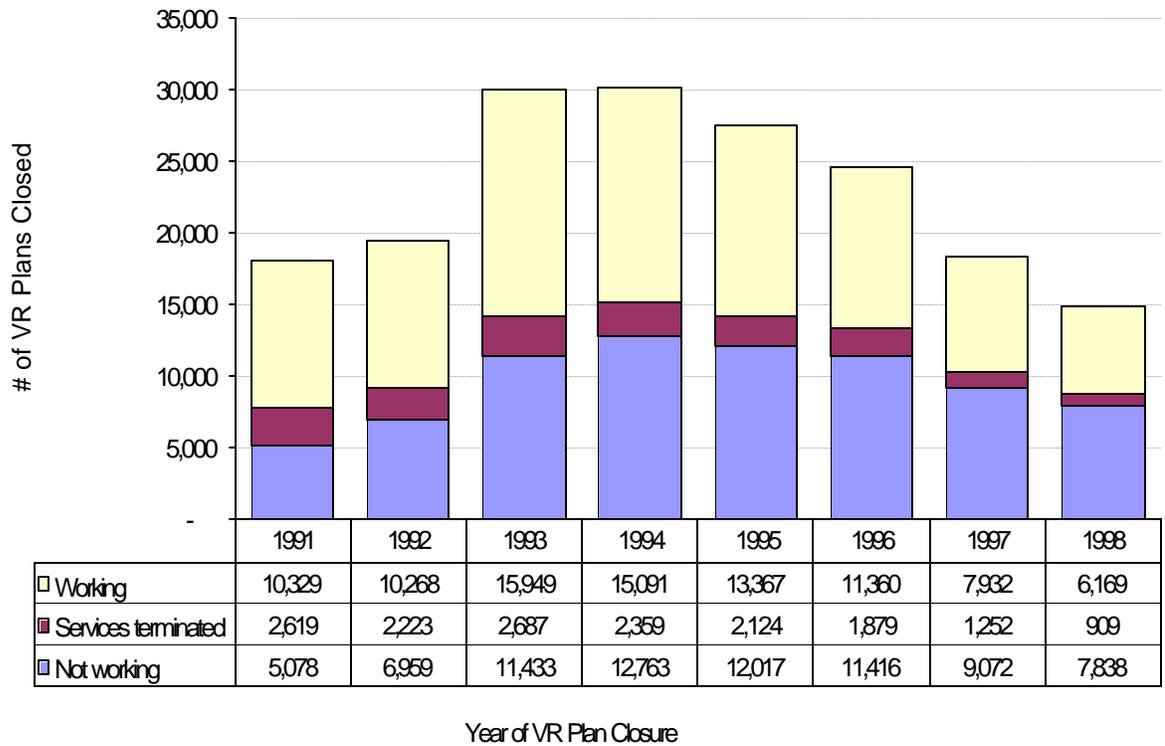
Source: Division of Labor Statistics and Research

Vocational Rehabilitation

Work Status at Plan Closure

This graph depicts the numbers of Vocational Rehabilitation (VR) plans that were closed during the 1990s by the injured workers' employment status at the time of plan closure.

Work Status at VR Plan Closure



Source: Division of Workers' Compensation

The total numbers of vocational rehabilitation plans approved increased slightly from 1991 to 1992, then rose dramatically from 1992 to 1993 and stayed on that high level through 1994. From 1994 to 1997, the total number of plans closed declined each year until reaching the 1991 level.

The numbers of persons working at time of plan closure were static from 1991 to 1992, rose and maintained at that level from 1993 to 1994, then decreased steadily.

