California Commission on Health and Safety and Workers' Compensation

CHSWC 2011 Annual Report

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State of California
Labor and Workforce Development Agency

Department of Industrial Relations

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The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the health and safety and workers' compensation systems in California and makes recommendations to improve their operation.

Established in 1994, CHSWC has directed its efforts toward projects and studies to identify opportunities for improvement and to provide an empirical basis for recommendations and/or further investigations. CHSWC utilizes its own staff expertise combined with independent researchers with broad experience and highly respected qualifications.

At the request of the Executive Branch, the Legislature and the Commission, CHSWC conducts research, releases public reports, presents findings, and provides information on the health and safety and workers' compensation systems.

CHSWC activities involve the entire health, safety and workers' compensation community. Many individuals and organizations participate in CHSWC meetings and fact-finding roundtables and serve on advisory committees to assist CHSWC on projects and studies.

CHSWC projects address several major areas, including permanent disability (PD) ratings and related benefits, State Disability Insurance (SDI), return to work, carve-outs and medical fee schedules. Additional projects address benefits, medical costs and quality, fraud and abuse, streamlining of administrative functions, informational services to injured workers, alternative workers' compensation systems, and injury and illness prevention. CHSWC also continually examines the impact of workers' compensation reforms.

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

CHSWC engages in a number of studies and projects in partnership with state agencies, foundations, and the health and safety and workers' compensation community including: the Labor and Workforce Development Agency (LWDA); the Department of Industrial Relations (DIR); the Division of Workers' Compensation (DWC); the California Department of Insurance (CDI); the Fraud Assessment Commission (FAC); the Governor's Office of Homeland Security (OHS); the Bureau of Labor Statistics (BLS); the Department of Fair Employment and Housing (DFEH); the California HealthCare Foundation (CHCF); RAND; the National Academy of Social Insurance (NASI); and the International Association of Industrial Accident Boards and Commissions (IAIABC). CHSWC projects and studies are described in this report.

CHSWC
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 examining the health and safety and workers' compensation systems in California and with 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 disability providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various health and safety and workers' compensation 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 ensure objectivity and incorporate a balance of viewpoints and to produce the highest-quality analyses and evaluation.

CHSWC Members Representing Employers

Catherine Aguilar

Catherine (Cathy) Aguilar has been active in the workers' compensation industry for over 30 years, working her way up from the mail room to claims examiner, supervisor, manager, director and vice president of claims for a national third-party administrator (TPA). Ms. Aguilar is currently the Claims Manager for the California Self Insurers' Security Fund. Previously she worked for the San Francisco Unified School District, the San Diego County Schools JPA and Costco Wholesale as regional director for the East Coast workers' compensation program.

Over the years, she has taught various courses for the Insurance Education Association and presented at numerous conferences and seminars.

Appointed by: Governor

Sean McNally

Sean McNally is the vice president of Corporate and Government Affairs for Grimmway Farms in Bakersfield, California. He is certified by the State Bar of California as a specialist in workers' compensation law. He is a licensed general contractor and serves as a trustee for the Self Insurers' Security Fund. His community activities include serving on the Kern Adult Literacy Council Board of Directors as the president and as a member of the Board of Directors of the Golden Empire Gleaners and the Board of Trustees for Garces Memorial High School.

Mr. McNally is a graduate of the University of the Pacific McGeorge School of Law and was a partner at the law firm of Hanna, Brophy, MacLean, McAleer and Jensen. He graduated from the University of San Francisco with Bachelor of Arts degrees in English and Theology. Following that, he did graduate studies at Hebrew University in Jerusalem, Israel.

Appointed by: Governor

CHSWC Members Representing Employers

Kristen Schwenkmeyer

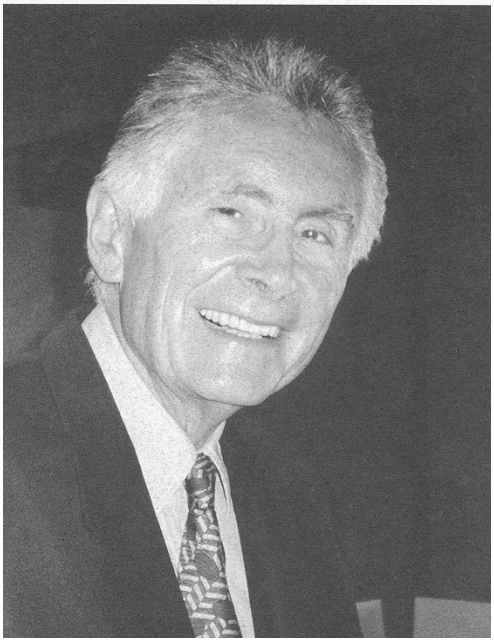
Kristen Schwenkmeyer is President of Gordon & Schwenkmeyer, Inc. (GSI), a telemarketing and fundraising firm that she founded with Mike Gordon in 1985. GSI has offices in Sacramento, San Diego and El Segundo, CA.

Previously, Ms. Schwenkmeyer served as staff aide to Supervisor Ralph Clark of the Orange County Board of Supervisors and Senator John Glenn in Washington, D.C.

Ms. Schwenkmeyer received a Bachelor of Arts degree in Political Science from the University of California, Santa Barbara.

Appointed by: Senate Rules Committee

Robert B. Steinberg



Robert B. Steinberg is a partner in the law offices of Rose, Klein & Marias and specializes in employee injury, third-party civil damage construction, product liability, asbestos and toxic exposure litigation. He is a fellow of the American College of Trial Lawyers (ACTL), a member of the Board of Governors of the Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and a trustee of the Asbestos Litigation Group (ALG). He is a past president of the California Trial Lawyers (CTLA) (1985) and a past trustee of the Los Angeles County Bar Association (1987). He is a past member of the Board of the Eagle-Picher and UNR Industries boards of directors and continues to serve as a Trustee advisor to the Manville, National Gypsum, Raytech, Eagle-Picher and UNR Industries asbestos victims trusts.

Mr. Steinberg received Law and Bachelor of Science degrees from the University of California, Los Angeles.

Appointed by: Speaker of the Assembly

CHSWC Members Representing Labor

Faith Culbreath

Faith Culbreath was asked in April 2009 by the Trustees of SEIU United Healthcare Workers West (UHW), a 150,000-member statewide local union, to head its External Affairs Department which includes building and promoting the Local's Political Power and Community Strength program. Ms. Culbreath has been President of Security Officers United in Los Angeles (SOULA), Local 2006, of the Service Employees International Union (SEIU) since 2007.

Previously, Ms. Culbreath was a Field Campaign Coordinator for the Property Services Division of SEIU and worked on various national and global campaigns. She also played a key role during the 2002 "Justice for Janitors" contract strike in Boston and was prominent in the development of the new SEIU Property and Service Local 3 in Ohio, Michigan, Pennsylvania and Indiana. She served dual roles as Secretary-Treasurer and Detroit City Director.

Appointed by: Speaker of the Assembly

Darrel "Shorty" Thacker

Darrel "Shorty" Thacker is the central district manager for the Northern California Carpenters' Regional Council. Mr. Thacker also served as the director of field support operations for the Bay Counties District Council of Carpenters and as the senior business representative of Local 22, Carpenters.

Mr. Thacker joined the Millwrights in 1973, where he worked in construction as a journeyman, foreman, general foreman and superintendent from 1973 to 1978. He also worked as a Millwright business agent from 1978 to 1983.

Following his service as a United States Marine in the Vietnam War, Mr. Thacker earned an Associate of Arts degree in Mathematics from Fresno City College in 1970.

Appointed by: Governor

CHSWC Members Representing Labor

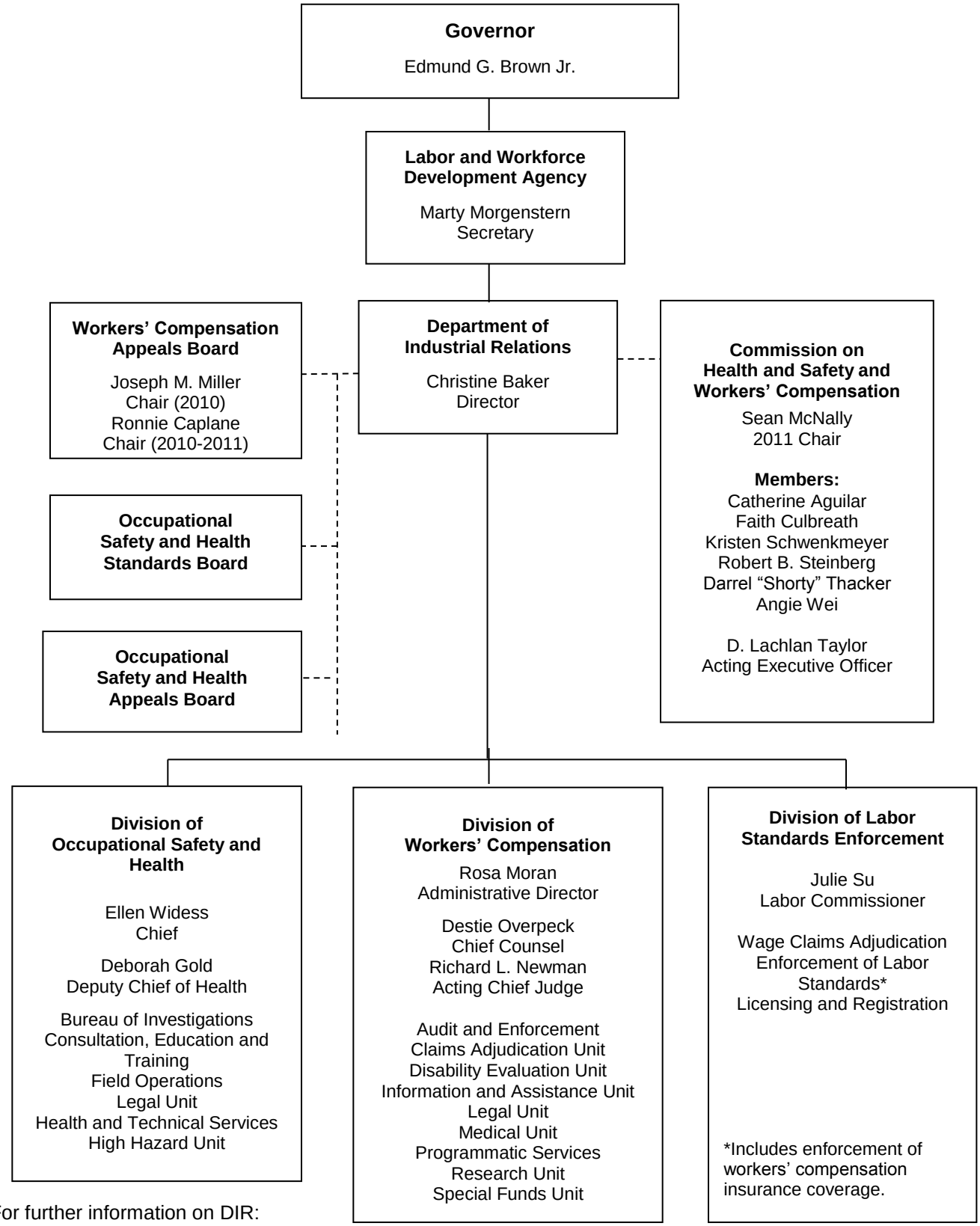
Angie Wei

Angie Wei is the legislative director of the California Labor Federation, the state AFL-CIO Federation. The state Federation represents 1,200 affiliated unions and over two million workers covered by collective bargaining agreements. Previously, Ms. Wei was a program associate for PolicyLine of Oakland, California, and advocated for the California Immigrant Welfare Collaborative, a coalition of four immigrant rights organizations that came together to respond to cuts in public benefits for immigrants as a result of the 1996 federal welfare reform law.

Ms. Wei holds a Bachelor of Arts degree in Political Science and Asian American Studies from the University of California, Berkeley, and a Master of Arts degree in Public Policy from the Kennedy School of Government at Harvard University.

Appointed by: Senate Rules Committee

State of California Health and Safety and Workers' Compensation Functions



For further information on DIR:
http://www.dir.ca.gov/org_chart/org_chart.pdf

CHSWC RECOMMENDATIONS

In the interest of California's workers and employers, the Commission on Health and Safety and Workers' Compensation (CHSWC) recommends ensuring the adequate and timely delivery of indemnity and medical benefits and eliminating unnecessary costs.

In addition, CHSWC strongly recommends that the State of California move toward developing an overall "culture of safety" in the workplace.

INDEMNITY BENEFITS

Permanent Disability

An increase in permanent disability (PD) compensation is expected for a number of reasons, including the fact that benefits were reduced more than anticipated at the time Senate Bill (SB) 899 was enacted, workers and their representatives have been advocating for a benefit increase, and employers are confronted with judicial interpretations permitting liberal interpretation of the AMA *Guides to the Evaluation of Permanent Impairment* and establishing parameters for rebuttal of the 2005 Permanent Disability Rating Schedule.

Research has demonstrated that benefits are not uniformly proportional to earnings losses either across the range of severity of disability ratings or across the range of pre-injury earnings. Benefits are disproportional to losses across the range of severity because benefits increase almost geometrically with increasing PD ratings, while average earnings losses increase in a more constant relation to increasing disability ratings. Benefits are also disproportional to losses across the range of pre-injury earnings because the weekly maximum payment (usually $230 per week, based on two-thirds of wages up to $345) is so low that it usually does not reflect differences in the dollar amounts of losses for workers who may have the same percentage loss of earnings but who have different pre-injury earnings.

The distribution of PD benefits would be more equitable if, when a PD benefit increase is adopted, the increase is directed primarily to the lower range of ratings and to workers whose pre-injury wages were more than $345 per week.

Recommendation

CHSWC recommends that PD compensation be increased, and at the same time, that legislation be enacted to improve the consistency of impairment ratings under the AMA *Guides* and to make the rating schedule conclusive for all or most cases. CHSWC recommends that when PD compensation is increased, the increase should be in the form of a higher maximum weekly rate, while the number of weeks of benefits for each percent of rated disability should be revised to make compensation more nearly proportional to the average losses associated with the PD rating.

RETURN TO WORK

The 2003 and 2004 reforms contained three major provisions aimed at improving return to work (RTW): tiered PD benefits; the supplemental job displacement benefit (SJDB); and the RTW Reimbursement Program for smaller employers. The RTW Reimbursement Program was not cost-effective, and the Legislature did not extend the program after December 31, 2009. The tiered PD and the SJDB programs are not well coordinated, and neither one is performing as originally intended. They may nevertheless serve a purpose, even if only as an indirect way to increase PD compensation until that issue is addressed directly.

RTW rates have improved from the low point reached in 2003. Empirical evidence cannot single out the cause of the improvement. Possible factors are changes to the California Fair Employment and Housing Act (FEHA) enacted in 2000, changes in workers' compensation medical treatment laws enacted in 2003, the repeal of vocational rehabilitation for injuries occurring after 2003, and changes in RTW incentives enacted in 2003 and 2004.

Recommendations

- Continue to promote a system that effectively and safely integrates injured workers back into the workplace at the earliest possible opportunity so that economic losses resulting from injuries may be reduced for both employers and employees. Coordinate workers' compensation with other programs that support RTW such as FEHA.
- Consider eliminating SJDB and tiered TD benefits; if these are retained, then coordinate the timelines for eligibility determinations and timing of notices
- Consider modifying SJDB and tiered PD eligibility to meet public policy goals in cases of seasonal and temporary employment, as well as general and special employment.
- Continue to support and further the discussion on the problems, trends and best practices of disability management.

