

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

**MINUTES OF MEETING**

**April 5, 2018**

**Elihu M. Harris State Building  
Oakland, California**

In Attendance

2018 Chair, Angie Wei

Commissioners Daniel Bagan, Doug Bloch, Martin Brady, Mona Garfias, and Shelley Kessler

Absent

Christy Bouma and Sean McNally

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

<b>Approval of Minutes from Last Meeting</b>	<b>Approved</b>
<b>Posting for Feedback the Evaluation of the Return to Work Fund in California's Workers' Compensation System Report by RAND</b>	<b>Approved</b>
<b>Request that the DWC staff develop a list of administrative recommendations that they could pursue immediately to create access to the RTW Supplement for more eligible workers more quickly.</b>	<b>Approved</b>

Chair Wei: I want to acknowledge the retirement of Director Christine Baker. Ms. Baker was the first Executive Officer of the Commission. The Commission may even have been a child to her who is now an almost full-grown adult—and probably still living at home. There is a tremendous gap without her presence, and it would be difficult to fill her shoes. The Commission represents the vision of Ms. Baker and is the embodiment of her life's work, which was to build consensus among diverse stakeholders, specifically between labor and management, and to reach agreement based on real data and real research. We will continue that mission now that Ms. Baker has retired. It is not often that someone serves for 34 years, and the knowledge acquired over those years is not irreplaceable but close to it. Ms. Baker was a unique public servant.

Ms. Baker never said, "No." She never said, "It cannot be done." She always said, "We will find a way." For Ms. Baker, that meant a balanced and fair approach. The Commission is deeply grateful for Ms. Baker's 34 years of dedication to the public, the system that binds them together, and the livelihood of injured workers and the state's economy. I am confident that Ms. Baker built the foundation to continue the work that lies on our shoulders; I appreciate the ongoing work of the staff and department heads at the Department of Industrial Relations (DIR). On behalf of the Commission, we pledge our full support to continuing the work of the DIR.

Commissioner Brady: I second the sentiment. I have never met anybody who worked non-stop, as Ms. Baker did. She had incredible courage and was so impactful with her spirit. It was as if she ran on cold fusion. She was an amazing public servant, and she will be missed. Her impact personally and professionally and on the economy of California cannot be put into words. She was an amazing individual, and I am very thankful for her service.

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

Ms. Wei then made a symbolic toast wishing Ms. Baker the best in her retirement, and all present applauded.

**Approval of Minutes from the December 15, 2017, CHSWC Meeting**

*CHSWC Vote*

Commissioner Kessler moved to approve the minutes of the December 15, 2017, meeting, and Commissioner Martin seconded. The motion passed unanimously.

**DWC Update**

**George Parisotto, Administrative Director, Division of Workers' Compensation (DWC)**

I also want to second the sentiment about Ms. Baker. She was probably the most dedicated public servant with whom I have ever worked. She brought incredible passion to making the workers' compensation system work for all stakeholders: injured workers, employers, providers, and everyone else. She would say that we should work around the clock to implement the reforms to the system. I would often receive emails at odd hours in the morning, asking a question or instructing us to accomplish this or that. Whenever she made a presentation, she made a point of recognizing her staff, which is the sign of a gracious person. I will miss her, and so will the Division (DWC). I wish her the best in all her future endeavors. I agree with Ms. Wei that Ms. Baker laid a solid foundation and that our agenda is clear for the next few months. We will work hard to achieve all our goals.

1. **MTUS and Formulary Update**—To be given by Dr. Ray Meister and Jackie Schauer following my presentation.
2. **Medical Access Study by RAND**
  - RAND has provided DWC with the preliminary results, which it is reviewing.
  - Final report should be ready for discussion at the next Commission meeting, in May.
3. **Anti-Fraud Activity**
  - Lien Stay Activity**
    - 152 criminally charged individuals (and their entities) currently have their liens stayed by operation of law under Labor Code section 4615.
      - 560,791 liens are currently designated as "4615" in the Electronic Adjudication Management System (EAMS).
  - Suspension Activity**
    - 242 physicians, practitioners, and providers have been suspended under Labor Code section 139.21(a). Four providers have requested a hearing.

**Lien Consolidation Activity**

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

- The Anti-Fraud Unit (AFU) has reviewed the lien filings of 107 convicted and suspended providers for possible lien consolidation.
- 28 providers have pending, active liens.
- 10 lien consolidation orders have been issued on 22,500 liens.
- 18 lien consolidations on 9,925 liens are currently being processed.

**4. Regulations**

**Interpreters Fee Schedule**

- Draft regulations were posted on the DWC website forum on April 4. The comment period closes April 13.
- Will address selection of interpreters, validating credentials, and setting fixed fees for services based on the federal court rate.

**Utilization Review**

- Regulations will address the 30-day “fastpass,” the period of time after the date of injury when no utilization review (UR) is required for treatment, consistent with the medical treatment utilization schedule (MTUS); UR certification for entities that conduct the service; physician reporting, which includes a new reporting form (a PR-1); and independent medical review (IMR) updates to address expedited formulary review.
- Posting on website anticipated in next two weeks.

**Carve-Out Program**

- Finalizing draft regulations that will simplify annual reporting obligations for carve-out program.
- Seeing an increase in carve-out program applications for local jurisdictions with their public safety officers.

**Qualified Medical Evaluators (QME)**

- Regulations—currently in the drafting process—will clarify the fee schedule, bring the dispute process in-house instead of having it conducted in the Office of Administrative Hearing, and set specific standards for the appointment and reappointment of QMEs.

**UR Data Reporting and Electronic Doctor’s First Report**

- DWC is working with DIR’s Information Technology (IT) Unit to establish data reporting standards for UR data reporting by claims administrators and the electronic filing by physicians of the Doctor’s First Report (DFR).
- UR reporting regulations and an implementation guide are being finalized and should be posted on our website in a month.
- DWC is working with DIR IT and gathering information from stakeholders about the standards for the electronic DFR.

## MINUTES OF CHSWC MEETING

April 5, 2018 Oakland, California

Commissioner Wei: If the insurance companies have booked those liens, what will happen to insurance premiums after those liens are disposed of?