SYSTEM PERFORMANCE

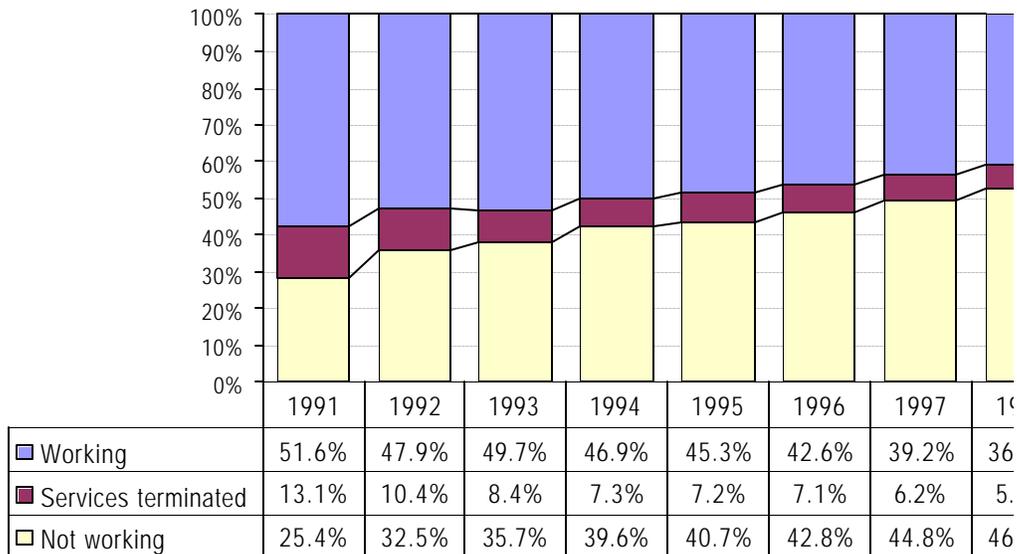
The numbers of injured workers who were not working at the time of VR plan closure rose dramatically from 1991 to 1994, then declined slightly to 1998. The numbers of plan terminations remained fairly constant before declining from 1996-1998.

Vocational Rehabilitation Outcomes

The chart below depicts the relative status of injured workers at the time of the completion of their vocational rehabilitation plan.

Clearly, the vocational rehabilitation outcomes for injured workers have worsened during the 1990s.

DWC Vocational Rehabilitation Plan Outcomes



Source: Division of Workers' Compensation

The proportion of rehabilitated employees working at the time of plan completion has declined during the 1990's. So has the proportion of those workers whose vocational rehabilitation services were terminated before plan completion.

Consequently, the proportion of workers not working at the time of plan completion has increased steadily during that time.

SPECIAL REPORT:

Workers' Compensation Costs and Benefits After the Implementation of Reform Legislation

Introduction

This report was prepared in response to the joint request from Senator Hilda Solis and Assembly Member Jack Scott that the Commission prepare background information on the impact of the reform legislation on workers' compensation costs to employers and benefits to injured workers.

The 1993 reforms instituted several changes that had a significant impact on costs and benefits:

- Abolished minimum rate law for Workers' Compensation insurance premiums
- Increased Temporary Disability (TD) and Permanent Disability (PD) benefit levels
- Instituted medical cost containment
 - Managed care
 - Fee Schedule reform
 - Restrictions on mental stress claims
 - Promotion of the role of the Primary Treating Physician
- Capped Vocational Rehabilitation benefits at \$16,000
- Implemented the Cal-OSHA High-Hazard Targeted Inspection Program and Loss Control Certification Program
- Established anti-fraud protections
- Provided a 'carve-out' option for the construction industry for alternative workers' compensation programs
- Created the Commission on Health and Safety and Workers' Compensation (CHSWC)

In a changing environment, it is difficult to isolate the impact of the reforms. Since the reforms were enacted, there are numerous other variables that also affect costs and benefits significantly, such as changes in the economy and wage rates. For example, from January 1993 to May 1999, the unemployment rate in California has fallen from 9.7% to 5.2%, while wages in manufacturing have increased about 18%. A decline in workers' compensation injuries and claims frequency has also been observed nationally.

PLEASE NOTE: To isolate the savings to employers and benefits to workers due to the 1993 reforms would require a more extensive study than time and resources permit. A comprehensive study would use multiple approaches to cross-check estimates, adopt a study design that accounts for simultaneous changes unrelated to reforms, and would incorporate information from state and national data that are not readily available to CHSWC. Given this, it is highly recommended that this accounting of workers' compensation costs and benefits subsequent to the reforms be cited and utilized with caution.