MEDICAL ISSUES

Many reform provisions have already addressed medical and medical-legal issues. These included establishing medical networks, revising fee schedules, using medical treatment utilization guidelines, using a single Qualified Medical Evaluator (QME) or Agreed Medical Evaluator (AME) for medical-legal reports in each case, and requiring medical treatment to be provided while waiting for acceptance or rejection of a claim of occupational injury or illness. Despite those efforts, medical costs are again rising.

Medical Treatment Guidelines

The Administrative Director (AD) of the Division of Workers' Compensation (DWC) was required by statute enacted in 2003 to adopt a medical treatment utilization schedule (MTUS) in consultation with CHSWC. DWC is continuing to augment and update the MTUS.

Recommendations

- Use stakeholder discussions and research to identify reasons for deviations from the guidelines so that inappropriate deviations can be minimized.
- Continue to evaluate the effect of the MTUS and identify its gaps or weaknesses so that it may be appropriately augmented and updated.
- Examine quality-management tools that may enhance quality of care and avoid unnecessary care while reducing the need for medical review of individual treatment recommendations.

Managing Medical Quality and Costs

California historically had higher-than-average medical costs with poorer-than-average outcomes, leading to the conclusion that medical costs were unnecessarily high. This general conclusion was supported by numerous more specific analyses. The 2003 and 2004 reforms produced an immediate reduction in medical expenses, but expenses have bottomed out and are again rising, according to data from the Workers' Compensation Insurance Rating Bureau (WCIRB) and the California Workers' Compensation Institute (CWCI). Throughout these changes, there have been concerns about the quality of medical care being provided to California's injured workers, timely and expedient access to medical care, restraints on unnecessary care, and understanding of medical errors in the provision of care. A RAND study reported that only 55 percent of medical care provided is consistent with recommendations based on published

literature and opinions of experts. Studies have shown that the quality of medical care in the United States is not high and that reporting quality-of-care information, either back to the providers or to consumers, can motivate providers to improve.

According to WCIRB, medical costs have increased significantly. In its January 2010 pure premium filing, WCIRB notes that since the full implementation of reforms in 2005, the average cost of the medical losses per claim have increased at a rate of 15 percent per year. In its filing for January 2011, WCIRB reported that average medical severity increased by 6.1 percent in 2008-09, suggesting that the rate of growth has slowed.

Recommendations

- Conduct additional studies which to determine what is driving medical costs.
- The AD should continue the process of adopting a physician fee schedule based on the Resource Based Relative Value Scale (RBRVS). A goal should be to arrive at a single conversion factor after a reasonable transition period.
- The AD should continue the process of revising the fee schedule to eliminate the duplication of reimbursements for the cost of implantable spinal hardware that result from the existing pass-through of spinal hardware costs in addition to diagnostic related group (DRG)-based facility fees which already include consideration for such costs.
- The AD should review adopting a Medicare-based fee schedule for specialty hospitals. Modifications of the Medicare methodologies for the workers' compensation patient populations may be needed, particularly with respect to workers' compensation stays in rehabilitation and long-term care facilities.
- The AD should continue the process of revising the fee schedule for Ambulatory Surgery Centers (ASCs). Any allowance above 120 percent of the Medicare ASC fee should only be based on insufficient access to services demonstrated by access studies in accordance with Labor Code Section 5307.2 and not based on speculative arguments. The AD should adopt definitions of ASCs eligible for payment of facility fees to be more similar to the requirements of Medicare or other payors.
- Continue to evaluate costs, access and quality of care provided by medical provider networks (MPNs). Areas for consideration for improving the MPN process include:
    - Allow DWC to approve the medical provider entity instead of requiring each insurance carrier or self-insured employer to file an application to establish an MPN.
    - Provide increased monitoring of quality and access to medical care.
    - Implement an independent audit process to confirm representations made by MPN applicants.
    - Implement a periodic recertification process to assure continued compliance with requirements.
- To enable improved monitoring of MPN performance, amend the Workers' Compensation Information System (WCIS) reporting requirements to identify the MPN if treatment is furnished through an MPN.

Improving the Quality of the QME System

Existing law provides that medical issues of compensable injury, nature and extent of injury, capacity for RTW, permanent impairment, and apportionment are all addressed by medical-legal evaluations. Issues of appropriateness of particular medical treatments are addressed first by utilization review (UR), with recourse to medical-legal evaluation if the worker disputes the result of a UR. A medical-legal evaluation is performed by an Agreed Medical Evaluator (AME) if the worker is represented and the parties agree, otherwise by a Qualified Medical Evaluator (QME) selected from a panel of three assigned by DWC.

Problems exist due to delays in selecting evaluators, obtaining examinations, and producing the evaluation reports. Problems also exist with deficiencies in the content of reports that fail to comply with the legal standards or omit necessary components and thus necessitate supplemental reports. In addition, problems exist with the consistency of reports because the outcome of the evaluation is significantly influenced by the selection of the evaluating physician. All of these problems contribute to increased frictional costs and delays in resolving disputes and delivering benefits to injured workers.

Recommendation

- Provide continuing training, monitoring, and oversight of QMEs with the goals of obtaining complete reports and consistent evaluations in compliance with legal requirements.
- Seek ways to attract and retain physicians to serve as QMEs, particularly in specialties where the demand is greatest.
- Consider changing the way QMEs are selected.

REDUCTIONS IN ADMINISTRATIVE COSTS

Liens

The number of liens filed per year has dropped since the introduction of the Electronic Adjudication Management System (EAMS) in August 2008. It is growing as people become more familiar with the new filing procedures. The volume of liens overwhelms the court system and creates an environment where overbilling, underpayment, and all manner of bad faith conduct can thrive. Filing, processing, and adjudicating liens place an enormous burden on the already strained workers' compensation courts and an administrative burden on the parties. Courts are seeing backlogs both in the processing liens into the system and getting the disputes resolved.

Recommendations

- Make resources available to enforce existing penalties and incentives for appropriate payments.
- Modify existing statute to require a clear explanation of payment or nonpayment of medical bills.
- Enact a meaningful statute of limitations to bar stale lien claims.
- Enact a filing fee to discourage frivolous claims, assessable as a cost to discourage frivolous disputes.
- Establish an administrative process to resolve fee schedule disputes, subject to limited judicial review.

Additional recommendations and discussion may be found in the CHSWC report on liens: http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReport.pdf.

ANTI-FRAUD EFFORTS

Insurance fraud, including failure to carry workers' compensation insurance, is a growing problem in our society, representing over $15 billion in losses each year in California alone, according to the Department of Insurance (CDI) Fraud Task Force Report May 2008. Most people believe that insurance fraud is a victimless crime that does not affect them. In fact, it is a crime that costs lives and also funds criminal enterprises. Ultimately, fraud contributes to higher premium costs for everyone. Cutting the cost of fraud

makes economic sense for California. Despite this, fraud is elusive and increasingly difficult to detect as criminals become more sophisticated in their practices.

Ultimately, fraud must be prosecuted in the criminal justice system; however, there are many opportunities to detect potential fraud through various indicators. CHSWC participates in research and activities that identify and measure potential fraud by working closely with the Fraud Assessment Commission (FAC) and CDI to examine the extent of potential fraud in the workers' compensation system and to make recommendations.

Workers' Compensation Payroll Reporting by Employers

The cost of workers' compensation insurance premium is based on the amount of an employer's payroll. By misreporting payroll costs, some employers avoid the higher premiums they would incur with full reporting of payroll. Employers can also misreport total payroll or the number of workers in specific high-risk, high-premium occupation classifications by simply reporting them in lower-risk, lower-premium occupations. A 2009 follow-up study to CHSWC's 2007 study found that between $15 and $68 billion of payroll annually are under-reported. A related study on split class codes found that 25 percent to 30 percent of low-wage payroll is under-reported or misreported.

Recommendations

- Focus more FAC funding on premium fraud enforcement.
- Develop a more systematic approach to detecting premium fraud.

Accuracy of Workers' Compensation Insurance Coverage Information

Two previous CHSWC recommendations have been enacted to help enforce the requirement for all employers to secure the payment of compensation. Both programs require accurate data.

Pursuant to CHSWC recommendations, Senate Bill (SB) 869 was enacted in 2007, amending Labor Code Section 90.3 to establish a records matching program in the Division of Labor Standards Enforcement (DLSE) to identify employers who do not have a record of workers' compensation coverage. Initial reports from that program show considerable success in indentifying uninsured employers and targeting them for enforcement actions. There are a number of errors, however, where insured employers are mistakenly identified as having no record of coverage.

Pursuant to CHSWC recommendations, Assembly Bill (AB) 483 was enacted in 2009 to establish an Internet site where viewers can determine if an employer has insurance. One of the concerns about this proposal has been the possibility of an employer being mistakenly reported as uninsured.

To optimize both of these programs and to facilitate enforcement of the requirement for all employers to secure the payment of compensation, the reasons for missing or mismatched information should be examined and processes should be adopted to assure the timeliness and accuracy of coverage data.

Recommendation

CHSWC recommends continuing examination of data quality problems and improvement of the reporting of employers' coverage for workers' compensation.

Definition of First Aid

Injuries that do not require treatment beyond first aid do not necessitate an employer report of injury for worker's compensation or a Cal/OSHA log. The definitions of first aid for those two purposes are different, however, resulting in a degree of uncertainty about when a minor injury is reportable. Even criminal

evasion of workers' compensation obligations may hide behind that uncertainty. Employers have identified the conflicting definitions as a barrier to compliance, and prosecutors have identified the conflicting definitions as a barrier to prosecution of willful violations. The definition of first aid is only pertinent to reporting requirements, so a change in the definition would not change an injured workers' right to receive treatment.

Recommendation

CHSWC recommends that the definition of first aid for purposes of workers' compensation reporting be amended to align with the definition used for Cal/OSHA purposes.

INFORMATION FOR INJURED WORKERS AND EMPLOYERS

Injured workers, employers and the public need up-to-date and easily accessible information about the workers' compensation system.

Recommendations

- Update informational publications as needed.
- Make information available in languages in addition to English and Spanish, such as Chinese, Vietnamese, Tagalog and Korean.

CALIFORNIA INSURANCE INDUSTRY

Workers' compensation premiums fell after the early 1990s reforms, only to rise sharply, almost tripling by the second half of 2003, before dropping back by early 2009 to match the 1999 low. As prices were climbing, however, more than two dozen insurers became insolvent. Assembly Bill (AB) 316, enacted in 2007, mandates CHSWC to conduct a study of the causes of those insolvencies. In June 2008, CHSWC awarded a contract to RAND to conduct the study. The final report of the study was published in 2009.

Recommendations

Findings from the CHSWC/RAND study identified six key factors that contributed to the insolvencies and volatility over the past 15 years:

- Inaccurate projections of claim costs.
- Pricing below projected costs.
- Reinsurance contracts that gave insurers and reinsurers insufficient stake in the profitability of the policies they wrote.
- Managing general agents who had little financial interest in the ultimate profitability of policies.
- Under-reserving for claim costs by insurers.
- Insurer surplus and capital that were inadequate to provide a cushion against adverse events.

CHSWC considers the first key factor, inaccurate projections of claims costs, to be the most important, and the one which remains a concern whether in a hard or soft market. The other factors to a large extent were unique to the price competitive environment at the time and the new, uncharted or inexperienced

environment surrounding the introduction of the open rating system in California.

Related to inaccurate projections of claim costs, RAND identified a problem at the Workers' Compensation Insurance Rating Bureau (WCIRB) in that it does not have direct access to transaction-level data on claims payments in order to better detect and then project more accurate claim costs. According to RAND, WCIRB is developing plans to collect transaction-level data directly from insurers in the future.

CHSWC supports a recommendation that helps WCIRB collect and analyze transaction-level data from insurers.

RAND made six recommendations aimed at improving the reliability of projecting costs which are noted below. The first three recommendations aim to make the system more predictable and the next three help WCIRB, CDI and insurers do a better job of predicting costs:

- Increase clarity of legislative intent.
- Expeditiously release guidance and regulation on issues when there are important disagreements among stakeholders.
- Review the Workers' Compensation Appeals Board (WCAB) system.
- Explore the most appropriate way for WCIRB to take advantage of transaction-level data.
- Increase the comprehensiveness of data provided to WCIRB.
- Fast-track analyses of the impact of important legislative and judicial opinions.

CHSWC acknowledges that many of these recommendations highlight the importance of the insurance regulators to do more, but they also highlight the responsibility of the Department of Industrial Relations (DIR) and the Legislature to help create an environment where WCIRB and CDI are not engaged in a guessing game as to the real and potential cost drivers in the system, as well as when those cost drivers will actually take effect.

Overall, CHSWC supports the four themes underlying the RAND recommendations, those of predictability, transparency, incentives, and CDI oversight.

UNINSURED EMPLOYERS BENEFITS TRUST FUND

All employers in California are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured.

Since not all employers comply with the law to obtain workers' compensation coverage for their employees, the Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. As of 2004, losses previously incurred by the State's General Fund are now incurred by the UEBTF and are now funded by a surcharge on all insured employers and self-insured employers, by penalties to non-compliant employers, and by recoveries from uninsured employers for actual worker injuries.

The workers' compensation community has expressed concern with several aspects of UEBTF. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers. Workers, along with the attorneys and medical providers to whom they turn for help, are concerned about the difficulties of obtaining benefits from UEBTF. Chief among those difficulties is

the need to accurately identify the employer and serve the employer as a precondition to obtaining benefits from UEBTF.

Recommendations

- Continue to expand the pilot project conducted by the Salinas Information & Assistance (I&A) office to assist injured workers in identifying insurers or identifying and serving uninsured employers. The project has already expanded to the Anaheim I&A office, and the experience of these two offices may inform further expansion statewide.
- Encourage reporting of suspected illegally uninsured employers:
    - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, encourage medical providers to report suspected uninsured employers to CDI on the FD-1 fraud form.
    - Revise the FD-1 form to make it more suitable for reporting uninsured employers and employer or insurer fraud, not just claimant fraud.
    - Develop a standard form and a hotline for whistleblowers to report to Division of Labor Standards Enforcement (DLSE) employers who are uninsured or committing other labor law violations.
- Improve reporting. Continue to improve the data matching program authorized by SB 869 to systematically identify unlawfully insured employers and more clearly report the results of that program annually.

WORKERS' COMPENSATION ADMINISTRATION

DWC administers the workers' compensation system in California. It is responsible for adopting regulations pursuant to delegations of legislative power. DWC is also responsible for enforcement, adjudication and data collection. CHSWC has collaborated with DWC on numerous studies and projects. To further DWC's mission to minimize the adverse impact of work-related injuries on California employees and employers, CHSWC recommends strengthening and streamlining DWC's oversight role.

Recommendations

- DWC should resume publishing the report on the promptness of first payment. This was a simple way to motivate claims administrators to improve their compliance with legal requirements. If the confidentiality of individually identifiable information (defined by Labor Code Section 138.7 to include information identifiable to an individual insurance company or employer) is an obstacle to the publication of this report, then the Legislature should enact an exception to authorize the publication of the promptness of payment report.
- DWC should implement expeditiously the following regulations to:
    - Update medical cost reporting.
    - Implement electronic billing.
    - Update coding for doctors' services to the codes in Medicare's RBRVS system.
    - Adopt regulations to implement pharmacy networks pursuant to Labor Code Section 4600.2.
- Conduct a review of WCIS to ensure that it captures the relevant data elements for measurement and analysis of the California workers' compensation system. Confining the elements to the International Association of Industrial Accident Boards and Commissions (IAIABC) specification may be limiting the ability to analyze unique features of the California system.
- Develop and adopt penalty regulations for failure to report data to WCIS per SB 826.

- The Legislature could enact the statutory amendments necessary for the AD to carry out a simplification of benefit notices, as described in the July 2010 CHSWC report on benefit notices and recommendations.
- Review EAMS performance and proceed with revisions as necessary. One example known to CHSWC is the inability of EAMS to recognize amended liens, forcing all liens to be entered as original even if they are amendments.
- Enforce compliance with EAMS filing requirements. One example known to CHSWC is the continued filing of liens on incompatible forms, which defeats the automated data acquisition functionality of EAMS.