Mr. Parisotto: I do not know the answer to that question, but I will certainly look into that for you.

### **Update on Workers' Compensation Medical Issues/Formulary** **Dr. Ray Meister, Executive Medical Director, DWC** **Jackie Schauer, DWC**

#### **Dr. Meister**

- 2017 IMR Overview with statistics
- Medical Treatment Utilization Schedule (MTUS)
  - Current treatment guidelines
  - Planned medical treatment guideline updates and additions
  - Formulary updates
  - Pharmacy & Therapeutics (P & T) Committee

IMR applications appear to have leveled off in 2017; in 2016, 173,000 IMR applications were filed, and in 2017, 176,000. IMR decisions likewise appear to have leveled off. [He then showed a chart depicting IMR Timeliness of Decisions and said that it takes about 30 days.] It takes about 20 days to obtain all the medical information needed to make a decision, and another 10-15 days to make a decision and mail the decision letter. [He next showed a chart of the service categories of treatment requests in IMR.] Pharmaceuticals alone accounted for 43% of the rates of IMR upheld and overturned in 2017. Service categories overturned rates vary from 7% to 17%. For pharmaceutical categories, overturned rates vary from 3% to 18%.

In November 2017, the treatment guidelines that make up the MTUS had a major update in the following areas.

- Cervical and Thoracic Spine Disorders Guideline
- Shoulder Disorders Guideline
- Elbow Disorders Chapter
- Hand, Wrist, and Forearm Disorders Guideline
- Low Back Disorders Guideline
- Knee Disorders Guideline
- Ankle and Foot Disorders Guideline
- Eye Disorders Chapter
- Chronic Pain Medical Treatment Guideline
- Opioids Treatment Guideline
- Initial Approaches to Treatment
- Hip and Groin Guideline
- Occupational/Work-Related Asthma Guideline
- Occupational Interstitial Lung Disease Guideline

Additional updates are being planned in the following guidelines:

**MINUTES OF CHSWC MEETING**  
**April 5, 2018 Oakland, California**

- Traumatic Brain Injury
- Prevention
- General Approach to Initial Assessment and Documentation
- Cornerstones of Disability Prevention and Management

The online MTUS educational course, including the formulary, is also being updated.

**Ms. Shauer**

I will provide an update on the formulary. Formal rulemaking began in March 2017, and a public hearing was held on May 1, 2017. There were three comment periods, and we received a lot of public input and good comments, which improved the regulations. Regulations were approved in December 2017 and went into effect January 1, 2018. Soon after the regulations were approved, DWC began a public education effort, with two live webinars [on December 13 and 14, 2017], that were posted for on-demand viewing on the DWC website. We also had four MTUS and formulary sessions at the DWC Education Conference, two in Los Angeles and two in Oakland. We are planning our first update to the MTUS Drug List.

We will be using statutory procedures that allow the drug list to be updated by an order from the Administrative Director. Most of the changes are related to updates in the American College of Occupational and Environmental Medicine (ACOEM) Eye Disorders Guideline and will add quite a few medications, most of which are exempt from prospective review. We are currently accepting applications for the Pharmacy & Therapeutics Committee from pharmacists and physicians. The Committee will have three pharmacists and three physicians, who will be appointed by the Administrative Director. Their role will be to advise the Administrative Director on updates to the formulary. The Committee will be chaired by Dr. Meister. We hope to have the first meeting in June. The meeting will be announced on the Administrative Director's mailing list, and the meeting agenda will be posted on the DWC website. The meeting will be open to the public.

We will be monitoring the impact of the formulary. The RAND Formulary Study contract included a provision for RAND to make some recommendations and proposals for a monitoring framework. We are analyzing that and look forward to its final peer review, which should be issued shortly. DIR research staff are designing a methodology to monitor the impact. They plan to primarily use Workers' Compensation Information System (WCIS) data as well as IMR and UR data. They will use a pre-formulary baseline to compare and observe things such as prescription trends and shifts in dispensing by pharmacies and physicians, shifts to exempt drugs, as well as prescription patterns for opioids and other high-risk medications.

***Comments by Commissioners***

Commissioner Bloch: Regarding IMR, why are some of the applications deemed ineligible?

Dr. Meister: Sometimes we get duplicate applications; if an application is not signed, if it is not submitted timely, or if the UR decision is not attached, then the application is deemed ineligible.

## MINUTES OF CHSWC MEETING

April 5, 2018 Oakland, California

Commissioner Bloch: Even though relatively few IMR requests are for psychological services, why are psychological services being denied in IMR?

Dr. Meister: I have not looked at that, but there are treatment guidelines, and there is a methodology within the medical evidence in the MTUS to search the medical literature. I assume that that process is being followed appropriately and that, if those requests are denied, they are not medically necessary.

Commissioner Bloch: I am pleased to hear that the MTUS is receiving updates. I have seen some [union] members fall apart after being injured. They needed psychological services because they could not deal with what was happening to them. It concerns me to see the relatively small number of cases not receive a critical service.

Dr. Meister: There are currently good psychiatric and mental health guidelines out there, and ACOEM is doing a major revamp of its mental health chapter, and we anticipate it later this year. Assuming it is added to the MTUS, we anticipate a nice addition.

Commissioner Bagan: [He refers to the presentation slides on IMR applications and decisions.] I anticipate that at some point the number of IMR applications and decisions will start to go down. It might just be a transposition error, but on the slide with the number of IMR decisions, in 2017 there were 176,000 and in 2016 there were 172,000, but on the slide before that, the number of applications in 2017 was the exact opposite: 172,000 in 2017 and 176,000 in 2016.

Dr. Meister: I also noticed that, but I did not look into it so cannot give a specific answer. There are variations from month to month—for instance, in November 2017, when we did a major update to the treatment guidelines. I am guessing that perhaps it took a little longer to make IMR decisions when the guidelines went into place. That might explain some drop-off at the end of 2017. We will check that, as these are preliminary figures for the 2017 IMR report, which is an annual report.

Commissioner Bagan: Is it anticipated that the formulary, as it gets fully implemented, will also have an effect on the number of IMRs filed?