Estimated Changes in Employer Costs

It is difficult to estimate with certainty the savings for employers. The Workers' Compensation Insurance Rating Bureau, in the "WCIRB Bulletin No. 99-01" published on March 16, 1999, provides two estimates of changes in employer costs between 1992 and 1998. Neither estimate attempts to isolate the impact of the 1993 legislative reforms.

The WCIRB estimated that insured California employers saved \$2.8 billion in workers' compensation net premium costs in 1998 when compared to 1992. However, this drop in premium costs may be due to factors other than the reforms, including changes in injury frequency, prior cost reductions, and insurer expectations of future losses based on past experience. Moreover, many believe that the workers' compensation premiums since 'open rating' do not represent actual costs during that period, but are reflective of pricing competition and the transitional nature of the current market. Note that this WCIRB estimate of premium savings does not include self-insured employers.

The WCIRB estimates that the costs of medical and indemnity benefits paid to injured workers of insured employers was \$0.9 billion less in 1998 than 1992. Again, this reduction could be due to many factors, including the 1993 reforms and changes in the economy. By extrapolation, the WCIRB then estimates that reductions in benefit costs for all employers (both insured and self-insured) was approximately \$1.3 billion in 1998 when compared to 1992.

The Commission utilized the WCIRB estimates as a basis for further analysis that attempts to assess the impact of the 1993 reforms on workers' compensation cost savings for all California employers, both insured and self-insured.

Frank Neuhauser of the Survey Research Center of UC Berkeley made modifications to the WCIRB data which

- incorporated labor force growth and changes in wage rates since 1992
- adjusted the WCIRB baseline to more closely correspond to the beginning of the reform period and
- incorporated improved estimates of premium savings to insured employers from open rating.

Mr. Neuhauser's analysis estimates that the savings to all California employers due to the results of the reforms were approximately \$1.3 billion in 1998.

Mr. Neuhauser's methodology and estimates of reform savings for employers are displayed on Table 1 on the following page.

Table 1: Changes in Cost Savings to Employers from 1993 Reforms, 1994-1998

	1994	1995	1996	1997	1998 ⁱ
Expected premium cost under pre open rating conditions (Av. Prem./expected loss = 1.35)		\$6.06 billion	\$6.99 billion	\$8.01 billion	\$8.01 billion
Expected premium cost under post open rating conditions ⁱⁱ (Av. Prem./expected loss = 1.15)	(Open rating not yet in effect)	\$5.20 billion	\$6.00 billion	\$6.86 billion	\$6.86 billion
Savings on premium cost as a result of open rating (Calculated for insured employers only)	\$0	\$0.88 billion	\$0.99 billion	\$1.14 billion	\$1.14 billion
Savings on premium cost as a result of benefit cost savings. ⁱⁱⁱ	\$0.7 billion	\$0.7 billion	\$0.7 billion	\$0.7 billion	\$0.7 billion
Total cost savings each year (Before increases to TD and PD rates - Includes an adjustment for self-insured employers)	\$0.7 billion	\$1.58 billion	\$1.69 billion	\$1.84 billion	\$1.84 billion
Impact of TD & PD benefit increases on employer cost savings each year.	(\$0.098 billion)	(\$0.255 billion)	(\$0.375 billion)	(\$0.454 billion)	(\$0.474 billion)
Total cost savings each year (After increases to TD and PD rates)	\$0.602 billion	\$1.325 billion	\$1.315 billion	\$1.386 billion	\$1.386 billion
Cumulative cost savings for California employers	\$0.602 billion	\$1.927 billion	\$3.242 billion	\$4.628 billion	\$6.014 billion

Estimated Changes in Worker Benefits

Frank Neuhauser of the Survey Research Center of UC Berkeley, with some discussions with David Bellusci of the WCIRB, developed the estimates of changes in worker benefits. Data were derived from the Workers' Compensation Insurance Rating Bureau of California (WCIRB) and from the California Workers' Compensation Institute's (CWCI) Industry Claims Information System (ICIS) system.

The 1993 reforms made several adjustments to the levels of benefits that are received by injured workers. Temporary Disability Benefits (TTD) were raised for workers with relatively high average weekly wages. The reforms also increased the maximum weekly permanent disability payments to disabled workers with impairments rated at greater than 15%.