HEALTH AND SAFETY

CHSWC recognizes that injury and illness prevention is the best way to preserve workers' earnings and to limit increases in workers' compensation costs to employers.

One of the most proactive efforts undertaken by CHSWC is the Worker Occupational Safety and Health Training and Education Program (WOSHTEP) which trains and educates workers, including young workers, in the fields and in a wide range of workplaces on proven injury and illness prevention measures. WOSHTEP has recently expanded its presence into Central California and is a statewide program that deserves continued support by employers and the health and safety and workers' compensation community.

CHSWC also recognizes that there will always be more that can be done to improve the injury and illness prevention culture and understand safety and health behaviors, especially in traditionally or emerging high-risk environments/occupations. As a result of CHSWC convening health and safety experts in 2008 to develop a safety and health research agenda, California is one step closer to understanding obstacles and opportunities in improved safety and health.

In 2012, the following projects and studies by leading researchers in the country will be completed:

- The Impact of Worker's Compensation Experience Modification Rating (Ex-mod) and Firm Age on Safety Behavior and Risk.
- Evaluation of the Effectiveness of California's Injury and Illness Prevention Program (IIPP) and Compliance Officers' Inspections.
- Experimental Evidence on the Causal Effect of Cal/OSHA Inspections on Workplace Employees and Employers.

CHSWC expects that the results of these projects and studies will yield important recommendations which may be adopted in full or in part to inform future research and action, leading to policy or administrative change to improve the health and safety and workers' compensation systems in California.

INTEGRATION OF WORKERS' COMPENSATION MEDICAL CARE WITH OTHER SYSTEMS

Group health costs have been rising much more quickly than inflation and wages. Worker's compensation medical costs have been rising even more quickly. These costs create financial challenges for employers, especially those in industries with already high workers' compensation costs. Furthermore, group health care and workers' compensation medical care are typically delivered through separate provider systems, resulting in unnecessary, duplicative and contraindicated treatment and inefficient administration.

Suggestions have been made to integrate workers' compensation medical care with the general medical care provided to patients by group health insurers in order to improve the quality and coordination of care,

lower overall medical expenditure, reduce administrative costs, and derive other efficiencies in care. Research also supports the contention that an integrated 24-hour care system could potentially provide medical cost savings, as well as shorten the duration of disability for workers.

Recommendations

- Evaluate the administrative and overhead cost of delivering occupational medical care under workers' compensation insurance.
- Disseminate the results of the evaluation and the opportunities and challenges of implementing an integrated occupational and non-occupational medical treatment and insurance product.
- Develop and provide specific details and resources on integrated care for unions and employers interested in carve-out programs.
- Evaluate the impact of MediCare's implementation of its secondary payor rights with regard to settlements of workers' compensation claims, and examine alternative ways to coordinate benefits between the two systems.

SPECIAL REPORT: 2011 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

This Special Report outlines the 2011 legislation and regulations on health and safety and workers' compensation.

HEALTH AND SAFETY

Health and Safety Legislation

The following describes the health and safety bill that was signed into law in 2011, as reported on the website of the Legislative Counsel of California at www.leginfo.ca.gov. To research legislation enacted into law in previous years, please consult prior year CHSWC annual reports which are available online at http://www.dir.ca.gov/chswc/AnnualReportpage1.html

AB 300 – Assembly Member Ma
Repeals and adds Chapter 7 (commencing with Section 119300) of Part 15 of Division 104 of the Health and Safety Code, relating to body art.
Safe Body Art Act.
Status: Enrolled 9/13/11 and Chaptered 10/09/11.

Under existing law, every person engaged in the business of tattooing, body piercing, or permanent cosmetics is required to register with the county in which that business is conducted, obtain a copy of the county's sterilization, sanitation, and safety standards, as established by the California Conference of Local Health Officers and distributed by the State Department of Public Health, as specified, and pay a one-time registration fee of $25.

Existing law allows the county to charge an additional fee, if necessary, to cover the cost of registration and inspection, and allows a county to adopt regulations that do not conflict with, or are more comprehensive than, standards adopted by the department.

Under existing law, a person who fails to register or who violates the sterilization, sanitation, and safety standards is liable for a civil penalty of up to $500, to be collected in an action brought by the prosecuting attorney of the county or city and county in which the violation occurred.

This bill would, as of July 1, 2012, repeal these provisions and, instead, enact the Safe Body Art Act. The act would prohibit a person from performing body art, as defined, without registering annually with the local enforcement agency. The bill would require practitioners to comply with specified requirements, including, among other things, client information and questionnaires, vaccination, bloodborne pathogen training, and sanitation. The bill would also require the owner of a body art facility, as defined, to obtain and annually renew a health permit from the local enforcement agency, as specified, and to maintain the body art facility in a specified manner.

The bill would authorize the local enforcement agency to charge a one-time facility notification fee in an amount between $25 and $45, but not in excess of the amount required to cover the actual costs of administering and enforcing the program. The bill would authorize a county, after December 31, 2015, to charge a different fee, established by local ordinance, so long as an increased fee amount is necessary to cover the actual costs of administering and enforcing the provisions.

This bill would regulate the performance of body art in vehicles, temporary booths, and at body art events. The bill would require a person sponsoring a body art event to obtain a permit and fulfill specified requirements and would authorize a local enforcement agency to establish reasonable regulatory fees,

including, but not limited to, a fee for body art events in an amount not to exceed, but sufficient to cover, the costs of enforcement.

The bill would authorize specified inspection by an enforcement officer, and would provide for the suspension or revocation of a certificate of registration or a health permit in specified circumstances. The bill would make performing body art without being registered, operation of a body art facility without a health permit, or operation of a temporary body art event without a permit a misdemeanor and would authorize the local enforcement agency to assess an administrative penalty, in an amount not less than $25 and not more than $1,000, for violating a provision of the bill. The bill would also authorize the local enforcement agency, in addition to these penalties, to impose a penalty of up to three times the cost of the registration or permit on a practitioner, owner of a body art facility, or sponsor of a temporary body art event who fails to obtain needed permits.

This bill would authorize a city, county, or city and county to adopt regulations or ordinances that do not conflict with, or are more stringent than, the provisions of the bill as those provisions relate to body art. Because this bill would place the inspection and enforcement requirements on local governments and because it creates a new crime, it would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for specified reasons.

AB 1136 – Assembly Member Swanson
Add Section 6403.5 to the Labor Code, relating to employment safety.
Employment safety: health facilities.
Status: Enrolled 9/19/11 and Chaptered 10/07/11.

Existing law regulates the operation of health facilities.

Existing law, the California Occupational Safety and Health Act of 1973, establishes certain safety and other responsibilities of employers and employees, including the requirement that employers provide safety devices and safeguards reasonably necessary to render the employment safe. Willful or repeated violations are a crime.

This bill would make findings and declarations concerning the lifting, repositioning, and transfer of patients in acute care hospitals and resulting injuries to hospital personnel.

This bill would amend the California Occupational Safety and Health Act of 1973 to require an employer to maintain a safe patient handling policy, as defined, for patient care units, and to provide trained lift teams, as defined, or staff trained in safe lifting techniques in each general acute care hospital, except for specified hospitals. The safe patient handling policy would require the replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices, or lift teams, as specified. As part of the injury and illness prevention programs required by existing regulations, employers would be required to adopt a patient protection and health care worker back and musculoskeletal injury prevention plan, which shall include a safe patient handling policy component, as specified, to protect patients and health care workers, as defined, in health care facilities. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Health and Safety Regulations

The regulatory activities of DOSH and the Occupational Safety and Health Standards Board (OSHSB) are outlined below. Formal rulemaking is preceded by a notice, the release of a draft rule, and an announcement for a public hearing. This update covers only recent administrative regulations.

Proposed DOSH regulations can be found online at:
http://www.dir.ca.gov/dosh/doshreg/mainregs.html

Regulations in Title 8 of the California Code of Regulations (CCR) can be found online at:
http://www.dir.ca.gov/samples/search/query.htm.

In 2010, the Occupational Safety & Health Standards Board (OSHSB) launched the Title 8 index at:
http://www.dir.ca.gov/title8/index/t8index.html

Occupational Safety and Health Standards Board approved standards are at:
http://www.dir.ca.gov/OSHSB/apprvd.html

The latest formal OSHSB rulemaking updates are available at:
http://www.dir.ca.gov/OSHSB/proposedregulations.html

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
Labor Code Section 142.3 **Cranes and Derricks**	**Status: Regulations completed. Filed with Secretary of State July 7, 2011. Effective July 7, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4* *Article 15, Sections 1610 through 1619* *Article 28, Section 1694* ***ELECTRICAL SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 5* *Group 2, High-Voltage Electrical Safety Orders* *Article 36, Section 2940* ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 153* *Section 6060* *Group 13* Related to moving standards for cranes and derricks. The new promulgation also addresses advances in the design of cranes and derricks, related hazards and employee qualifications necessary for safe operation. http://www.dir.ca.gov/OSHSB/CDAC.html
Labor Code Section 142.3 **Portable Ladders**	**Status: Regulations completed. Filed with Secretary of State December 8, 2010. Effective January 7, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4, Article 22* *Section 1648; and Article 25* *Sections 1675 and 1678* ***GENDERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 4* *Sections 3276, 3277, 3278, 3279, and 3280;* *Article 5, Section 3287; and Article 11, Section 3413* All ladders used in connection with ladder jack scaffolds shall be heavy-duty Type I, IA, or IAA duty rated ladders and shall be designed and constructed in accordance with the General Industry Safety Orders, Sections 3278 and 3279 3276(c). Job-built ladders shall not be used for this purpose. http://www.dir.ca.gov/OSHSB/Portable_Ladders.html
Labor Code Section 142.3 **Maximum Allowable Load**	**Status: Regulations completed. Filed with Secretary of State December 29, 2010. Effective January 28, 2011.**

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
	CONSTRUCTION SAFETY ORDERS *Division 1, Chapter 4, Subchapter 4, Article 29, Section 1709* No building, structure, or any temporary support or scaffolding to be subjected to any load beyond its design load strength, unless the employer determines, based on information received from a qualified person who is experienced in structural design, that the structure or portion of the structure is capable of safely supporting the load. http://www.dir.ca.gov/OSHSB/Max_Load.html
Labor Code Section 142.3 **Definitions of "Manifold" and "Header"**	**Status: Regulations completed. Filed with Secretary of State December 9, 2010. Effective January 8, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4, Article 32* *Section 1742* Clarifies the meaning of manifold and headers as part of hoses and connections related to hazards of ignition, fire and explosion. http://www.dir.ca.gov/OSHSB/Manifold.html
Labor Code Section 142.3 **Underground Vaults--Headroom Clearance**	**Status: Regulations completed. Filed with Secretary of State December 9, 2010. Effective January 8, 2011.** ***HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 5, Article 17* *Section 2813* Defines manholes and minimum dimensions and clearances. http://www.dir.ca.gov/OSHSB/Underground_Vaults.html
Labor Code Section 142.3 **Standard Guardrails**	**Status: Regulations completed. Filed with Secretary of State April 26, 2011. Effective May 26, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 2* *Section 3209* Specifies and refines guardrail material and dimensions. http://www.dir.ca.gov/OSHSB/Guardrails.html

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
Labor Code Section 142.3 **Machinery and Equipment**	**Status: Regulations completed. Filed with Secretary of State March 7, 2011. Effective April 6, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 7* *Section 3328* Refines the requirement that machinary and equipment will not create hazards. http://www.dir.ca.gov/OSHSB/Machinery_and_Equipment.html
Labor Code Section 142.3 **Personal Protective Devices--Hazard Assessment and Equipment Selection (Horcher)**	**Status: Regulations completed. Filed with Secretary of State April 13, 2011. Effective April 13, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 10* *Section 3380* Specifies and refines requirements of Personal Protective Devices, using Federal standard, and excluding mining and construction industries. http://www.dir.ca.gov/OSHSB/PPD.html
Labor Code Section 142.3 **Elevating Employees with Lift Trucks**	**Status: Regulations completed. Filed with Secretary of State May 3, 2011. Effective June 2, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 25* *Section 3657* Specifies type of equipment to be used and manner in which to elevate employees with lift trucks. http://www.dir.ca.gov/OSHSB/Elevating_Employees.html
Labor Code Section 142.3 **Firing of Explosive Materials (Blasting Operations)**	**Status: Regulations completed. Filed with Secretary of State February 1, 2011. Effective March 3, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 116* *Section 5291.* Specifies and refines warning signal/procedure and sets forth behaviors around the blast area.

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
	http://www.dir.ca.gov/OSHSB/Blasting_Operations.html
Labor Code Sections 60.5 and 6308 **Tramway Fee Increase**	**Status: Public Hearing on April 14, 2011. Filed with OAL 11/9/11.** ***CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH REGULATIONS-CAL/OSHA*** *Title 8 Division 1, Chapter 3.2, Subchapter 2 Article 8* *Section 343* Increases fees for different tramway inspections. http://www.dir.ca.gov/DOSH/DoshReg/TramwayFeeIncrease.html
Labor Code Sections 60.5 and 6308 **Registration – Asbestos – Related Work**	**Status: Regulations completed. Adopted May 20, 2011. Effective June 19, 2011.** ***CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH REGULATIONS-CAL/OSHA*** *Title 8 Division 2, Chapter 3.2,Article 2.5* *Sections 341.13, 341.14, 341.15, 341.16, and 341.17* Updates asbestos registration rules, certification of asbestos consultants and approval of courses and course providers. http://www.dir.ca.gov/DOSH/DoshReg/AsbestosTraining.html
Labor Code Section 142.3 **Vehicle Exhaust Retrofits**	**Status: Public Hearing February 17, 2011. Written comments on further modifications due November 21, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4* *Article 2, Section 1504* *Article 10, Section 1591, New Appendix A* *Article 11, Section 1597* ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7* *Article 25, Section 3363* *Article 93, New Section 4925.1* ***MINE SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 17, Article 17* *Section 7016* Specifies vehicle exhaust retrofits and related driver safety and visibility issues. http://www.dir.ca.gov/OSHSB/Diesel_Retrofits.html

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
Labor Code Section 142.3 **Work Over or Near Water**	**Status: Public hearing May 19, 2011. Adopted June 16, 2011. Effective September 4, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4, Article 2, Section 1504* *Article 12, Section 1600* *Article 13, Sections 1602-1603.1* *Specifies definitions of ladders and their use and safe access on barges and wharves, related first aid specifications.* http://www.dir.ca.gov/OSHSB/Work_over_Water.html
Labor Code Section 142.3 **Definition of Certified Safety Professional (CSP)**	**Status: Public hearing May 19, 2011. Adopted July 21, 2011. Effective September 28, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4, Article 2* *Section 1504* ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 1* *Section 3207* Specfies an updated definition of Certifed Safety Professional (CSP) http://www.dir.ca.gov/OSHSB/CSP.html
Labor Code Section 142.3 **First Aid for Electrical Workers (Horcher)**	**Status: Public hearing August 18, 2011. Adopted September 15, 2011. Effective October 27, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4, Article 3* *Section 1512* ***ELECTRICAL SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 5* *Group 1, Section 2320.10 (Low-Voltage Electrical Safety Orders)* *Group 2, Section 2940.10 (High-Voltage Electrical Safety Orders)* Specifies Medical Services and First Aid. http://www.dir.ca.gov/OSHSB/ESO_First_Aid.html
Labor Code Section 142.3	**Status: Public hearing August 18, 2011.Second 15-day Notice comments due November 14, 2011.**