Dr. Meister: I am hopeful that that will be the case. Having updated treatment guidelines and the formulary tied back to the MTUS makes me hopeful that it will decrease the number of UR denials.

Commissioner Bagan: What about the uptick in the timeliness of IMR decisions in November and December 2017—has that calmed down, did it keep going, or did it flatten out and return to the 30-day trend?

Dr. Meister: I noticed that, too, and I am sorry that I did not look into it. I guess that it may have to do with the new guidelines in place. The IMR reviewers, like everyone else, need time to discern and learn. We have those numbers, so we can check that out.

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

Chair Wei recognized Secretary of Labor David Lanier, who recently arrived to attend the meeting; she said they would welcome any comments and feedback from him as well.

Chair Wei: It seems that we have not seen a downward trend line in IMR. When we gamed out what IMR would look like, we anticipated a downward trend line. Why are we at the same levels of IMR? Remind me what percentage of the requests for authorization (RFAs) for treatment these IMR numbers refer to. For example, is it still 1 in 10 treatment requests going to IMR; is it 1 in 20?

Dr. Meister: I do not have specific numbers; but what I remember is that we hear that 85% or 90% of the treatment requested are approved. I believe the UR denials are a small percentage—that around 10% are treatment requests—and then a somewhat smaller number go to IMR. I do not have a specific answer on why IMR has not gone down. Once we get the guidelines up to date and with the addition of the formulary, I hope those things will be positive factors in a downward trend. We probably need to look some more to see if there are reasons that some of the providers are not following the guidelines or not even attempting to follow them; several factors may be involved, but I do not have specific answers.

Commissioner Brady: Your answer about the number of IMRs was helpful. There should also be a feedback loop to providers because an uphold rate of 90% or higher is still high. One could see that some providers have quite a volume [tipping the scale], so they are automatically set up to conduct an IMR repeatedly for something that they know is not going to be approved. I am curious about the feedback loop going back to those clinicians, instead of their setting something up automatically. Perhaps we need to nudge them to have better (utilization review) outcomes and educate them.

Dr. Meister: If we can do a better job of educating providers and help the people who want to follow the rules and the guidelines, it would be helpful. Sometimes we see an excellent UR decision using the guidelines. We need to understand the various factors involved and why someone may not use that education (for utilization review).

Chair Wei: It seems that we have been able to isolate the fraudulent providers. Could we get to the same level of precision with the doctors who may be submitting requests for treatment outside the guidelines in a consistent fashion? I do not know whether the public policy outcome should reduce IMR to as close to zero as possible. I am not sure that is not my goal, but there is a problem if the numbers stay the same over the years. It will be helpful to look at this after the formulary takes greater hold and after the new chapters and guidelines get layered in. [Dr. Meister agreed.] What we do not want to happen is for the insurers to build this (IMR) in as a permanent part of what we pay.

Commissioner Kessler: I am interested in the public hearings on the formulary and the comments and the types of questions and concerns that were put forward most often on it.

Dr. Meister: One specific category of questions that will be addressed in the UR regulations that are currently being written and will go out for review is how the pharmaceuticals are handled in the first 30 days and how they may be handled differently than other treatment requests. So the

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

largest category of questions may concern the specifics of UR. There were questions about the specifics of the formulary and an exempt drug. A drug is exempt when it is used in conjunction to be consistent with the recommendations in the guidelines; there were questions about what happens when an exempt drug is being used and is not consistent with the guidelines. The details raise question marks as people are revamping their systems, and they want it to be as accurate as possible.

***Public Comments***

Steve Cattolica, California Society of Industrial Medicine and Surgery: The MTUS guidelines currently have no psychiatry guidelines. For psychiatric cases in which a psychotropic drug may be necessary and the request goes through the RFA process, the only UR guidelines used to evaluate that process are the chronic pain guidelines. The chronic pain guidelines do not favor psychotropic drugs for pain and would result in denial. Until psychiatric guidelines are part of the MTUS, there will be a gap. I do not know how to measure the gap. I ask for psychiatric guidelines [to be included], and well-thought-out psychiatric guidelines exist and are in use today commercially. Are we required to use AECOM guidelines? Because they are taking a certain amount of time getting psychiatric guidelines together that would be relevant to psychiatric diagnoses. If there are guidelines that could have been used two or three years ago and we were remiss, I think that is a mistake. I would like to recommend that WCIS have a way of counting UR denials in different categories of guidelines and IMR requests that result by type of guideline. Each of those guidelines is a different age. Just recently, two sets of guidelines have been implemented that are statutorily out of date. Do we have more problems with guidelines of that age than with more recent guidelines? I think the WCIS could probably tell us that. The five-year time frame that DIR seems to be bound by seemed arbitrary when it was first put into statutory regulations. WCIS can probably refine it, and DIR can come up with a better time frame so that AECOM or Official Disability Guidelines (ODG), has a better idea of what is required in California, so that doctors can operate their practices and handle their cases, and carriers can better respond to RFAs.

Dr. Meister: Mental health conditions are a very important issue in workers' compensation. What I recommend is what the medical evidence search sequence lends itself naturally to. It is the previous MTUS mental health chapter, which dates to 2004 and is very limited in its scope. AECOM is working on a comprehensive update. What DWC does have in the second step of the medical search sequence is also to look at the current chapter of the ODG, which has the benefit of having had Medical Evaluation Advisory Committee (MEAC) members review it a couple of years ago and provide feedback; that is a more comprehensive chapter. It would be a good place to look for guidance today. Even when a new AECOM chapter is incorporated into the MTUS, the ODG chapter is still available. That is why we have the medical evidence search sequence, and we do not want only the MTUS to be used. Providers should use what they think is the best guidance for the individual patient.



**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

**Report on Evaluation of RTW Fund in California's Workers' Compensation System Study**

**Michael Dworsky, RAND**  
**Denise Quigley, RAND**

The two key objectives of the study were to:

- Evaluate performance to date
- Develop policy options to guide DIR in improving the program.