Table 2 below includes the impact of the growth in average wages (derived from the Labor Market Information Division of the Employment Development Department) and incorporates several assumptions about the impact of the reform legislation on possible increases in utilization. For further details, see the working paper by Frank Neuhauser entitled "Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability," available from CHSWC.

Table 2 shows that by 1998, workers received an increase in temporary disability benefits of \$198 million and in permanent disability benefits of \$276 million. Thus the total increases in benefits to workers from the TD and PD benefit increases in the 1993 reforms (line 3) equals \$474 million in 1998.

These estimates of employee benefits do not take into account reductions in injuries that may have occurred as a result of the reforms. The WCIRB estimates that the indemnity claim frequency for employees of insured employers dropped from 58 per million on-level premium dollars in 1991 to 35 per million on-level premium dollars in 1998. These reductions may be driven by heightened safety efforts motivated by targeted inspections or by the higher TD benefits required under the legislation. Reductions in injuries are counted as savings to employers, but they also represent a significant benefit to workers.

The table also reports estimates (adapted from the WCIRB estimates) of the impact of several changes in compensability adopted in the 1993 reforms. We estimate that these changes reduced employer costs by \$500 million per year. The changes include capping vocational rehabilitation, eliminating post-termination claims, and restricting psychiatric claims. If the full amount were to be counted as a reduction in benefits to workers, the total payments to workers in each year would be negative. Between 1994 and 1998, the cumulative reduction in benefits to workers would be \$844 million, as reported in the last line of the table.

However, the changes in compensability should not be counted equally with the changes in TD and PD benefits. These changes were made to remedy perceived excesses in the pre-reform system. In particular, it was believed that benefits were not being paid to the appropriate injured workers. If the changes reduced benefits to workers who did not deserve them in the first place, this should not be counted. Since evaluating whether these changes improved the targeting of benefits in California is beyond the scope of

SPECIAL REPORT: COSTS AND BENEFITS

this report, we suggest simply that the total of \$500 million is an overestimate of the benefit reduction associated with the changes in compensability.

Since we cannot determine what fraction of the change in compensability represents a reduction in benefits to workers, we conclude that -\$26 million^{iv} is a lower bound on the benefits to workers attributable to the reforms in 1998. The upper bound is \$474 million, which is directly attributable to changes in PD and TD.

Table 2: Changes in Benefits to Injured Workers from 1993 Reforms, 1994-1998

	1994	1995	1996	1997	1998
Increases in Temporary Disability	\$43 million	\$107 million	\$153 million	\$187 million	\$198 million
Increases in Permanent Disability	\$55 million	\$148 million	\$222 million	\$267 million	\$276 million
Total TD+PD benefit increases for each year.	\$98 million	\$255 million	\$375 million	\$454 million	\$474 million
Legislative changes in compensability: restrictions on vocational rehabilitation, psychiatric injuries, and post-termination claims. ^v	(\$500 million)				
Net benefit change (decrease) each year	(\$402 million)	(\$245 million)	(\$125 million)	(\$46 million)	(\$26 million)
Cumulative benefit change (decrease) since 1994	(\$402 million)	(\$647 million)	(\$772 million)	(\$818 million)	(\$844 million)

Conclusion

Our summary of relevant analyses indicate that there have been significant changes in both costs and benefits:

- Employer savings from the 1993 reforms are estimated to be between \$1.3 billion and \$2.8 billion in 1998^{vi}.
- Increased benefits to injured workers in 1998 are estimated to be between -\$26 million and \$474 million.

PLEASE NOTE: The large range in both estimates illustrates the difficulty associated with these analyses. The data are subject to multiple interpretations, and the assumptions behind the estimates may be controversial. Any estimate of either employer savings or benefits to injured workers must be treated cautiously, including those cited in this report.

For Further Information

The WCIRB Bulletin No. 99-01 entitled “Evaluation of the Impact of the 1993 Legislative Changes on Pure Premium Rates” formed the basis for deriving the cost savings estimates.

The report by Frank Neuhauser of UC Berkeley entitled “Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability” discusses the effect of these adjustments on the amount of indemnity payments made to injured workers in each year since reform.