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
Ventilation Inside Shafts, Culverts, and Pipelines	***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4* *Article 4, Section 1533* *Article 6, Section 1541, Section 1512* ***TUNNEL SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 20, Article 1* *Section 8403* Specifies ventiliation for internal combustion engines in shafts and pipelines. http://www.dir.ca.gov/OSHSB/Ventilation.html
Labor Code Section 142.3 **Hazardous Liquids**	**Status: Public hearing June 16,2011. Adopted July 21, 2011. Effective September 9, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 7* *Sections 3302 and 3308* Specifies guarding against hazardous liquids and contact with skin. http://www.dir.ca.gov/OSHSB/Hazardous_Liquids.html
Labor Code Section 142.3 **Employer Duty to Pay for Personal Safety Devices and Safeguards**	**Status: Public hearing January 20, 2011. Terminated.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 10* *New Section 3380.1* Specifies required PPE and exceptions. http://www.dir.ca.gov/OSHSB/Duty_to_Pay.html
Labor Code Section 142.3 **Chain or Wire Rope Access Equipment (Jacob's Ladders)**	**Status: Public hearing April 21, 2011. Adopted June 16, 2011. Effective August 27, 2011.** ***PETROLEUM SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 15* *Article 2, Section 6755* *Article 8, New Section 6799.1* Defines and specifies use of such chain or wire rope access ladders. http://www.dir.ca.gov/OSHSB/Jacob%27s_Ladders.html

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
Labor Code Section 142.3 **General Conditions in Shipyard Employment, Federal Final Rule (Horcher)**	**Status: Public Hearing September 15, 2011. Adopted October 20, 2011.** ***SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 18* *Articles 1, 3, 4, 6, and 8* Specifies availability of First Aid, lockout requirements, and definitions related to ships and shipyards. http://www.dir.ca.gov/OSHSB/Shipyard_Employment.html
Labor Code Section 142.3 **Fixed Ladders and Steps for Telecommunication Towers and Poles**	**Status: Public Hearing June 16, 2011. Adopted July 21, 2011. Effective October 6, 2011.** ***TELECOMMUNICATION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 15, Article 1* *Section 8608* Defines and specifies steps on telecommunication poles. http://www.dir.ca.gov/OSHSB/Telecom_Ladders.html
Labor Code 142.3 **Single-Rail Ladders**	**Status: Public Hearing December 15, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 4* *Sections 3276 and 3278* Defines single-rail ladder. http://www.dir.ca.gov/oshsb/Single_Rail_Ladder.html
Labor Code 142.3 **Helicopter Fueling**	**Status: Public Hearing December 15, 2011.** ***CONSTRUCTION SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 4, Article 35* *Section 1905* Eliminates grounding requirement for helicopter fueling. http://www.dir.ca.gov/oshsb/Helicopter_Fueling.html

2011 OSHSB and DOSH Regulations	Status of Regulations (as of November 17, 2011)
Labor Code 142.3 **Use of Portable Step Ladders**	**Status: Public Hearing October 20, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7* *Article 4, Section 3276* *Article 5, Section 3287* Proposes rules for safe ladder use and labeling. http://www.dir.ca.gov/oshsb/Step_Ladders.html
Labor Code 142.3 **Portable Ladders—Frequency of Inspections**	**Status: Public Hearing October 20, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 4* *Section 3276* Requires that portable ladder inspections be conducted at least monthly. http://www.dir.ca.gov/oshsb/Portable_Ladder_Inspections.html
Labor Code 142.3 **Definition of General Purpose Die**	**Status: Public Hearing October 20, 2011.** ***GENERAL INDUSTRY SAFETY ORDERS*** *Division 1, Chapter 4, Subchapter 7, Article 54* *Section 4188* Defines the term Press Brake Die, General Purpose. http://www.dir.ca.gov/oshsb/GP_Die.html

WORKERS' COMPENSATION

Workers' Compensation Legislation

The following describes the workers' compensation bills that were signed into law in 2011, as reported on the website of the Legislative Counsel of California at www.leginfo.ca.gov. To research legislation enacted into law in previous years, please consult prior year CHSWC annual reports which are available online at http://www.dir.ca.gov/chswc/AnnualReportpage1.html.

AB 55 - Assembly Member Gatto
Amends Section 679 of the Unemployment Insurance Code, relating to unemployment insurance.
Unemployment compensation: employer: motion picture industry.
Status: Enrolled 7/25/11 and Chaptered 8/3/11

Existing unemployment insurance law requires any employing unit that is a motion picture payroll services company, as defined, to be treated as an employer of a motion picture production worker, as defined, and to file a statement of intent with the Employment Development Department. Existing law requires any employment unit operating as a motion picture payroll services company that quits business to file with the director a final return and report of wages, as provided, and to notify the motion picture production companies and allied motion picture services of its intent to quit business, as provided. Existing law requires the employing unit's status to be applied to its affiliated entities, as defined. Existing law requires the director to notify an entity, as provided, that does not satisfy the requirements of a motion picture payroll services company, as provided, of the facts and circumstances upon which the determination was made. Existing law authorizes the department to make a specified report to the Legislature. Existing law repeals these provisions on January 1, 2012.

This bill would delete the authorization of the department to make the report and the January 1, 2012 repeal date.

AB 228 - Assembly Member Fuentes
Amends Section 11780.5 of the Insurance Code, relating to the State Compensation Insurance Fund.
State Compensation Insurance Fund: out-of-state risks.
Status: Enrolled 9/21/11 and Chaptered 10/9/11

Existing law creates the State Compensation Insurance Fund administered by a board of directors for the purpose of transacting workers' compensation insurance, insurance against the expense of defending any suit for serious and willful misconduct against an employer or his or her agent, and insurance for employees and other persons for the compensation fixed by the workers' compensation laws for employees and their dependents. Existing law authorizes the fund to insure a California employer against the employer's liability for workers' compensation benefits, under the law of any other state, for California employees temporarily working outside of California on a specific assignment if the fund insures the employer's other employees who work within California.

This bill would expand that authorization so that the fund would be authorized to insure a qualified employer whose principal place of business is in California against the employer's liability for workers' compensation benefits, under the law of any other state, if the fund insured the employees who work within California, as specified. The bill would require the Department of Insurance, on or before March 1, 2015, to report to the Secretary of the Senate and the Chief Clerk of the Assembly regarding the experience of the fund in engaging in these transactions and make recommendations, as provided, and to post the report on the department's Internet Web site. The bill would prohibit the fund from initiating paid advertising or soliciting sponsorship of advertising campaigns to market or promote to prospective insureds the ability to insure qualified employers under the law of any other state and would make specified provisions inoperative on December 31, 2016.

AB 335 - Assembly Member Solario
Amends Sections 138.4, 3550, 4060, 4061, 4658.5, and 5401 of the Labor Code, relating to workers' compensation.
Workers' compensation: notices.
Status: Enrolled 9/20/11 and Chaptered 10/7/11

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law establishes, in the Department of Industrial Relations, the Commission on Health and Safety and Workers' Compensation. Existing law requires that specified notices be provided to injured employees and prescribes the contents of notices that are required to be posted, given to, or mailed to an employee. Existing law provides for specified procedures to be used in notifying employees regarding benefits and required actions in pursuing a workers' compensation claim.

This bill would require the administrative director, in consultation with the commission, to prescribe reasonable rules and regulations for serving certain notices on an employee. This bill would require the administrative director, in consultation with the commission, to develop, make fully accessible on the department's Internet Web site, and make available at district offices informational material written in plain language that describes the overall workers' compensation claims process. This bill would require each notice to be written in plain language and to reference the informational material to enable employees to understand the context of the notices. This bill would modify provisions required to be in, and procedures for, specified notices, and would delete a requirement for notice by certified mail, and would make conforming changes.

AB 378 - Assembly Member Solorio
Amends Sections 139.3, 139.31, and 5307.1 of the Labor Code, relating to workers' compensation.
Workers' compensation: pharmacy products.
Status: Enrolled 9/20/11 and Chaptered 10/7/11

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment.

Existing law provides that it is unlawful for a physician to refer a person for specified medical goods or services, whether for treatment or medical-legal purposes, if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral. A violation of this provision is a misdemeanor.

This bill would add pharmacy goods, as defined, to the list of medical goods or services for which it is unlawful for a physician to refer a person under this provision, except in prescribed circumstances. By creating a new crime, this bill would impose a state-mandated local program.

Existing law requires the administrative director, after public hearings, to adopt and revise periodically an official medical fee schedule that establishes reasonable maximum fees paid for medical services, other than physician services, and for other prescribed goods and services, in accordance with specified requirements. Under existing law, prior to the adoption by the administrative director of a medical fee schedule for any treatment, facility use, product, or service not covered by a Medicare payment system, the maximum reasonable fee paid cannot exceed the fee specified in the official medical fee schedule in effect on December 31, 2003. Existing law also provides that for pharmacy services and drugs not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees are 100% of fees prescribed in the relevant Medi-Cal payment system.

This bill would prohibit the maximum reasonable fees paid for pharmacy services and drugs from including specified reductions in the relevant Medi-Cal payment system.

This bill would require any compounded drug product, as defined, to be billed by the compounding pharmacy or dispensing physician at the ingredient level, as prescribed, and in accordance with regulations adopted by the California State Board of Pharmacy. This bill would set specified maximum reimbursement for a dangerous drug, dangerous device, or other pharmacy goods, dispensed by a physician, and would define related terms.

This bill would prohibit a provision concerning physician-dispensed pharmacy goods from being superseded by any provision of the official medical fee schedule adopted by the administrative director unless the official medical fee schedule provision is expressly applicable. This bill would also require the provision adopted by the administrative director to govern if a provision concerning physician-dispensed pharmacy goods is inconsistent with the prescribed official medical fee schedule.

This bill would also delete obsolete provisions relating to the adoption of a medical fee schedule for patient facility fees for burn cases.

This bill would incorporate additional changes in Section 5307.1 of the Labor Code proposed by Senate Bill 923, which would become operative only if Senate Bill 923 and this bill are both chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

AB 397 - Assembly Member Monning
Adds Section 7125.5 to the Business and Professions Code, relating to workers' compensation insurance.
Workers' compensation insurance: contractors.
Status: Enrolled 8/31/11 and Chaptered 10/7/11

Existing law requires private employers to secure the payment of compensation by obtaining and maintaining workers' compensation insurance or to self-insure as an individual employer or as one employer in a group of employers. The Contractors' State License Law requires every licensed contractor to have on file at all times with the Contractors' State License Board a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, or a statement certifying that he or she has no employees and is not required to obtain or maintain workers' compensation insurance coverage.

This bill would require, at the time of renewal, an active contractor licensee with an exemption for workers' compensation insurance on file with the board to either recertify the licensee's exemption or to provide a current and valid Certificate of Workers' Compensation Insurance or Certificate of Self-Insurance. The bill would also provide for retroactive license renewal, as specified, for otherwise acceptable license renewal applications when the applicant provides the required documentation within 30 days after notification by the board of the renewal rejection.

AB 436 - Assembly Member Solorio
Amends Sections 17250.30 and 81704 of the Education Code, amends Section 6531 of the Government Code, amends Section 1771.7 of, repeals Sections 1771.55, 1771.75, 1771.8, 1771.85, and 1771.9 of, and repeals and adds Sections 1771.3 and 1771.5 of, the Labor Code, and amends Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3 of the Public Contract Code, relating to public works, and making an appropriation therefor.
Public works: labor compliance.
Status: Enrolled 9/23/11 and Chaptered 9/30/11

Existing law authorizes the awarding body for a public works project to not require the payment of the general prevailing rate of per diem wages on public works projects of specified sizes and types of work, if

the awarding body elects to initiate and enforce a labor compliance program containing specified requirements for every public works project under the authority of the awarding body or the awarding body elects to meet certain requirements with regard to any public works project under its authority, including payment of a fee to the Department of Industrial Relations for the enforcement of prevailing wage obligations, as specified, which may be waived under specified circumstances, determined by the department and deposited in the State Public Works Enforcement Fund.

Existing law also requires the Director of Industrial Relations, with the approval of the Director of Finance, to assess a fee on any awarding body using funds derived from any bonds issued by the state to fund public works projects, as specified, which are deposited in the State Public Works Enforcement Fund, a continuously appropriated fund. Existing law also requires an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004, or the body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 or the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, to pay a fee to the department sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance enforcement, as specified, to be deposited in the State Public Works Enforcement Fund. Existing law authorizes the department to waive the fee where specified criteria are met.

Existing law gives specified authority for certain school district governing boards, governing boards of community college districts and community college facility construction projects, cities, counties, qualified entities that operate a wastewater facility, solid waste management facility, or water recycling facility, transit operators, and unified school districts to enter into design-build contracts for specified projects if certain requirements are met, including the establishment and enforcement of a labor compliance program or the contracting with a 3rd party to operate a labor compliance program. Existing law gives specified authority for the San Diego Model School Development Agency to award construction contracts, as specified, and requires it to establish and enforce a labor compliance program or to contract with a 3rd party to operate a labor compliance program.

Existing law requires entities contracting under the above provisions to pay a fee to the department, established by the department as specified, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance. Existing law requires all fees collected pursuant to these provisions to be deposited in the State Public Works Enforcement Fund and to be used only for enforcement of prevailing wage requirements on those projects and authorizes the department to waive the fee if specified criteria are met.

This bill would make revisions regarding the method by which the Department of Industrial Relations sets reimbursement rates for its costs of performing prevailing wage monitoring and enforcement on the specified public works projects described above, when the reimbursement to the department may be waived, and would exempt from the above-described requirements those public works projects financed in any part by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This bill would also provide that, upon an order of the Director of Finance, a loan in an amount not to exceed $4,300,000 shall be made from the Uninsured Employers Benefit Trust Fund to the State Public Works Enforcement Fund, thereby depositing additional moneys into a continuously appropriated fund.

AB 469 - Assembly Member Swanson
Amends Sections 98, 226, 240, 243, 1174, and 1197.1 of, and adds Sections 200.5, 1194.3, 1197.2, 1206, and 2810.5 to, the Labor Code, relating to employment.
Employees: wages.
Status: Enrolled 9/19/11 and Chaptered 10/9/11

(1) Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages.

This bill would provide that in addition to being subject to a civil penalty, any employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to paying restitution of wages to the employee.

This bill would make it a misdemeanor if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order of the Labor Commissioner for wages due.

(2) Existing law provides that an action by the Division of Labor Standards Enforcement within the Department of Industrial Relations for collection of a statutory penalty or fee must be commenced within one year after the penalty or fee became final.

This bill would extend the period within which the division may commence a collection action, as defined, from one year to 3 years.

(3) Existing law permits the Labor Commissioner to require an employer who has been convicted of a subsequent wage violation or who has failed to satisfy a judgment to post a bond in order to continue business operations.

This bill would extend the time required for a subsequently convicted employer to maintain a bond from 6 months to 2 years and would require that a subsequently convicted employer provide an accounting of assets, as specified, to the Labor Commissioner.

(4) Existing law requires an employer to post specified wage and hour information in a location where it can be viewed by employees.

This bill would require an employer to provide each employee, at the time of hiring, with a notice that specifies the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages and to notify each employee in writing of any changes to the information set forth in the notice within 7 calendar days of the changes unless such changes are reflected on a timely wage statement or another writing, as specified. No notice would be required for an employee who is employed by the state or any subdivision thereof, exempt from the payment of overtime, or covered by a collective bargaining agreement containing specified information.

(5) In addition to the crime and employer obligations imposed by this bill, the Labor Code provides for other work-related standards and duties that, upon violation, are subject to specified penalties.

This bill would state that the Labor Code establishes minimum penalties for failure to comply with wage-related statutes and regulations.

Because this bill would create a new crime or expand the definition of a crime, it would impose a state-mandated local program.