RAND conducted a mixed-methods evaluation both qualitatively and quantitatively. The qualitative methods included: review of regulations and program operations; stakeholder interviews throughout DIR and people in the system, such as labor, attorneys, employers, and claims administrators; analysis of program data; and other administrative records. The qualitative part of the study was conducted by Ms. Quigley. The quantitative piece of the study was conducted by Mr. Dworsky. Findings and recommendations were discussed with a technical advisory group to get feedback about the findings.

The four broad criteria for evaluating the program were:

- Is the RTW Supplement program targeting the intended population?
- Is the program being administered efficiently—for example, does it look as if there are lengthy delays; does it look as if workers are rejected and have to resubmit their applications?
- Is it resistant to fraud and abuse?
- Is it reaching all eligible workers?

A preview of the study findings include:

- The program is targeting the intended population;
- It is being administered very efficiently by DIR;
- It appears to be resistant to fraud and abuse; the program has performed well in these first three criteria.
- The program has room for improvement in reaching eligible workers. The policy recommendation will focus on how to improve take-up by eligible workers.

Stakeholders' views on RTW Supplement program targeting were mixed. Many agreed that workers without a return-to-work offer were likely to have disproportionate earnings losses. Interviewees believed that supplementary payments of \$5,000 were insufficient for workers. Others thought the payments were valuable for workers, but some wanted the program to be more narrowly targeted.

The data show that workers with the RTW Supplement may be more vulnerable than other workers with permanent disability (PD). This study compared RTW Supplement recipients to other PD workers without it. Compared to workers without RTW Supplements, RTW Supplement recipients:

- Have lower weekly wages (\$661 vs. \$813)
- Are more likely to work in industries that are:
  - Physically demanding (manufacturing or construction);
  - High turnover (retail or admin./support service).

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

- Have higher median duration of temporary disability (TD) (58 vs. 25 weeks)
- RTW Supplement recipients have more severe impairments. It is 11 (rating) points higher than workers who do not receive the supplement.

RTW Supplement program is administered quickly and efficiently:

- 96% of applications to date have been approved
- Almost no denials are appealed to the Workers' Compensation Appeals Board (WCAB) for formal judicial appeal.
- Application processing and payment are very timely:
  - DIR has 85 days after an application is submitted to issue payment
  - Typical applicant receives payment within two weeks
  - Nine of ten successful applications paid within three weeks
- Stakeholders perceived administration to be efficient

RTW Supplement program appears to have good program integrity

- DIR procedures have eligibility checks in place to verify worker identity and eligibility
- When workers are denied for technical reasons, DIR staff work to correct issues and enable resubmission
- Quantitative data was not available for fraud and abuse. Stakeholders did not allege fraud or abuse related to RTW Supplement program.

The greatest cause for concern is whether the RTW Supplement program is reaching eligible workers:

- Workers are eligible if they receive a Supplemental Job Displacement Benefit (SJDB) voucher
- Workers with the SJDB voucher might fail to apply
- Difficult to answer with DIR data. RAND obtained voucher data from claims administrators
  - Caveat: data may not be representative of system
  - DIR is not notified when SJDB voucher is issued, so better system-wide data are needed. With help from DIR, they were able to partner with other claims administrators to see whether a voucher was received and link that data to the WCIS data. The sample of claims administrators they worked with was small and may not be representative. This was the best way RAND had to ask workers whether they received a SJDB.
  - Take-up rate in this sample is about 55%. Only about half of voucher recipients in the RAND data applied for the RTW Supplement program. Workers had to fill out an online form to get the \$5,000 benefit, and questions can be raised as to whether workers understand what the benefit is. This led RAND to interrogate why workers were not applying for this benefit.

Attorney representation was the most important factor explaining take up: Lack of attorney representation was the most important factor in not applying for voucher.

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

**Policy Recommendations**

Program changes should increase take up among eligible workers. RAND identified two policy options to do so:

First, make RTW Supplement payment automatic upon SJDB voucher issuance

- Program administration by DIR would continue; claims administrator to notify DIR in a timely manner when SJDB voucher is issued; DIR to identify the injured worker and issue RTW Supplement payment upon notification
- Eliminate the need for the injured worker to actively apply for RTW Supplement
- Increase take up of RTW Supplement program to 100% of eligible workers; currently it is 50% to 55%.

Second, if DIR does not make the SJDB program automatic, improve notification and awareness of RTW Supplement program by:

- Modifying SJDB voucher to feature information about RTW Supplement program more prominently.
- Improving DIR website
  - Simplify navigation to RTW Supplement program information;
  - Make it easier to obtain assistance with application.

Physician reporting of RTW & voucher form could be improved

- Physician failure to complete RTW & voucher form may affect access to SJDB voucher.
- DIR might consolidate RTW & Voucher Report and Maximum Medical Improvement (MMI) report to facilitate compliance
- New report would both establish PD status and detail work restrictions
  - Would require process to redact medical information before communicating work restrictions to employers

Concerns about SJDB program effectiveness and program integrity

- Rehabilitation is core objective of workers' compensation
  - But no rigorous evidence exists on whether the current voucher-based SJDB system helps workers

Some stakeholders shared anecdotes suggesting SJDB may be ineffective and prone to fraud by providers:

- Overbilling or fraud in SJDB invoices
- Falsified worker signatures on SJDB vouchers and invoices
- Provision of low-value services unlikely to help workers
- Better evidence on SJDB effectiveness and program integrity could help DIR better serve workers and control costs

RAND recommends that DIR require claims administrators to notify DIR when SJDB vouchers are issued

- DIR currently lacks the data needed to track the size of the eligible population. DIR does not have the billing data, so it does not see in WCIS who providers are and the type of

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

services they are providing. DIR just sees the total paid amount for SJDB benefit to each worker.

- DIR does not see when the voucher is issued to each worker.
- DIR should get more comprehensive data about who is getting the SJDB voucher and what they are using the voucher for.

Conclusion: RTW supplement program is largely meeting its objectives.