The Commission’s reports of studies and projects and its annual report are accessible on the web at www.dir.ca.gov. From the Department of Industrial Relations’ home page, select ‘workers’ compensation’ or ‘occupational safety and health’ and then the Commission. Printed copies of reports are available by contacting the Commission office.

Endnotes

ⁱ Estimated cost data from 1998 was not available – 1997 estimated data was utilized.

ⁱⁱ ‘Expected premium under post open rating conditions’ includes adjustments for increases in employee earnings, increases in employment levels, employee benefit increases, decreases in claim frequency, and increases in average cost per claim.

ⁱⁱⁱ The 1993 reforms such as limits on medical-legal evaluations, limits on stress claims, and the cap on vocational rehabilitation benefits resulted in savings to employers of approximately \$500 million per year starting in 1994. (See the following endnote.) In addition, there were

SPECIAL REPORT: COSTS AND BENEFITS

approximately \$200 million in savings attributable to other factors such as anti-fraud efforts, changes in medical-legal costs, and fee schedules.

- ^{iv} Based on a calculation using the benefit estimate of \$474 million and 100% of the benefit reductions.
- ^v After adjusting the WCIRB estimates to reflect 1998 labor market conditions, our analysis shows estimated benefit reductions of \$260 million (Vocational Rehabilitation), \$195 million (Psychiatric Claims) and \$52 million (Post Termination Claims) for a total of \$507 million. We use an estimate of \$500 million in benefit reduction each year. We note that employment terminations may have decreased due to improvements in the economy.

This calculation takes the dollar savings per worker, multiplies the saving by the number of covered full-time equivalents for 1992, multiplies that by the growth in the labor force (1992-1998), times 1.5 for the portion of the workforce covered by self-insurance.

For example, for Vocational Rehabilitation:

$$\begin{aligned} & \$20 \text{ (WCIRB estimate of VR savings/worker)} * 7.8 \text{ million (FTE 1992)} * 1.11 \text{ (11\% growth in} \\ & \text{labor force)} * 1.5 \text{ (WCIRB estimate that self-insurers represent 1/3 of market)} = \\ & \$20 * 7.8 \text{ million} * 1.11 * 1.5 = \$260 \text{ million} \end{aligned}$$

- ^{vi} \$2.8 billion was chosen as an upper bound for the estimate of employer savings. This WCIRB estimate includes factors outside the reform, but it also does not include the self-insured. Given that we do not expect that the self-insured had the same savings as the insured, and that the self-insured are less than half the number of injuries as the insured, we expect that the factors outside of the reforms (declining injuries, economy, etc.) at least cancel and most likely outweigh the omission of the self-insured. Therefore, we regard this as an upper bound.

SPECIAL REPORT: COSTS AND BENEFITS

CHSWC & THE COMMUNITY

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Community Activities

CHSWC is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

AFL-CIO Legislative Committee Meeting

Executive Officer presentation

Agricultural Personnel Management Association

Executive Officer presentation

California Chamber of Commerce

Executive Officer presentation

California Department of Finance

Executive Officer presentation on CHSWC projects and budget

California Department of Industrial Relations

Executive Officer presentation

California Department of Insurance

Executive Officer presentation to the Fraud Advisory Committee

California Workers' Compensation Institute

Executive Officer presentation to the Claims Committee

Executive Officer presentation to the Research Committee

California Legislature

Executive Officer presentation to the Assembly Committee on Insurance

California Self-Insured Employers Association

Executive Officer presentation

Californians for Compensation Reform

Executive Officer presentation at Legislative Conference

**International Association of Industrial Accident Boards and Commissions
Safety Committee Meeting**

Executive Officer presentation

Integrated Health, Disability and Work/Life Initiatives Conference

Executive Officer presentation

National Association of Governmental Labor Officials

Executive Officer presentation

National Institute for Occupational Safety and Health

Executive Officer presentation

Western Growers Association

Executive Officer presentation

Workers' Compensation Research Group

23rd Annual National Symposium on Workers' Compensation

Executive Officer presentation

Workers' Compensation Research Institute

Executive Officer presentation