(6) This bill would incorporate additional changes to Section 98 of the Labor Code proposed by AB 240, that would become operative only if AB 240 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

This bill would also incorporate additional changes to Section 226 of the Labor Code proposed by AB 243, that would become operative only if AB 243 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

AB 507 - Assembly Member Hayashi
Amends Sections 124960 and 124961 of, and repeals Section 11453 of, the Health and Safety Code, relating to public health.
Controlled substances: pain management.
Status: Enrolled 9/7/11 and Chaptered 10/2/11

(1) Existing law authorizes the Department of Justice to employ a physician to interview and examine any patient in connection with the prescription, possession, or use of a controlled substance, requires the patient to submit to the interview and examination, and authorizes the physician to testify in prescribed administrative proceedings.

This bill would repeal that provision.

(2) Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California. The violation of specified provisions of the act is a crime. Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription-controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

Existing law sets forth the Pain Patient's Bill of Rights.

This bill would revise the Pain Patient's Bill of Rights.

AB 585 - Assembly Member Fong
Amends Section 3212.1 of the Labor Code, relating to workers' compensation.
Workers' compensation: cancer presumption.
Status: Enrolled 9/19/11 and Chaptered 10/7/11

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law provides that in the case of active firefighting members of certain fire departments and in the case of certain peace officers, a compensable injury includes cancer that develops or manifests itself during the period when the firefighter or peace officer demonstrates that he or she was exposed while in the service of the public agency to a known carcinogen, as defined. Existing law establishes a presumption that the cancer in these cases arose out of, and in the course of, employment, unless the presumption is controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer.

This bill would extend this presumption to active firefighting members of a fire department serving a National Aeronautics and Space Administration installation who adhere to specified training standards.

AB 878 - Assembly Member Berryhill
Amends Section 7125 of the Business and Professions Code, relating to contractors.
Contractors: workers' compensation insurance.
Status: Enrolled 9/1/11 and Chaptered 10/9/11

Existing law, the Contractors' State License Law, provides for the licensing and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. Existing law authorizes the board to appoint a registrar of contractors and requires a workers' compensation insurer to report to the registrar specified information regarding a licensee's workers' compensation policy.

This bill would, additionally, require a workers' compensation insurer to report to the registrar a licensee whose workers' compensation insurance policy is canceled by the insurer if the insurer has completed a premium audit or investigation, a material misrepresentation has been made by the insured that results in financial harm to the insurer, and no reimbursement has been paid by the insured to the insurer. The bill

would provide that that information is not subject to the California Public Records Act. The bill would also provide that a willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action by the registrar against the licensee.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

AB 1168 - Assembly Member Pan
Adds Section 5307.7 to the Labor Code, relating to workers' compensation.
Workers' compensation: vocational expert fee schedule.
Status: Enrolled 9/9/11 and Chaptered 10/7/11

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the administrative director, after public hearings, to adopt and revise periodically official fee schedules that establish reasonable maximum fees paid for, among other things, medical services, medicines, and medical supplies. Existing law authorizes the Workers' Compensation Appeals Board to determine and allow certain expenses as liens against any award of compensation.

This bill would require, on or before January 1, 2013, the administrative director to adopt, after public hearings, a fee schedule that establishes reasonable hourly fees paid for services provided by vocational experts. This bill would prohibit a vocational expert from being paid, and prohibit the appeals board from allowing, vocational expert fees in excess of those that are reasonable, actual, and necessary.

AB 1263 - Assembly Member Williams
Adds Section 11785.5 to the Insurance Code, relating to the State Compensation Insurance Fund.
State Compensation Insurance Fund: directors and officers: postemployment.
Status: Enrolled 6/21/11 and Chaptered 7/1/11

Existing law provides for the existence of the State Compensation Insurance Fund to be administered by a board of directors for the purpose of transacting workers' compensation insurance, and insurance against the expense of defending any suit for serious and willful misconduct, against an employer or his or her agent, and insurance to employees and other persons of the compensation fixed by the workers' compensation laws for employees and their dependents.

Existing law provides that the board of directors shall appoint a president, a chief financial officer, a chief operating officer, a chief information technology officer, a chief investment officer, a chief risk officer, and a general counsel. The positions are subject to the Milton Marks Postgovernment Employment Restrictions Act of 1990 which, among other things, prohibits specified employees, officers, and consultants, for one year after leaving office or employment, from engaging in specified activities for the purpose of influencing administrative or legislative action. This provision is an exception to the general rule that contracts in restraint of trade are void and unenforceable.

This bill would prohibit the members of the fund's board of directors and fund officers appointed by the board from lobbying the fund for 2 years after leaving the fund. The bill would require that any consulting for the fund by former members of the fund's board of directors and former fund officers, who had been appointed by the board, be approved by the board.

AB 1425 - Assembly Insurance Committee
Amends Sections 481, 10113.2, and 11629.79 of, repeals Section 1758.994 of, and repeals and adds Section 10113.35 of, the Insurance Code, relating to insurance.
Committee on Insurance. Insurance.
Status: Enrolled 9/22/11 and Chaptered 10/2/11

(1) Existing law requires the Insurance Commissioner to report to the Legislature by June 30, 2004, regarding the effectiveness of specified provisions regulating credit insurance agents in protecting consumers involved in credit insurance transactions.

This bill would repeal this reporting requirement provision.

(2) Existing law governs the regulation of life settlements, as defined, by the Insurance Commissioner. Existing law prohibits a person from entering into, brokering, or soliciting life settlements unless that person holds a license, issued by the commissioner, to so act. Existing law authorizes the commissioner to adopt rules and regulations reasonably necessary to govern life settlement transactions and to adopt rules and regulations under those provisions as emergency regulations.

This bill would revise and recast the provisions governing the rulemaking authority of the commissioner and would instead authorize the commissioner to adopt rules and regulations reasonably necessary to implement specified provisions governing life settlements, as specified.

(3) Existing law establishes a low-cost automobile insurance program. Existing law, subject to exceptions, requires that the Office of Administrative Law review administrative regulations proposed by state agencies prior to their adoption. Exceptions to this requirement authorized the Insurance Commissioner to adopt emergency regulations relating to the low-cost automobile insurance program as it commenced in 2000, and as it was expanded in 2006, that are not subject to the review process of the Office of Administrative Law.

This bill would repeal the language that authorized the commissioner to adopt emergency regulations in relation to the low-cost automobile insurance program.

(4) Existing law requires any insurance policy that includes a provision to refund premium other than on a pro rata basis, including the assessment of cancellation fees, to disclose that fact in writing, including the actual or maximum fees or penalties to be applied, which may be stated in the form of percentages of the premium. The disclosure is required to be provided prior to, or concurrent with, the application and prior to each renewal to which the policy provision applies.

This bill would authorize a workers' compensation insurer to provide the disclosure with the quote offering insurance to the consumer prior to the consumer accepting the quote in lieu of disclosure prior to or concurrent with the application.

AB 1426 - Assembly Member Solorio
Amends Sections 110, 123.5, 123.6, 127, 133, 138, 138.1, 138.2, 5307, 5307.3, 5310, 5311.5, 5500.3, and 5502 of, and to repeal Section 127.5 of, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.
Workers' compensation: court administrator.
Status: Enrolled 9/20/11 and Chaptered 10/7/11

Existing law creates the position of court administrator with respect to the workers' compensation adjudicatory process at the trial level. The court administrator is appointed by the Governor with the advice and consent of the Senate and has specified powers and duties relating to the workers' compensation trial process, including supervision of administrative law judges and prescribing certain forms and calendars.

This bill would remove the position of court administrator and distribute the duties to the Workers' Compensation Appeals Board and the Administrative Director of the Division of Workers' Compensation, as specified. The bill would make other technical and conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

SB 457 - Senator Calderon
Amends Section 4903.1 of the Labor Code, relating to workers' compensation.
Workers' compensation: liens.
Status: Enrolled 9/8/11 and Chaptered 10/7/11

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law authorizes a medical provider to file a lien claim with the Workers' Compensation Appeals Board for certain expenses incurred by the provider. Under existing law, the board is required to allow a lien to the extent of benefits paid or services provided for reimbursement for self-procured medical costs for the effects of an injury or illness arising out of and in the course of employment.

Existing law requires the administrative director, after public hearings, to adopt and revise periodically an official medical fee schedule that establishes reasonable maximum fees paid for medical services, other than prescribed goods and services, in accordance with specified requirements.

This bill would require the board to determine, on the basis of liens filed, reimbursement for benefits paid or services provided by a self-insured employee welfare benefit plan notwithstanding the official medical fee schedule when an award is made for reimbursement for self-procured medical costs for the effects of an injury or illness arising out of and in the course of employment. This bill would also state that its provisions do not modify in any way specified rights or obligations.

SB 459 - Senator Corbett
Add Sections 226.8 and 2753 to the Labor Code, relating to employment.
Employment: independent contractors.
Status: Enrolled 9/14/11 and Chaptered 10/9/11

Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship.

This bill would prohibit willful misclassification, as defined, of individuals as independent contractors. The bill also would prohibit charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation, as specified, where those acts would have violated the law if the individuals had not been mischaracterized. The bill would authorize the Labor and Workforce Development Agency to assess specified civil penalties from, and would require the agency to take other specified disciplinary actions against, persons or employers violating these prohibitions. It would also require the agency to notify the Contractors' State License Board of a violator that is a licensed contractor, and require the board to initiate an action against the licensee. The bill would authorize an individual to file a complaint, as specified, to request the Labor Commissioner to issue a determination that a person or employer has violated these prohibitions with regard to the individual filing the complaint. The bill would authorize the Labor Commissioner to assess civil and liquidated damages against a person or employer based on a determination that the person or employer has violated these prohibitions.

This bill would provide that a person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for the individual shall be jointly and severally liable with the employer if the individual is not found to be an independent contractor. This bill would exempt from the provisions regarding joint and several liability a person who provides advice to his or her employer or an attorney who provides legal advice in the course of practicing law.

SB 684 - Senator Corbett
Adds Section 11658.5 to the Insurance Code, relating to workers' compensation insurance.
Workers' compensation insurance: dispute resolution: arbitration clauses.
Status: Enrolled 9/2/11 and Chaptered 10/7/11
Existing law requires that a workers' compensation insurance policy or endorsement not be issued by an insurer unless the insurer files a copy of the form or endorsement with a rating organization and 30 days have expired from the date the form or endorsement is received by the Insurance Commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would require an insurer that intends to use a dispute resolution or arbitration agreement to resolve disputes arising in California out of a workers' compensation insurance policy or endorsement issued to a California employer, as defined, to disclose to the employer, contemporaneously with any written quote that offers to provide insurance coverage, that choice of law and choice of venue or forum may be a jurisdiction other than California and that these terms are negotiable between the insurer and the employer. The bill would require that the employer sign the disclosure, as evidence of receipt, when the employer accepts the offer of coverage. The bill would authorize the dispute resolution or arbitration agreement to be negotiated before any dispute arises. These provisions would apply to workers' compensation policies issued or renewed on or after July 1, 2012.

SB 826 - Senator Leno
Amends Sections 138.6 and 138.7 of the Labor Code, relating to workers' compensation.
Workers' compensation: data reporting requirement: administrative penalties.
Status: Enrolled 7/7211 and Chaptered 10/7/11

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the administrative director to develop a cost-efficient workers' compensation information system and requires the administrative director to adopt regulations specifying the data elements to be collected by electronic data interchange.

Existing law establishes the Workers' Compensation Administration Revolving Fund in the State Treasury. Money in the fund may be expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the administration of the workers' compensation program, except as provided, and for the Return-to-Work Program.

This bill would require the administrative director to assess an administrative penalty against a claims administrator for a violation of data reporting requirements. This bill would require the administrative director to promulgate a schedule of penalties providing for an assessment of no more than $5,000 against a claims administrator in any single year, calculated by violation type and excluding threshold rates of violations, as prescribed. This bill would provide that any penalty is to be deposited in the Workers' Compensation Administration Revolving Fund.

Existing law provides that a person who, or public or private entity that, is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or maintained by the division on that claim, except as specified.

This bill would require the administrative director to publish an annual report disclosing the compliance rates of claims administrators and would authorize the administrative director to publish the identity of claims administrators for this purpose.

Workers' Compensation Regulations

The regulatory activities of the Division of Workers' Compensation (DWC) to implement the provisions of the recent workers' compensation reform legislation are outlined on the following pages. Formal rulemaking is often preceded by the release of a draft rule and the opening of an online forum for interested parties to post comments. This update covers only recent regulations. Older regulations can be found in previous Commission on Health and Safety and Workers' Compensation (CHSWC) annual reports which are available online at http://www.dir.ca.gov/chswc.

Information about these preliminary activities is available at http://www.dir.ca.gov/Wcjudicial.htm.

The latest formal rulemaking updates are available at www.dir.ca.gov/DWC/dwcrulemaking.html.

DWC Regulations	Status of Regulations
Labor Code Section 5307.1 **Physician Fee Schedule** As of January 1, 2006, the Administrative Director (AD) will have the authority to adopt an Official Medical Fee Schedule (OMFS) for physician services	**Status: Pre-rulemaking public comment – July 10, 2010; a stakeholder meeting was held on Aug. 17, 2010.** *8 CCR Sections 9789.12.4, 9789.13.2 and 9789.14.1* http://www.dir.ca.gov/dwc/DWCWCABForum/dwc_PhysicianFeeSchedule.htm DWC's new draft regulations propose adopting the resource based relative value scale (RBRVS), as well as ground rules relating to calculation of fees. While the initial proposal was budget neutral, the revision adds funding to the physician fee schedule accrued from reductions in spinal hardware and ambulatory surgical center fees, along with system savings gained through electronic billing.
Labor Code Section 5307.1 **Ambulance fee schedule** Administrative Director (AD) shall adopt and revise periodically an Official Medical Fee Schedule (OMFS). In 2003, the AD adopted regulation 9789.70, effective January 1, 2004, which provided that the maximum fees for ambulance services were 120 percent of the fee prescribed in the relevant Medicare payment system, and which provided that for services not covered by the Medicare payment system, the maximum fee was the fee specified in the 2003 Official Medical Fee Schedule (OMFS)	**Status: By AD order dated Jan. 27, 2011, ambulance fee schedule was adjusted to conform to the January 1, 2011 change to the Medicare payment system.** **Filed with Secretary of State - July 13, 2010. Effective - July 13, 2010.** http://www.dir.ca.gov/dwc/DWCPropRegs/Ambulance regulations/Ambulance/Regulations.htm *8 CCR Section 9789.70* Regulation clarifies that the section does not apply to services provided by air ambulance providers which are air carriers as defined by the federal Airline Deregulation Act of 1978, as amended. The Airline Deregulation Act of 1978 predated the adoption of this section of the Official Medical Fee Schedule (OMFS), and as it may have preempted regulations which would have an effect on rates charged by air carriers, section 9789.70 might never have legally applied to providers which were air carriers as defined in the Act.
Labor Code Section 4603.4 **Electronic and standard medical billing** Administrative Director (AD) must adopt regulations by January 1,	**Status: Filed with secretary of state on April 18, 2011. Effective dates: standardized billing effective Oct. 15, 2011; electronic billing effective Oct. 18, 2012.** http://www.dir.ca.gov/dwc/DWCPropRegs/Ebilling/EBilling_Regulations.htm