RAND's evaluation found the program to be:

- Targeting intended population;
- Efficiently administered;
- Resistant to fraud and abuse;
- Incomplete take-up among eligible workers is the most important shortcoming;

Recommendations

- RTW Supplement program should be automatic;
- Improve the notification program.
- Outreach is needed if program is not automatic;
- Reporting would help track eligible population size;
- Information on voucher recipient population would help evaluate SJDB integrity and effectiveness.

***Comments by Commissioners***

Commissioner Bloch: I was appointed when the negotiations for the reforms were happening, so I have a lot to learn. Earlier studies by RAND show that when a worker does not return to work, it is the single biggest indicator of what amounts to catastrophic income loss; therefore, they are discussing workers who are suffering the most from their workplace injuries, and it is important to put all those conversations in that context. I am happy to hear that the SJDB voucher program was administered efficiently; I am also glad to hear that people were receiving the voucher benefit in a timely manner. About the recommendations of this study, the difference is striking when a worker has legal representation versus when he/she does not. They have invested a lot in outreach, and they have tried different approaches. I liken it to the way the City of Oakland replaced the parking attendants with automated parking kiosks. People did not understand how the parking kiosks work, so the City of Oakland had to hire Teamsters to operate the machines. They explained the new automated system to the public. The Teamsters were like the attorneys who help injured workers navigate the system. Given that the doctors are not paid for these referrals, and eligible workers are not getting these benefits, I strongly support automating the SJDB voucher payment. If someone is getting an SJDB, and they are eligible to get a voucher, they should make receiving it automatic, and I support the recommendations in this study.

If every eligible worker was getting this benefit, it would create questions about cost. However, since the voucher benefit started, questions arose that we were not spending the entire \$120 million, so should we increase the benefit? Should this money be paid out every year and replenished? If every eligible worker was getting the benefit, is \$120 million enough? From 2015 until October 31, 2017, the fund has paid out \$142,965,000 from this fund, and it has amounted to \$80 million in annual payments, and the employer side has saved a significant sum since the reforms in terms of eligible workers not getting their benefits. This is important as they move

**MINUTES OF CHSWC MEETING**  
**April 5, 2018 Oakland, California**

forward to look at the efficacy of this system and ensure that workers who suffer catastrophic income loss get the benefit that they deserve.

Commissioner Brady: If this is the interim report, then what is the date of the final report?

Mr. Dworsky: We are waiting for public comments to finalize the report, but I will consult with DIR about waiting or having an addendum with comments. I anticipate that we will publish the final report in June. This report has been through the RAND peer-review process, and the findings have been finalized. If there are significant public comments that should be addressed, they will be able to add an addendum to this report.

Commissioner Kessler: How were the stakeholders chosen for this report?

Mr. Dworsky: We conducted about 15 interviews for the qualitative part of this study.

Ms. Quigley: We identified 20 stakeholders initially, but then we reduced this number to 15 stakeholders who accepted the interview request. We assembled the list, so we had a representative set of stakeholders from various groups to have a minimum of two in each category. The categories included: employers, administrative attorneys, defense attorneys, applicant attorneys and included injured workers and the workers' compensation primary treating physicians, agreed medical evaluator (AME) and QME physician.

Commissioner Kessler: Why only 15? That does not seem like a large cross section. How did you determine whom to ask?

Ms. Quigley: Fifteen is not a large number, but we did try to have a breadth of people in that representative group. We were not looking to have a representative sample of stakeholders, otherwise, we would have tried to do a larger sampling or maybe conducted a survey. We intended to have in-depth conversations with people to identify issues and discuss aspects of the program. This was a qualitative set of exploratory interviews to speak with people and identify issues. For that purpose, we were fine with having a list of experts of 15 to 20 people. We identified people through our own list of experts and lists that we got from confirmation from DIR and input from others.

Commissioner Kessler: Can you identify the labor stakeholders who spoke with you for this report?

Ms. Quigley: I am not allowed to say.

Mr. Dworsky: We promised the interviewees confidentiality.

Commissioner Kessler: I am happy about the recommendation to automatically fund the voucher. I used the DWC website to see if I could navigate it. I suggest that DWC add a navigation pane on the top or the side of the webpage in different languages because you have to scroll to the bottom or the side to get the navigation pane to find other languages. Also, the forms are in English, and many low-wage workers from very demanding physical environments may not have access to a computer or a scanner or have challenges in speaking English. Language issues can be addressed on the website.

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

I am also concerned about when injured workers, especially immigrant workers, get access to financial support. People who do not have income become mobile, and the sooner they can find these injured workers the better. Therefore, I like the recommendation of an automatic payment. Also is there any protection in the paperwork or the documentation so undocumented immigrants can get some sort of protection? People who are getting public assistance then would not have their names on a list that would enable them to be targeted for immigration challenges that many are facing today.

Mr. Dworsky: Those are reasonable concerns, and my understanding is that the same privacy protections would apply to this, but it is a good thing for DIR to confirm.

Commissioner Garfias: I am concerned about the unrepresented employees whose claims are settled, and there is a lack of effort to track them. Some type of notification should go to the employees either from the carrier or from DIR. There should be a second notification, aside from the carrier, from DIR.

Mr. Dworsky: Notification about the RTW Supplement was mentioned at the technical advisory group meeting. The claims administrators noted the challenges; they had a sense that this program was not being funded out of premiums, so they would not be involved in administering or sending out notifications. It would be prudent to anticipate some resistance from the administrators if DIR handed out responsibility for that. The bigger problem is that DIR knows who applies for this program, and the claims administrators do not know about eligibility. Neither party knows both pieces of information at the same time. Simple fixes, such as sending notification to people who have applied within three months, turned out to be infeasible for the SJDB voucher. It is a reasonable recommendation that additional notification targeted to the worker will increase the take up. The question is who is responsible for sending the notification. Improving information flow about how the SJDB voucher program works has benefits for the administration of the RTW Supplement.

Commissioner Garfias: When an injured worker gets a voucher, and then he goes to another employer, and the process starts all over again—is that how an injured worker commits fraud?

Mr. Dworsky: Regarding questions of fraud in the SJDB system, we only have anecdotal evidence, and I cannot speak to that. The regulations state that this is a one-time payment to injured workers even if the injured worker has multiple vouchers, and he does not get supplemental payments.

Commissioner Garfias: If the injured workers were with a different employer, and they submit another claim, is there any way to track the injured worker to see whether a voucher has been issued to them?

Mr. Dworsky: It is my understanding that workers can receive more than one voucher if they have multiple injuries with different employers. In terms of the RTW Supplement program, it is a one-time payment of \$5,000. Even if the worker was injured in 2014, and he gets a voucher, and if the same worker was re-injured in 2015, DIR is able to identify them and cross-reference whether they have been paid already, so the RTW Supplement only goes out once, even though there are multiple vouchers.

Commissioner Bagan: There are 16,000 vouchers currently issued with a \$5,000 benefit. They anticipated voucher recipients would number 24,000, but if they raise it to 32,000, then they anticipate reducing the benefit to \$3,750 in order to keep the total paid out within the \$120

## MINUTES OF CHSWC MEETING

April 5, 2018 Oakland, California

million limit. Maybe they should look at how the \$5,000 is being used, who is using it, is it effective, and is it accomplishing what it is supposed to. Perhaps the answer should be for the voucher to be at a higher amount and more targeted.

Mr. Dworsky: These are very important considerations for choosing policy corrections; and it was worth asking why we cannot target the benefit more narrowly. There is a trade-off between administrative complexity and timeliness, and the amount of information we gather about severely disabled workers and what their work outcomes are. More details on the timing of the payments are in the report. The payments are very tightly concentrated shortly after key milestones in the claims. They are concentrated either after settlement dates or after drawing permanent partial disability (PPD) benefits for workers who draw them. The downside of picking a subset of workers to give them higher payments is that, for disability ratings, it can be a slow process. For instance, ratings are challenged, or people require multiple evaluations, or waiting for people to come to the Disability Evaluation Unit, and that process can take a long time after maximum medical improvement has been reached. In terms of thinking about work outcomes, there is always concern about introducing poor work incentives, and if you just ask who is not working two years later, then you incentivize workers not to work through that milestone, which could be detrimental to their recovery. The point that it could be targeted more narrowly is well taken. But it is important to be aware of the trade-offs. It is valuable to know how people are using the benefit; I would like to have information about that by either conducting a survey or asking workers what they are using the money for and was it helpful. People in the United States do not have much cash on hand; especially if you are going through a period of work disability, having any additional cash might help one meet expenses in a timely manner. We could field a survey and get data instead of just speculating.

Commissioner Bloch: What about doctors not completing paperwork and should we reimburse them for the time they spend filling forms?

Mr. Dworsky: That is one interpretation that came from certain stakeholders. The time the doctor spends in filling out the RTW voucher form is not billable. One suggestion that was made was to make it reimbursable for the physicians to improve compliance with that reporting requirement. Doctors' unawareness of the form and misperception that the forms are redundant because they contain a lot of the same information may also be important factors.

Commissioner Bloch: If they wanted to follow up with a recommendation to put the automatic payment notification on the claims administrator, would there be pushback?

Mr. Dworsky: The claims administrators, in the non-representative sample that RAND used, thought it would be reasonable to notify DIR with more information about the SJDB voucher. The claims administrators were more reluctant to say that they would be able to help with sending out notifications to workers. They were concerned that if it became the claims administrators' responsibility to notify the workers, and the benefits are not being financed by the premiums, then it is an additional cost that they end up having to fund out of premiums. The political compromise in the RTW fund is that the claims administrators would be able to stay out of its administration. The resistance was in giving notification or follow-up responsibilities to the claims administrators. They were much more receptive to reporting voucher issuance to DIR, and then DIR could do the notification.

Commissioner Bloch: I have heard that in the technical advisory group some of the insurance industry stakeholders, including some that represent Teamster employers, were concerned with

**MINUTES OF CHSWC MEETING**  
**April 5, 2018 Oakland, California**

how the SJDB money was being spent, whether workers were actually using that for educational training/vocational training. Is that right?

Mr. Dworsky: I cannot speak to which stakeholders said that, but we have some detail in the report about what stakeholders told us about the program integrity of the SJDB. It is anecdotal data; it is a very large system, and we may be only hearing about “bad apples,” it may be hard to know how large the problem is without more systemic data. There were some concerns about fraudulent vocational rehabilitation providers and equipment vendors—basically being able to get overpayment through the SJDB system.

Commissioner Bloch: If there are fraudulent providers, then I share those concerns. I become concerned when I hear talk about how these workers are spending their money. I understand that they have SJDB benefits that we hope will help people obtain access to vocational training so that they can get back to work. If they need to improve that system so that it works better for workers, then I am all for that. On top of that, there is the \$5,000 payment to help people who no longer have any income, and what I know from talking to workers is that they are thinking about how they are going to pay the mortgage or the rent. It costs \$4,000 just to rent a one-bedroom apartment here in the Bay Area. We are talking about people who no longer have any income and may have to feed their family. I apologize, but I get very upset when I hear talk and criticism about how workers are struggling to make these choices when they have to figure out how to keep a roof over their head and feed their families and are suffering injuries that have prevented them from going back to work. I think we need to remember that these are the choices that workers are facing, and this \$5,000 represents a meager effort to help them offset those expenses. I would strongly oppose any talk of reducing this benefit. I think this study raises questions that we are going to have to answer in the future about whether the benefit level is adequate for injured workers. Are they doing a good enough job of letting workers know whether they are eligible for these benefits? If everyone starts taking up the benefit, is \$120 million adequate? I think we need to know how much savings the employers have captured from the benefit since this reform went into place—of the \$120 million annual amount.

Commissioner Brady: How do other states tackle this [issue]?

Mr. Dworsky: We did not do a general scan of other states’ policies that look like this. I am not aware of other states that have a disability rating system like California’s that also have a supplemental payment. We did talk in the report about the advantages to that kind of hybrid system, which is what the RTW Supplement essentially is in California. Certainly other states do not use disability ratings, and just look at actual wage loss—places such as Michigan and, to some extent, Texas—that keep paying benefits at that same temporary disability rate until somebody goes back to work. That is a very different model from the one in California, and it has some drawbacks in terms of work incentives, and there are very different approaches to speedy resolution. I am not aware of any other state that has this kind of hybrid system. [Mr. Dworsky named and motioned to Seth Seabury from RAND, who has studied workers’ compensation longer to see whether he had any examples of other states.]