DWC Regulations	Status of Regulations
2005, and that the regulations must mandate that employers accept electronic claims for payment of medical services on or before July 1, 2006. The amendment also stated that payment for medical treatment provided or authorized by the treating physician shall be paid within 15 working days of electronic receipt of a billing for services at or below the fees set forth in the Official Medical Fee Schedule (OMFS).	*8 CCR Sections 9792.5, 9792.5.0, 9792.5.1, 9792.5.2 and 9792.5.3* Regulations governing electronic and standardized medical treatment billing. These regulations implement, interpret and make specific sections 4600, 4603.2 and 4603.4 of the Labor Code.
Labor Code Section 138.6 **Workers' Compensation Information System (WCIS)** Administrative Director (AD) is required to develop a cost-efficient Workers' Compensation Information System (WCIS) to manage operations, evaluate the benefit delivery system, measure adequacy of indemnity payments, and provide statistical data for research of the workers' compensation system	**Status: Filed with Secretary of State on Nov. 15, 2010. Effective date Nov. 15, 2011.** http://www.dir.ca.gov/dwc/DWCPropRegs/WCIS_Regs/WCIS_Regulations.htm *8 CCR Sections 9701-9702* Eliminates unnecessary data elements, adds relevant data elements, corrects errors in the text of the regulation, adds lien payment data elements for medical bill payment reporting, and updates the two California-specific implementation guides. These proposed regulations implement, interpret and make specific Labor Code Section 138.6, which mandates the development of the Workers' Compensation Information System (WCIS), requires data to be collected electronically to be compatible with the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Information (EDI) system, and requires data elements to be collected through EDI to be set forth in regulations.
Labor Code Section 5318 **Inpatient Hospital Fee Schedule; spinal surgery using implantable hardware** A separate reimbursement for implantable medical devices, hardware, and instrumentation for certain diagnostic related groups (DRGs). The statute also provides	**Status: Public hearing held on Jan. 25, 2011.** http://www.dir.ca.gov/dwc/DWCPropRegs/InpatientHospitalFeeSchedule/InpatientHospitalFeeSchedule.htm *8 CCR Sections 9789.20 et seq. and new section 9789.25* The proposed revisions to the inpatient hospital fee schedule regulations provide hospitals with an annual choice in how they would be reimbursed for complex spinal surgery using implantable hardware. Provide for the updates to the federal regulation, federal register, and

DWC Regulations	Status of Regulations
that the pass-through section would only be operative until the Administrative Director (AD) adopts a regulation specifying separate reimbursement, if any, for implantable medical hardware or instrumentation for complex spinal surgeries.	payment impact file references made in the inpatient hospital fee schedule updates by order of the Administrative Director (AD), in order to conform to changes in the Medicare payment system.
Labor Code Sections 4603.5, 5307.1, and 5307.3 **Official Medical Fee Schedule-Hospital Outpatient Departments and Ambulatory Surgical Centers** Labor Code Section 5307.1 requires that the Official Medical Fee Schedule (OMFS) for ambulatory surgical centers (ASCs) be based on the fee-related structure and rules of Medicare program. The Labor Code caps the aggregate allowances for ASCs at 120 percent of the fee paid by Medicare for the same services performed in a hospital outpatient department (HOPD) setting.	**Status: Public hearing held on Jan. 25, 2011.** http://www.dir.ca.gov/dwc/DWCPropRegs/AmbulatorySurgicalCenter/AmbulatorySurgicalCenter.htm *8 CCR Sections 9789.30, 9789.31, 9789.32, 9789.33, 9789.36, 9789.37, 9789.38, and 9789.39* Proposes to revise the ambulatory surgical center (ASC) fee schedule by modifying the multiplier for ASC facility fees to 100 percent of the Medicare outpatient fee schedule or 102 percent multiplier that includes an extra 2 percent reimbursement for high-cost outlier cases.

Assembly Bill 1073

AB 1073 Mandates/Tasks	Status of Regulations
Labor Code Sections (LC§§) 5307.27, 4604.5 **Medical Treatment Utilization Schedule –** Chronic pain medical treatment guidelines, postsurgical treatment guidelines evidence-based reviews, DWC's and Official Disability Group's (ODG's) references, and postsurgical treatment guidelines ODG's references.	***Status:* Regulations completed. Filed with Secretary of State June 18, 2009. Effective July 18, 2009.** http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_Regulations.htm *8 CCR Sections 9792.20 - 9792.26* The Medical Treatment Utilization Schedule (MTUS) was amended and definitions were updated. The postsurgical treatment guidelines provide that the 24-visit cap on physical medicine services shall not apply to visits for postsurgical physical medicine and rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the Administrative Director (AD). The postsurgical treatment guidelines define key terms commonly used in the regulations, address the application of the postsurgical treatment guidelines, address postsurgical patient management, set forth the postsurgical patient treatment approach, and describe the indications, frequency and duration of postsurgical treatment. Chronic pain guidelines are similarly defined and addressed for chronic pain management and treatment.

Senate Bill 899

SB 899 Mandates/Tasks	Status of Regulations
LC §§4600.3 et seq., 4600.5, 4600.6 and 4600.7 **Health Care Organizations (HCOs)**	***Status:* Regulations completed. Filed with Secretary of State November 4, 2009. Effective Jan. 1, 2010** http://www.dir.ca.gov/dwc/DWCPropRegs/hco/HCO_Regulations.htm *8 CCR Sections 9771, 9778, 9779, 9779.5, and 9779.9* To reduce the certification application fee and recertification fee and remove redundant data collection requirements.

SB 899 Mandates/Tasks	Status of Regulations
LC §4616 et seq, 59, 124, 133, 138.3, 138.4, 139.6, 3550, 3551, 4603.5, and 5307.3. **Medical Provider Network (MPNs)**	***Status:*** **Regulations completed. Filed with secretary of state Aug. 9, 2010. Effective Oct. 8, 2010.** http://www.dir.ca.gov/dwc/DWCPropRegs/MPN_Regulations/MPN_Regulations.htm *8 CCR Sections 9767.3, 9767.6, 9767.8, 9767.12, 9767.16, 9880, 9881, 9881.1, 10139* Amends medical provider network (MPN) regulations. The proposed amendments will streamline the existing MPN notification process primarily by shortening required notices, allowing flexibility in distribution of notices, and by reducing filings with the division. The regulations also amend the employee information form, and Workers' Compensation Claim Form (DWC 1) and notice of potential eligibility (NOPE) regulations. The proposed amendments also clarify other filing requirements and update the DWC workers' compensation poster, the initial employee notice, and the NOPE form to reflect changes to benefits and to include MPN information. Specifically, the regulations: • Allow MPN notices to be distributed electronically to all covered workers. • Eliminate the 14-day MPN implementation and change of MPN notice period. • Further define and streamline the MPN implementation notice. • Reduce distribution of both the Change of MPN notices and the Termination/Cessation of Use of MPN notices only to covered injured workers. • Eliminate only the filing of the Change of MPN notices with DWC. • Clarify material modifications that require filing with DWC. • Clarify provider listing requirements. • Require MPN notices to be in Spanish only where there are Spanish-speaking employees. • Require an MPN contact e-mail address to be included in notices. • Require access to the MPN contact through the toll-free number. • Update the Employee Poster and Notice of Potential Eligibility and DWC Claim Form 1.

SB 899 Mandates/Tasks	Status of Regulations
LC §4062.1 and LC §4062.2 **Qualified Medical Evaluator Procedures for Unrepresented Injured Workers and Procedures for Represented Injured Workers**	***Status:*** **Regulations completed. Filed with Secretary of State January 13, 2009. Effective Feb. 17, 2009.** http://www.dir.ca.gov/dwc/DWCPropRegs/qme_regulations/qme_regulations.htm *8 CCR Sections 1 - 159* Qualified Medical Evaluator (QME) definitions and procedures were updated. Qualified Medical Evaluator (QME) Forms 105 (Request for QME Panel – Unrepresented) and 106 (Request for QME Panel – Represented) and the Attachments to Form 105 (How to Request a QME if You Do Not Have an Attorney) and to Form 106 (How to Request a QME in a Represented Case) are revised. QME Form 121 (Declaration Regarding Protection of Mental Health Record) and QME Form 122 [Agreed Medical Evaluator (AME) or QME Declaration of Service of Medical-Legal Report] are created.
LC §139.2, LC § 4060, LC §4061, LC §4062, LC § 4062.1 and LC §4062.2 **Qualified Medical Evaluator Amendment of Forms to include chiropractors**	**Status: Public hearing held on August 9, 2011.** http://www.dir.ca.gov/dwc/DWCPropRegs/QMERegulations/QMERegulations.htm *8 CCR Sections 100, 104, 105 and 106* The proposed revisions to the qualified medical evaluator regulations amend Qualified Medical Evaluator Forms 100, 104, 105 and 106 to include specialties for doctors of chiropractic approved by the Board of Chiropractic Examiners.

SB 899 Mandates/Tasks	Status of Regulations
LC §4600 **Pre-Designation of Physician**	***Status:*** **Regulations completed. Effective March 14, 2006, and revised February 21, 2007, to comply with 2007 amendment to Labor Code Section 4600.** (SB 186 in 2009 removed the sunset date of this provision.) http://www.dir.ca.gov/DWC/DWCPropRegs/predesignation_Regulations/Predesignation_regulations.htm *8 CCR Sections 9780 through 9783.1* An employee may pre-designate his or her personal physician if the employee notifies the employer prior to the date of injury that he or she has a personal physician and whether the employer offers non-occupational group health coverage. If the worker fails to properly pre-designate a personal physician prior to injury, he or she will not be able to do so after the injury occurs. If an injured worker does not properly pre-designate his or her personal physician, the employer will have the control over the employee's medical treatment for the first 30 days from the date the injury is reported. Alternatively, if the employee whose employer has a medical provider network (MPN) fails to properly designate his or her personal physician, the employee will be required to get treatment within the MPN for the course of the injury. If the employee has properly pre-designated a personal physician, referrals made by that physician need not be within an MPN.

SB 899 Mandates/Tasks	Status of Regulations
LC §4616 **Medical Provider Networks**	***Status:*** **Regulations completed. Emergency regulations effective November 1, 2004. Permanent regulations effective September 15, 2005.** http://www.dir.ca.gov/dwc/dwcpropregs/MPNReg.htm *8 CCR Sections 9767.1 et seq.* Regulations specify the requirements for a medical provider network (MPN), the MPN application process, access standards, the second- and third-opinion process, the procedure to modify an MPN, the process to transfer ongoing care into and within the MPN, the employer-notification requirements, and the procedures concerning the denial of an MPN plan or the suspension or revocation of an MPN plan. **Effective April 9, 2008:** A new definition of the term "cessation of use" was added as subdivision (a)(2). The added definition states that "cessation of use" means the discontinued use of an implemented MPN that continues to do business. A new definition of the term "termination" was added as subdivision (a)(25). The added definition states that the term "termination" means the discontinued use of an implemented MPN that ceases to do business. The other subdivisions were re-lettered to accommodate these additions. These amendments were necessary to provide definitions for the regulated public and to differentiate between the terms "cessation of use" and "termination." **Effective Oct. 8, 2010**, the amendments to the regulations include the following: • Allows MPN notices to be distributed electronically to all covered workers. • Eliminates the 14-day MPN implementation and change of MPN notice period. • Further defines and streamlines the MPN implementation notice. • Reduces distribution of both the Change of MPN notices and the Termination/Cessation of Use of MPN notices only to covered injured workers. • Eliminates only the filing of the Change of MPN notices with DWC. • Clarifies material modifications that require filing with DWC. • Clarifies provider listing requirements.

SB 899 Mandates/Tasks	Status of Regulations
	• Requires MPN notices to be in Spanish only where there are Spanish-speaking employees. • Requires an MPN contact e-mail address to be included in notices requires access to the MPN contact through the toll-free number, updates the Employee Poster and Notice of Potential Eligibility and DWC Claim Form 1
LC §4660 **Permanent Disability Rating Schedule Revision**	***Status:*** **Revised regulations in progress. Public hearings on 7/21/08 and 7/22/08. Time for completion of regulations elapsed.** ***Status:*** **Regulations Completed. Emergency regulations effective January 1, 2005. Permanent regulations effective June 10, 2005.** http://www.dir.ca.gov/dwc/dwcpropregs/PDRSRegs.htm *8 CCR Section 9725 et seq.* The Permanent Disability Rating Schedule (PDRS) adopts and incorporates the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment, 5th Edition*. The PDRS includes multipliers ranging from 1.1 to 1.4, depending on type of injury, to adjust AMA impairment to reflect diminished future earning capacity. The PDRS is effective for dates of injury on or after January 1, 2005, and for dates of injury prior to January 1, 2005, in accordance with subdivision (d) of Labor Code §4660. The PDRS shall be amended at least once every five years. The Administrative Director (AD) shall (1) collect 2005 PDRS ratings for 18 months, (2) evaluate the data to determine the aggregate effect of the diminished future earning capacity adjustment on the permanent partial disability ratings under the 2005 PDRS, and (3) revise, if necessary, the diminished future earning capacity adjustment to reflect consideration of an employee's diminished future earning capacity for injuries based on the data collected.

SB 899 Mandates/Tasks	Status of Regulations
LC §4660 **Permanent Disability Rating Schedule Revision (continued)**	**Effective May 2008: Regulations in process. Time for completion of regulations elapsed.** Notice of Rulemaking issued and public hearings were held on July 21 and 22, 2008. Following adoption of the 2005 PDRS, DWC gathered 18 months of data on return to work and wage loss and conducted a comprehensive study. The rulemaking proposed to amend the current future earning capacity adjustment and the current age adjustment in the PDRS to reflect empirical data on wage loss. The rulemaking was not completed.
LC §5814.6 **Penalty for Business Practice of Unreasonable Delay in Payment of Compensation**	***Status:* Regulations completed. Final regulations effective May 26, 2007.** http://www.dir.ca.gov/DWC/DWCPropRegs/AdminPenalties_LC5814_6Regulations/LC5814_6Regulations.htm *8 CCR Sections 10225 – 10225.2* Penalties are specified for the following particular violations of Labor Code §5814: 1. $100,000 for a finding of knowing violation with a frequency indicating a general business practice; 2. $30,000 for each finding by a workers' compensation judge of failure to comply with an existing award; 3. $5,000 to $15,000, depending on duration, for delay in payment of temporary disability benefits; 4. $1,000 to $15,000, depending on severity, for each penalty award by a workers' compensation judge for unreasonably denying authorization for treatment or failing to reimburse an employee for self-procured treatment; 5. $2,500 for each penalty award by a workers' compensation judge for failure to provide a notice or training voucher regarding a supplemental job displacement benefit (SJDB) in a timely manner; 6. $2,500 for each penalty award by a workers' compensation judge for failure to reimburse an injured worker for supplemental job displacement services, or where a failure to pay the training provided results in an interruption of training; 7. $1,000 to $15,000, depending on duration, for each penalty award by a workers' compensation judge for failure to make timely payment of permanent disability benefits; 8. $2,500 for each penalty award by a workers' compensation judge for any other violation of Labor Code §5814.

SB 899 Mandates/Tasks	Status of Regulations
LC §5814.6 **Penalty for Business Practice of Unreasonable Delay in Payment of Compensation (continued)**	The Administrative Director (AD) may charge penalties under both Labor Code §129.5 (including failure to pay undisputed portion of indemnity or medical treatment) and §5814 (unreasonable delay in payment of compensation); however, only one penalty may be imposed following the hearing on such charges. The AD may mitigate a penalty based on consideration of specified equitable factors. Each administrative penalty shall be doubled upon a second finding and tripled upon a third finding under Labor Code §5814.6 within a five-year period.

Assembly Bill 227 and Senate Bill 228 – Official Medical Fee Schedule

AB 227 & SB 228 OMFS Mandates/Tasks	Status of Regulations
LC §5307.1 **Physician Fee Schedule** Provides that the existing Official Medical Fee Schedule (OMFS) for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5 percent. As of January 1, 2006, the Administrative Director (AD) will have the authority to adopt an OMFS for physician services.	***Status*: Regulations revised effective February 15, 2007.** http://www.dir.ca.gov/DWC/OMFS9904.htm *8 CCR Section 9789.11* For physician services rendered on or after January 1, 2004, the maximum allowable reimbursement amount set forth in the Official Medical Fee Schedule (OMFS) 2003 is reduced by five (5) percent, except that the reimbursement will not fall below the Medicare rate. The Administrative Director (AD) has not yet adopted the Medicare-based schedule for physicians. On October 1, 2007, pursuant to contract, the Lewin Group began preparing its study regarding recommendations for a physician fee schedule.
LC §5307.1 **Pharmacy Fee Schedule** Administrative Director (AD) to adopt a new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.	***Status:* Regulations complete. Effective March 1, 2007.** http://www.dir.ca.gov/DWC/OMFS9904.htm *8 CCR Section 9789.40* Regulation reflects the statutory mandate that pharmacy services rendered on or after January 1, 2004, must be paid at 100 percent of the current Medi-Cal rates.

AB 227 & SB 228 OMFS Mandates/Tasks	Status of Regulations
LC §5307.1 **Official Medical Fee Schedule Shall Be Adjusted** to conform to relevant Medicare/Medi-Cal changes within 60 days of changes (except specified inpatient changes)	***Status:*** **Statutes specify that changes can be implemented without regulations.** Updates to Medicare and Medi-Cal changes are implementeted by an "Order of the Administrative Director of the Division of Workers' Compensation." Update orders issued periodically as needed. The most recent orders issued are as follows: • Inpatient – update to conform to Medicare changes was adopted by Order, effective December 1, 2011. • Outpatient – update to conform to Medicare changes was adopted by Order, effective April 15, 2010, and updated September 15, 2011. • Ambulance fees – update to conform to Medicare changes was adopted by Order, effective January 1, 2011. • Pathology and Clinical Laboratory – update to conform to Medicare changes was adopted by Order, effective January 1, 2011, and updated effective August 1, 2011.
LC §5307.1 **Official Medical Fee Schedule Shall Be Adjusted** to conform to relevant Medicare/Medi-Cal changes within 60 days of changes (except specified inpatient changes)	• Durable Medical Equipment, Orthotics, Prosthetics and Supplies (DMEPOS) – update to conform to Medicare changes was adopted by Order, effective July 1, 2011. http://www.dir.ca.gov/DWC/OMFS9904.htm
LC §5307.1 **Specified Schedules (Not in Fee Schedule until January 1, 2005)** (Skilled nursing facility, home health agency, inpatient for hospitals exempt from Medicare Prospective Payment System, outpatient renal dialysis)	***Status:*** **In process.** Expect to move forward on these in 2011. DWC is in the process of prioritizing the work.

Other Mandates of Assembly Bill 227 and Senate Bill 228

AB 227 & SB 228 Other Mandates/Tasks	Status of Regulations
LC §4603.4 **Electronic Bill Payment Regulations** Regulations are required to be adopted by January 1, 2005, and to mandate acceptance of electronic bills by January 1, 2006.	***Status:*** **Filed with secretary of state on April 18, 2011. Effective dates: standardized billing effective Oct. 15, 2011; electronic billing effective Oct. 18, 2012.** The regulations require standardized forms for medical bills and will require claims administrators to accept electronic claims for payment of medical services.
LC §4610.1 **Utilization Review Enforcement**	***Status:*** **Regulations completed. Final regulations effective June 7, 2007.** http://www.dir.ca.gov/DWC/DWCPropRegs/UREnforcementRegulations/UR_EnforcementRegulations.htm *8 CCR Sections 9792.11 – 9792.15* Regulations provide for: • Investigations of the utilization review process. • A series of penalties on claims administrators from $50.00-$50,000 for failure to have a utilization review plan or provide treatment according to the regulations. • Procedures include Notice of Administrative Penalty Assessment, Appeal Hearing, and Review Procedure.
LC §5318 **Spinal Surgery Implantables/Hardware Reimbursement** Statute codified old regulation providing extra payment for hardware/implantables until Administrative Director (AD) adopts reimbursement regulation	***Status:*** **Public hearing held on Jan. 25, 2011.** http://www.dir.ca.gov/dwc/DWCPropRegs/InpatientHospitalFeeSchedule/InpatientHospitalFeeSchedule.htm *8 CCR Sections 9789.20 et seq. and new section 9789.25* The proposed revisions to the inpatient hospital fee schedule regulations provide hospitals with an annual choice in how they would be reimbursed for complex spinal surgery using implantable hardware. Provide for the updates to the federal regulation, federal register, and payment impact file references made in the inpatient hospital fee schedule updates by order of the Administrative Director (AD), in order to conform to changes in the Medicare payment system.

AB 227 & SB 228 Other Mandates/Tasks	Status of Regulations
LC §5307.27 **Medical Treatment Utilization Schedule**	***Status:*** **Regulations completed. Final regulations effective June 15, 2007.** http://www.dir.ca.gov/DWC/DWCPropRegs/MedicalTreatmentUtilizationSchedule/MTUS_regulations.htm *8 CCR Sections 9792.20 – 9792.23* The American College of Occupational and Environmental Medicine's (ACOEM) *Practice Guidelines*, Second Edition (2004), are presumed correct for both treatment and diagnositic services addressed in those guidelines, both for acute and for chronic conditions. For conditions and injuries not addressed by ACOEM *Practice Guidelines*, treatment shall be in accordance with other scientifically and evidence-based treatment guidelines that are generally recognized by the national medical community. Key terms are defined. A hierarchy of evidence is established to govern circumstances not covered by ACOEM *Practice Guidelines*, variances from the guidelines, and conflicts among other guidelines. The hierarchy ranges from strong to moderate to limited research-based evidence, with a minimum of one randomized controlled study to constitute limited research-based evidence. Treatment shall not be denied on the sole basis that the condition or injury is not addressed by the ACOEM *Practice Guidelines*. In this situation, the claims administrator shall authorize treatment if such treatment is in accordance with other scientifically and evidence-based medical treatment guidelines that are generally recognized by the national medical community. A Medical Evidence Evaluation Advisory Committee is established and its composition is specified. ***Status of Follow-up Regulations:*** **Regulations completed. Filed with Secretary of State June 18, 2009. Effective July 18, 2009.** http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_Regulations.htm DWC has updated the Medical Treatment Utilization Schedule (MTUS), including adoption of new chronic pain and elbow guidelines. This rulemaking action was combined with the postsurgical treatment guidelines rulemaking to carry out Assembly Bill (AB) 1073.

Assembly Bill 749

AB 749 Other Mandates/Tasks	Status of Regulations
LC §138.4 **Benefit Notices to Employees from Claims Administrators** Regulations are revised to reflect changes in this statute	***Status:*** **Regulations completed. Effective April 9, 2008.** http://www.dir.ca.gov/dwc/DWCPropRegs/BenefitNoticeRegulations/BenefitNotice_regulations.htm *8 CCR Sections 9767.16, 9810, 9811, 9812, 9813, 9813.1, and 9813.2* Updates notices dealing with payment, nonpayment, or delay in payment of temporary disability, permanent disability, return to work and the provision of vocational rehabilitation services, notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation, and an accounting of benefits paid.
LC §§139.48 and 139.49 **Return-to-Work Reimbursement Program/Study**	***Status:*** **Regulations completed. Effective August 18, 2006.** http://www.dir.ca.gov/dwc/DWCPropRegs/ReturnToWork_regulations/ReturnToWork_regulations.htm *8 CCR Sections 10004-10005* During 2009, the Division of Workers' Compensation has been actively publicizing the Return-to-Work Reimbursement Program. The Return-to-Work Study was completed May 2009.
LC §3822 **Fraud Notice** (Annually to every employer, claims adjuster, third-party administrator, physician and attorney participating in workers' compensation)	***Status:*** **Completed for 2007. Completed for 2008. Completed for 2009. Completed for 2010. Completed for 2011.**

AB 749 Other Mandates/Tasks	Status of Regulations
LC §4062.8 **Develop and Revise Educational Materials for Primary Treating Physicians and Chiropractors**	***Status:*** **Project in process.** DWC is in the process of developing an Internet-based series of educational materials for treating physicians and qualified medical evaluators (QMEs).
LC §4600.2 **Pharmacy Contract Standards**	***Status:*** **In process.** DWC contracted with the University of California, San Francisco (UCSF) Pharmacy School to provide study and recommendations for contract standards. Report received at the end of March 2004. Stakeholder meeting held in fall of 2009. Draft regulations posted on forum for comments until April 5, 2010.
LC §4603.4 **Electronic Bill Payment Regulations**	***Status:*****. Filed with secretary of state on April 18, 2011. Effective dates: standardized billing effective Oct. 15, 2011; electronic billing effective Oct. 18, 2012.** The regulations require standardized forms for medical bills and will require claims administrators to accept electronic claims for payment of medical services.

Other Regulations

Other Mandates/Tasks	Status of Regulations
LC §138.6 **Workers' Compensation Information System** Implementation of the Workers' Compensation Information System (WCIS) mandated medical treatment and payment data collection	***Status:*** **Regulations became effective April 21, 2006. Amended regulations filed with secretary of state on Nov. 15, 2010. Effective date Nov. 15, 2011.** http://www.dir.ca.gov/dwc/DWCPropRegs/WCIS_Regs/WCIS_Regulations.htm *8 CCR Sections 9701-9702* Eliminates unnecessary data elements, adds relevant data elements, corrects errors in the text of the regulation, adds lien payment data elements for medical bill payment reporting, and updates the two California-specific implementation guides.

Other Mandates/Tasks	Status of Regulations
LC §§129, 129.5 **Audit Program Regulations**	***Status:*** **Regulations completed. Filed with Secretary of State Apr. 20, 2009. Effective May 20, 2009.** *8 CCR Sections 10100.2 – 10115.2* Updates definitions and procedures for adjusting locations, the annual Report of Inventory, routine and targeted audits, and audit compliance penalties.
LC §123.6 **Ethical Standards for Workers' Compensation Administrative Law Judges**	***Status*****: Regulations completed. Filed with Secretary of State August 25, 2008. Effective September 24, 2008.** *8 CCR §§9720.1 et seq.*
LC §§133, 4603.5, 5307.3, 5307.4 **Americans with Disabilities Act – Access to DWC District Offices. New sections.**	**Status: Public hearing held on September 27, 2011. First 15-day comment period closed on Oct. 26, 2011.** 8 CCR *§§*9708.1 - 9708.6 and 10226.1 -10226.6 Notice of rulemaking on the Division of Workers' Compensation (DWC) Public Disability Regulations pursuant to Government Code sections 11135 et seq., Civil Code sections 51 and 54 et seq. and the Americans With Disability Act, 42 USC 12101 et seq. was filed with the Office of Administrative Law (OAL) on August 2nd. The proposed regulations set forth DWC's policies and procedures for accommodating individuals with disabilities who particpate in the programs, activities and services of DWC.
LC §§127.5, 5300, 5307 **Workers' Compensation Appeals Board/Division of Workers' Compensation (WCAB/DWC) District Offices Regulations and Forms**	***Status:*** **Regulations became effective November 17, 2008.** *8 CCR §§ 10210 et seq.* http://www.dir.ca.gov/dwc/DWCPropRegs/EAMS_regulations/EAMS regulations.htm

Other Mandates/Tasks	Status of Regulations
LC §§4061.5, 4603.4, and 4610 **PR-2 Form - Primary Treating Physician's Progress Report, Functional Improvement Report, Request for Authorization Form**	***Status*: Regulations in process. Draft regulations were posted on the Division of Workers' Compensation (DWC) online Forum through May 18, 2008. Formal rulemaking will commence shortly.** *8 CCR Sections 9785, 9785.2*
LC §127 **Fees for Copies of Documents**	***Status:* Revisions anticipated in 2012.** *8 CCR Section 9990*
LC §4659 **Commutation Tables for Permanent Disability**	***Status:* Need to hire actuary.** *8 CCR §§ 10169, 10169.1*

Administration of Self Insurance Plans Regulations

The regulatory activities of the Office of Self Insurance Plans (OSIP) are outlined below. Formal rulemaking is preceded by a notice, the release of a draft rule, and an announcement for a public hearing. This update covers only recent administrative regulations.

Proposed OSIP regulations can be found online at:
http://www.dir.ca.gov/sip/siprule.html

Regulations in Title 8 of the California Code of Regulations (CCR) can be found online at:
http://www.dir.ca.gov/samples/search/query.htm.

2011 OSIP Regulations	Status of Regulations (as of October 20, 2011)
Administration of Self Insurance	**Status: Effective October 19, 2011.** ***Estimating Work Injury Claims and Medical Reports: Estimating and Reporting Work Injury Claims*** *Title 8, California Code of Regulations Chapter 8, Subchapter 2, Article 1 Sections 15201; Article 3 Section 15214 ; Article 5 Section 15251; Article 6 Section 15300; Article 9 Section 15400.2 and 15405; Article 11 Section 15430; Article 13 Section 15478, 15481 and 15484.* http://www.dir.ca.gov/sip/siprule.html
Administration of Self Insurance	**Status: 15-day public comment period is scheduled to end at 5:00 p.m. on July 23, 2011.** ***Estimating Work Injury Claims and Medical Reports: Estimating and Reporting Work Injury Claims*** *Title 8, California Code of Regulations Chapter 8, Subchapter 2, Article 6 Section 15300.* http://www.dir.ca.gov/sip/siprule.html
Administration of Self Insurance	**Status: 15-day public comment period is scheduled to end at 5:00 p.m. on February 10, 2011.** ***Recordkeeping and Audits: Confidentiality*** *Title 8, California Code of Regulations Chapter 8, Subchapter 2, Article 9 Section 15405.* http://www.dir.ca.gov/sip/siprule.html
Administration of Self Insurance	**Status: 15-day public comment period is scheduled to end on January 3, 2011.**

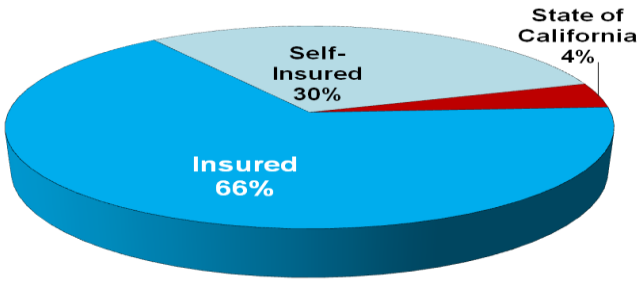
2011 OSIP Regulations	Status of Regulations (as of October 20, 2011)
	Definitions ***Cash in Trust*** ***Self Insurer's Annual Report*** ***Estimating and Reporting Work Injury Claims*** ***Maintenance of Records*** ***Confidentiality*** ***Excess Insurance*** ***Annual Actuarial Certification of Losses*** ***Continuing Financial Capacity of Group Self Insurers*** *Title 8, California Code of Regulations Chapter 8, Subchapter 2, Article 1 Sections 15201; Article 3 Section* *15214 ; Article 5 Section 15251; Article 6 Section 15300; Article 9 Section 15400.2 and 15405; Article 11 Section 15430; Article 13 Section 15478, 15481 and 15484.* http://www.dir.ca.gov/sip/siprule.html
Administration of Self Insurance	**Status: 45-day comment period has been extended to 5:00 p.m. on December 7th, 2010.** **Definitions** **Security Deposit Requirements** **Self Insurers' Annual Report** **Estimating Work Injury Claims and Medical Reports** **Recordkeeping and Audits** **Hearings and Appeal Procedure** **Group Self Insurance.** *Title 8, California Code of Regulations Chapter 8, Subchapter 2, Article 1 Section 15201; Article 3 Section 15214; Article 5 Section 15251; Article 6 Section 15300; Article 9 Section 15400.2 and 15405; Article 11 Section 15430; Article 13 Section 15478, 15481 and 15484.* http://www.dir.ca.gov/sip/siprule.html

SYSTEM COSTS AND BENEFITS OVERVIEW

The California workers' compensation system covers 14,377,000 employees[1] working for over 864,000 employers[2] in the State. These employees and employers generated a gross domestic product of $1,901,088,000,000 ($1.90 trillion) for 2010.[3] A total of 531,700 occupational injuries and illnesses were reported for 2010,[4] ranging from minor medical treatment cases up to catastrophic injuries and deaths. The total paid cost to employers for workers' compensation in 2010 was $14.8 billion. (See textbox "Systemwide Cost: Paid Dollars for 2010 Calendar Year" on page 63.)