Mr. Seabury: California is leading the way on this type of system.



MINUTES OF CHSWC MEETING  
April 5, 2018 Oakland, California

Mr. Dworsky: The short answer about whether any other states have a hybrid system like California's is no.

Commissioner Kessler: I am concerned about the date that the report would be released in June. Are there data questions that were not or could not be answered? Related to the data, are there questions raised whose answers would alter or augment the report that is fundamental or would raise the character or quality of the report itself?

Mr. Dworsky: I do not think so. We were careful in writing the report to stay within the confines of the data. With that caveat, I do not believe there is additional data—certainly data that they can get during the life of the contract for the current study—that would dramatically change what we learned during the writing of the report. I think if we could get system-wide information about SJDB vouchers, it would resolve some of the uncertainty about the size of the eligible population. Apart from the WCIS, no data source captures the entire workers' compensation system. And because the SJDB voucher does not go to the WCIS, it is not clear what the source of that information would be, unless DIR was able to change what is collected by the system.

Commissioner Kessler: That sounds like a positive suggestion about trying to capture the information. I am also concerned about how small the sample was to get some of this information. The issue itself is very deep, and I share with Mr. Bloch concern over the suggestion that benefits might be lowered because otherwise they would run out of money. I am more agitated by this suggestion because I had to live on it when I was injured—especially because of the cost of living in the Bay Area, but it is true everywhere; people need whatever resources they can get because eating is a hard habit to break. I want to ensure that we are giving people who have been injured—most of whom through no fault of their own, but occasionally because there are unsafe working conditions—the best they can get so that they can get back on their feet. We don't have the vocational training we used to have years ago, so it would certainly be helpful to find ways to train some of these people for jobs and salaries and benefits that help them rebuild their lives. As I look at the suggestions [in the report], I hope people are thinking about what they could live on, what they would do if they were stuck in that situation, because so many of my "folks" [union members] have been. These are people who want to work. I appreciate the recommendations and the depth of the study, and I hope to augment some of the challenges with some good solutions.

Chair Wei: It is problematic that we are leaving money on the table for primarily low-wage injured workers. There must be a way—since they have all anticipated \$120 million in supplements for injured workers who cannot return to work. It is one of the definitive things they know in terms of a cost-line item in the system. Shame on us for leaving money on the table for injured workers who need it. We will be adopting the draft report after public comment, but in the interim, I would like to hear from the staff: half the people eligible for the benefit are not receiving it. What, if anything, can we do immediately to find these people and get them the money for which they are eligible, without any changes in the law? There has got to be a way; it is a known number of people. In the grand scheme of things, there are not that many of them; we should know who they are and be able to get them that money. I would like to ask the staff for a series of steps we can implement administratively under current law to get more of this money out. Any changes to either SJDB or the RTW Fund are not going to be decided by the

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

Commission but by the legislature. Some legislative activity has looked at this issue and, I anticipate, will continue to look at this issue. While those deliberations are happening, I would like to figure out if there is anything more that we as a Commission or the staff and the DWC can do to get this money to injured workers without any changes in the law.

*CHSWC Vote*

Chair Wei asked whether a motion on this issue is needed. Commissioner Bagan moved that the Commission look into the issue. Ms. Wei said perhaps there should be a report and asked the staff to see whether it can present recommendations at the next Commission meeting. Commissioner Kessler seconded the motion. Ms. Wei then restated the motion as a request that the staff develop a list of administrative recommendations that could be pursued immediately to get more eligible workers access to the RTW Supplement money more quickly. Commissioner Bagan raised the motion again, and Commissioner Kessler seconded it. There was unanimous support, and the motion carried.

*Public Comment*

Bruce Wick, CALPASC/Specialty Contractors Association: I need to speak about Christine Baker. We owe her a debt that we can never repay. It is true that she defined what a tireless person is. She was, as Commissioner Wei stated, a person of accomplishment. She said that "we will get this done," not ten years from now, but "we will get this done," over and over again, "we will solve this." I commit to following her legacy and one of those is combatting fraud. The rating bureau is proposing a 7.1% decrease in the advisory rate; the public actuary proposed a 12% decrease—a lot of that is fraud coming in. It is really important, and I thank Christine.

Contrary to Mr. Brady, I will offer two simple things that will change [access to] the RTW Fund. I will do this by telling a short story. A lady in the office with which I work asked me if I could answer a few questions her sister had. This person had a workers' compensation claim and worked for a city. She left her job and unfortunately had an accident and was unable to go back to work. She received her voucher, but this person did not want an attorney involved unless she needed one. Things had come this far, everything was resolved, and my first question was: Did she get her \$5,000? The woman did not know what I was talking about. I asked her what her paperwork said, and right there on the front in one sentence in a big paragraph, it said, "you may be eligible for a Return to Work Supplement." I saw it, but she had no idea. The person's sister who works in insurance read through that and did not know what it was. It surprises me that they cannot put on the form: "You may be eligible for \$5,000." I think that they would get a significant turnaround [with a change in the wording]. Anyone would respond to [wording like] that. I could see many lay people just going right past the sentence the way that it is worded in the voucher. Because this person did not have an attorney, at one point they were filling it out online, and it worked really great—she was English speaking—and they are going along, and, at one point, they say you have to enter your WCAB number. She did not have one because she had not filed. Thankfully, it was during daytime hours, and we called and got a WCAB number, so we were able to enter that number from DIR/DWC and in six days she got \$5,000. That was a big deal to her and her family. This is really important, and we need to do these things to get the

MINUTES OF CHSWC MEETING  
April 5, 2018 Oakland, California

money in the hands of these people who are at a crucial time, with a change in their life they did not anticipate.

Chair Wei: Thank you. Those were two administrative recommendations right there.

Rick Meechan, Applicant Attorney: I have a comment on slide 4 in the presentation, and on the program's date of first application. This program actually applied around 2013. The slide understates the amount of money that has not been paid to most injured workers. Is it true that the state has underpaid this fund by something like \$480 million that has not gone to injured workers since this was first implemented?

Mr. Dworsky: We were not able to determine, based on our reading of the Labor Code, what \$120 million funding level meant, whether it was a target for how much goes out each year or whether it was a target level for the fund. We cannot take a stand on whether the amount of money going out being less than \$120 million a year constitutes underpayment. We define underpayment as whether workers are failing to receive a supplement. I do not feel comfortable commenting on the question of how much money should have been paid out since I am not a lawyer, and I am not able to parse the exact intent of the Labor Code on this. It was a fair observation; while the program was being established, no money was paid out in 2013 and 2014.

Dr. Leslie Hewitt, President of the California Chiropractic Association: I am a Primary Treating Physician (PTP), I have been an AME and a QME. Commissioner Kessler opened up a big question for me about the 15 stakeholders. California is a big state, and I want to ask whether the stakeholders are representative of farm fields, Los Angeles, San Diego, Northern California, the different doctors who do the reports, and the PTPs in the rural areas. It would be nice to see representation there. It also opened up another question for me, on the original agenda, there was a report on access to medical treatment for injured workers, which is why I am here today, and it is not on the agenda. My question is why is that report not on the agenda today. It is a huge question when looking at access for injured workers, especially in rural areas.

Mr. Dworsky: It is a fair question about representativeness of stakeholders we spoke with, and, unfortunately, the time frame and the resources for this study were not scoped for a fully representative scientific survey of stakeholders. We did go over that in the report and described it as exploratory research. We did not have the level of funding or time to actively canvass a state as large and diverse as California, unfortunately. [Mr. Dworsky asked Denise Quigley whether she had anything else to add.]

Ms. Quigley: We were interested in talking to stakeholders to identify issues, which is a different aim than trying to come up with what the representative opinion of all stakeholders across California is. We were interested in discussing the operation of the program and have an understanding of the issues, exploring which issues are there. It is true that we also would have liked to have been able to have a representative sample, but that was not the scope of this study. But we did want to make sure that we heard from the stakeholders and that we had a Technical Advisory Panel as well to respond, and the same type of representative stakeholders are in their Technical Advisory Group (TAG). It served as a sounding board from those who are very interested in this issue.

**MINUTES OF CHSWC MEETING**  
April 5, 2018 Oakland, California

Chair Wei explained to Dr. Hewitt that the Access to Medical Treatment Study would be on the agenda at the next Commission meeting, which has not been completely established but should be in June of this year.

Commissioner Bloch: I appreciate the constraints of the report and not being able to interpret the Labor Code, which I also do not think is the job of the Commission but, rather, that of the Legislature. I think it is important for the public to know that there is a bill before the legislature right now authored by Assembly Member Tom Daly, AB-553, and I will read from the Legislative Counsel's Digest. "This bill would require the [Administrative Director of the DWC] to have the program distribute the \$120 million annually to eligible workers, as specified, and would require commencing with the end of the 2017 calendar year that any remaining program funds available, after the above-described supplemental payments are made, be distributed pro rata to those eligible workers subject to a \$25,000 limit per calendar year." There is more to the bill, but that that was the heart of the matter. For those interested in this question, I refer them to that bill. It is not for the Commission but for the elected representatives to decide. We do studies at the Commission that help the legislature inform what is the right policy; the excellent study that Mr. Dworsky did raises questions, and hopefully the legislature will take the study and the feedback from the Commission into consideration when it looks at bills like [AB-553].

*CHSWC Vote*

Chair Wei asked for a motion to post the report for feedback and comment and final posting in 30 days. Mr. Brady made the motion, and Mr. Bloch seconded the motion. Ms. Wei asked whether there was any discussion. Ms. Kessler said that she would like to see the feedback that comes in. Ms. Wei said that Commissioners would see the feedback and that it would probably also be posted on the website. Ms. Wei said that they would review the feedback for final deliberation and potential adoption at the next meeting in June. The motion passed unanimously.

**Executive Officer Report**  
**Eduardo Enz, CHSWC**

Mr. Enz thanked the Commission for the opportunity to present a brief on Commission staff activities. He said that, since the December 15 meeting, the staff has worked to implement Commission decisions and to fulfill requests.

The 2017 CHSWC Annual Report and the WOSHTEP Annual Report have both been finalized and posted on the website. The update on the frequency, severity, and economic consequences of the Musculoskeletal Injuries to Firefighter study will get underway later this month.

**CHSWC Study/Project Update**

The Janitorial Training Curriculum for Workers is in process and final lesson plans and video should be completed by this summer. The model-training curriculum for occupational safety and health training for child-care workers and employers is also underway, as is the project to develop the California Occupational Research Agenda.

**MINUTES OF CHSWC MEETING**

April 5, 2018 Oakland, California

**Legislative Request from Senator Ricardo Lara RE: SJDB Program**

The Commission received a legislative request from Senator Ricardo Lara to evaluate the SJDB program in light of allegations of fraud. Our DIR Research team is currently conducting this evaluation internally and will share findings and recommendations as soon as available.

**Decision**

Mr. Enz said that one decision needed to be considered [to post for feedback and comment and for final posting in 30 days the draft report titled "Evaluation of the Return-to-Work Fund in California's Workers' Compensation System," by Michael Dworsky and Denise Quigley at RAND], but it had already been taken care of, so his comments were concluded.

[Ms. Kessler briefly filled in for Ms. Wei during her temporary absence from the room.] Ms. Kessler asked whether the Commissioners had any comments on the report by Mr. Enz. There were no comments.

**Other Business**

Ms. Kessler asked whether any other business, proposals, questions, or comments remained before the Commission. There were none.

**Adjournment**

The meeting was adjourned at 12:12 p.m.

Approved:

  
\_\_\_\_\_  
Angie Wei, 2018 Chair

060718  
\_\_\_\_\_  
Date

Respectfully submitted:

  
\_\_\_\_\_  
Eduardo Enz, Executive Officer, CHSWC

06/07/18  
\_\_\_\_\_  
Date