Employers range from small businesses with just one or two employees to multinational corporations doing business in the State and the state government itself. Every employer in California must secure its liability for payment of compensation, either by obtaining insurance from an insurer licensed by the Department of Insurance (CDI) or by obtaining a certificate of consent to self-insure from the Department of Industrial Relations (DIR). The only lawful exception is the State, which is legally uninsured. Based on the claim counts reported to the Workers' Compensation Information System (WCIS) (see the chart below), 66 percent of injuries occur to employees of insured employers, 30 percent of injuries occur to employees of self-insured employers, and 4 percent of injuries occur to employees of the State of California.[5] (See textbox "Method of Estimating the Workers' Compensation System Size" on pages 61-62 for calculations based on claim counts and paid loss data.)

Figure 1: Market Shares Based on Claim Counts Reported to WCIS (2008-2010 average)



Data Source: DWC - WCIS

[1] NASI Report: Workers' Compensation Benefits, Coverage, and Costs, 2009. August 16, 2011. http://www.nasi.org/sites/default/files/research/Workers_Comp_Report_2009.pdf.

[2] CHSWC estimates are based on an Employment Development Department report, as above, showing 1,344,480 businesses. Of these, 960,082 were businesses with 0 to 4 employees. For this estimate, half of those businesses are assumed to have no employees subject to workers' compensation. 1,344,480– (960,082/2) = 864,439. http://www.labormarketinfo.edd.ca.gov/?pageid=138.

[3] California Department of Finance, Economic Research Unit, http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Misc.htm.

[4] The latest year for which Workers' Compensation Information System (WCIS) reports are reasonably complete. Data are from the Division of Workers' Compensation (DWC) report from the WCIS database, "Workers' Compensation Claims (in 000's) by Market Share with Eleven-Year History and Cumulative Totals, 2000-2010," June 3, 2011, http://www.dir.ca.gov/dwc/wcis/WCIS_Reports.html. Due to delayed reporting, the number of claims reported to WCIS for a given year may grow by more than 5 percent between the second and the fourth years after the end of the accident year. Boden, Leslie I. and Al Ozonoff, "Reporting Workers' Compensation Injuries in California: How Many are Missed?" (2008). CHSWC Report.

[5] Data for 2006 are from the Division of Workers' Compensation report from the WCIS database, "Workers' Compensation Claims (in 000's) by Market Share with Eight Year History and Cumulative Totals, 2000-2007," April 25, 2008. From 2002 through 2006, the average shares varied by no more than =0.5/-0.4 for the insured share, =0.7/-0.5 for the self-insured share, and =/-0.2 for the State. CHSWC omits the years 2000 and 2001 from these averages because reasonably complete reporting was not achieved until mid-2001.

Method of Estimating the Workers' Compensation System Size

The overall system size is now estimated at 1.5 times the insured sector size. For several years, the generally accepted estimate was 1.25. Beginning in 2008 and with help from the Workers' Compensation Insurance Rating Bureau (WCIRB), the Commission on Health and Safety and Workers' Compensation (CHSWC) estimated the system size at 1.43 times the insured market. This was based on claims counts in the Workers' Compensation Information System (WCIS).[1] As of 2011, CHSWC is revising that estimate to 1.5 times the insured sector. The revised estimate is based on updated claims data as well as paid loss counts from WCIS.

Claims counts show a continuing decline in the number of claims for all sectors from year to year. The decline has been steeper in the insured sector from 2008 through 2010. CHSWC is using a three-year moving average because it blunts the effect of one-time aberrations. The three-year average shares based on claims counts are 66.1percent insured, 29.6 percent self-insured, and 4.3 percent state. Using these values, the multiplier for extending insured sector information to the overall system is 100%/66.1% = 1.51.

Table 1: Workers' Compensation Claims (in 000's) by Market Share

	Insured		Self-Insured		State of California	
Year	Number	Market Share (%)	Number	Market Share (%)	Number	Market Share (%)
2008	431.2	67.0	186.4	29.0	26.2	4.1
2009	362.1	65.4	166.8	30.1	24.7	4.5
2010	350.2	65.9	157.5	29.6	24.0	4.5
Average for 3 years		**66.1**		**29.6**		**4.3**

[1] WCIS Database, http://www.dir.ca.gov/dwc/wcis/WCIS_tables/WCC-MarketShare.pdf

(continued on the next page)

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Method of Estimating the Workers' Compensation System Size

Based on the convergence of market share measurements from two independent methods, the data convincingly demonstrate that the insured market share is no more than 67 percent of the workers' compensation system. Depending on the method of measurement, the self-insured sector is 29 or 30 percent and the State is 3 or 4 percent.

Paid loss data indicate that 67 percent of the market is insured, 30 percent is self-insured, and 3 percent is State. These percentages are stable using 2009 data for insured and private self-insured sectors and either 2008/2009 or 2009/2010 data for the State and public self-insured sector, as shown in Tables 1 and 2, below. The multiplier for extending insured sector information to the overall system is 100%/67% = 1.493.

Table 2: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) – using public self-insured and state data for FY 2008-2009

	Indemnity	Medical	Sub-Total	% in Total
a. Private Self-Insured[1] (2009)	$550,287,340	$761,740,423		
b. Public Self-Insured[2] (2008/2009)	$846,463,847	$949,449,769		
SELF-INSURANCE PLAN (a + b)	$1,396,751,187	$1,711,190,192	**$3,107,941,379**	**30%**
INSURED (2009)[3]	$2,820,000,000	$4,165,000,000	**$6,985,000,000**	**67%**
STATE (2008/2009)[4]	$127,498,013	$189,678,862	**$317,176,875**	**3%**
Total			**$10,410,118,254**	

Table 3: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) – using public self-insured and state data for FY 2009-2010.

	Indemnity	Medical	Sub-Total	% in Total
a. Private Self-Insured (2009)	$550,287,340	$761,740,423		
b. Public Self-Insured (2009/2010)	$833,513,351	$978,954,150		
SELF-INSURANCE PLAN (a + b)	$1,383,800,691	$1,740,694,573	**$3,124,495,264**	**30%**
INSURED (2009)	$2,820,000,000	$4,165,000,000	**$6,985,000,000**	**67%**
STATE (2009/2010)[5]	$129,614,625	$219,574,219	**$349,188,844**	**3%**
Total			**$10,458,684,108**	

[1] Private Statewide Summary, http://www.dir.ca.gov/sip/StatewideTotals.html.
[2] Public Statewide Summary, http://www.dir.ca.gov/sip/StatewideTotals.html.
[3] WCIRB, 2009 Losses and Expenses Report, Exhibit 18.1, Released June 22, 2010.
[4] Costs Information, http://www.dpa.ca.gov/benefits/workers-comp/main.htm.
[5] Costs Information, http://www.dpa.ca.gov/benefits/workers-comp/main.htm.

Workers' compensation is generally a no-fault system that provides statutory benefits for occupational injuries or illnesses. Benefits consist of medical treatment, temporary disability (TD) payments, permanent disability (PD) payments, return-to-work assistance, and death benefits. The overall amounts paid in each of these categories systemwide are shown in the following chart. These figures are based on insurer-paid amounts multiplied by 1.5 to include estimated amounts paid by self-insured employers and the State.

Systemwide Cost: Paid Dollars for 2010 Calendar Year

Table 4: A Claim Counts-based Estimate of Workers' Compensation System Size (Million $)

	Insured	***Self-Insured and the State****	***All Employers***
Indemnity*	$2,823	$1,412	$4,235
Medical*	$4,302	$2,151	$6,453
Changes to Total Reserves	$209	$105	$314
Insurer Pre-Tax Underwriting Profit/Loss	-$1,559	N/A	-$1,559
Expenses (See Table below: Breakdown of Expenses)	$4,038	$1,305	$5,343
TOTAL for 2010	$9,813	$4,972	**$14,785**

*Include CIGA payments

Source for Insured figures above is WCIRB Losses and Expenses report June 2011. Self-insured and state expenses are calculated by CHSWC using 0.50 multiplier for equivalent cost components. The equivalent expense components are estimated as follows:

Table 5: Breakdown of Expenses (Million $)

	Insured	*Self-Insured and State*	*All Employers*
Loss Adjustment Expense	$1,924	$962	$2,886
Commissions and Brokerage	$727	N/A	$727
Other Acquisition Expenses	$473	N/A	$473
General Expenses	$685	$343	$1,028
Premium and Other Taxes	$229	N/A	$229
Total	$4,038	$1,305	**$5,343**

Estimate of Workers' Compensation System Size Based on Written Premium

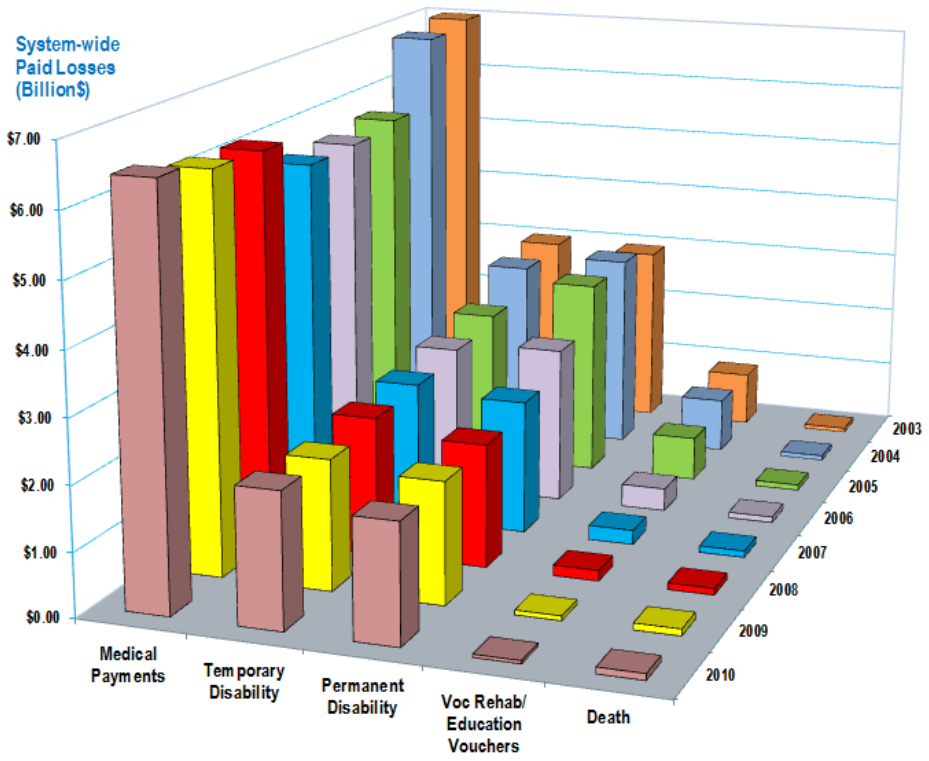
Another way to calculate systemwide costs for employers is by using written premium.

Written premium for insured employers = $9.8 billion in accident year 2010.[6]

$9.8 billion * 1.5 = $14.7 billion systemwide costs for employers.

[6] WCIRB Summary of September 30, 2011 Insurer Experience Report, December 8, 2011.

Figure 2: System-wide Paid Benefits, by Year and Type of Payment (Billion $)



* System-wide amounts estimated at 1.5 times the amounts reported by insurers

Data Source: WCIRB

Costs Reached a Crisis in 2003

Both the increases in the costs of workers' compensation benefits and changes in the workers' compensation insurance industry were factors contributing to a workers' compensation crisis that peaked in 2003. The crisis propelled reforms enacted in 2003 and 2004 which reduced the cost of benefits. Within several years, the average rate for workers' compensation insurance fell by over 60 percent. The impact on injured workers' benefits is the subject of continuing study.

Increasing Cost of Benefits

The costs of workers' compensation benefits increased greatly between 1997 and 2003. The total costs of the California workers' compensation system more than tripled, growing from $7.8 billion in 1997 to $29.0 billion in 2003.[7]

Medical Costs

Medical costs, which are the largest single category of workers' compensation costs, rose most sharply, from $2.6 billion in 1997 to $7.1 billion in 2003. The rate of increase in medical cost per workers'

[7] The total cost of the workers' compensation figures consists of medical care payments and wage replacement benefits to injured workers, along with administrative expenses and adjustments to reserves, as calculated by CHSWC based on insurer data from WCIRB. *Annual Reports,* San Francisco: WCIRB, 1998, 2004.

compensation claim far exceeded the rate of increase in the consumer price index for medical care. The cost increase is driven partly by the availability of new medical technologies and drugs that are increasingly costly. Furthermore, the rate of utilization of medical goods and services was higher in workers' compensation than in other insurance systems, as well as higher in California workers' compensation than in other states. The high rates of utilization did not produce superior health outcomes.

Weekly Benefits

Other contributing factors to the increases in costs were the increases to the TD and PD benefits that began phasing into effect in 2003 following Assembly Bill (AB) 749 enacted in 2002. Benefits prior to AB 749 had not kept up with inflation:

- AB 749 brought weekly TD benefits up to two-thirds of the State's average weekly wage by 2005. This is the standard set by the National Commission on State Workers' Compensation Laws. AB 749 also indexed TD benefits to inflation in the State average weekly wage beginning in 2006, much like in other states.

- After AB 749, weekly PD benefits for 2006 were increased by about 40 percent over 2002 weekly rates, bringing the weekly rates to approximately equal the rates in 1984 after adjusting for inflation.

Expansion of Liability

Another factor contributing to the increase in workers' compensation costs for employers was the expansion of workers' compensation liability. Through most of the history of the workers' compensation system, the courts have expanded the boundaries of compensability. Partially counteracting this broad trend, there have been legislative restrictions from time to time, such as those imposing new conditions to compensability for psychiatric claims or post-termination claims. Although the system was originally seen as primarily dealing with traumatic injuries and accidents, it has come to be dominated by cumulative injuries and illnesses that may interact with the diseases and disorders of an aging population, the epidemic of obesity, and other public health issues outside the strictly occupational sphere.

Instability in the Insurance Industry

When the workers' compensation insurance industry was deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances below their actual costs. Many insurers drew on their reserves or other sources of capital or relied on investment profits during bull market years. Investment income dropped with the return of a bear market. Between 2000 and 2003, 26 workers' compensation insurers went into liquidation. Subsequently, the surviving insurers charged higher premium rates to meet costs and begin to replenish reserves. A study to obtain a more thorough analysis of the causes of the market instability was published in December 2009.

Impact on Employer

Costs for insurance peaked at an average of $6.29 per $100 of payroll in the latter half of 2003, making California the most expensive state in the U.S. for workers' compensation insurance. However, the average premium rate has dropped every year from the second half of 2003 to 2008 when it was $2.16, a decrease of almost 66 percent from the second half of 2003. From 2008 to 2010, the average premium rate increased by 7 percent from $2.16 per $100 of payroll to $ 2.32 per $100 of payroll, correspondingly.

Workers' Compensation Reforms: Recent Changes to the California System

Key Legislative Changes

California made significant legislative reforms in the workers' compensation system in 2002, 2003 and

2004. The reforms of 2002, 2003 and 2004 included provisions that, at least initially, accomplished the following:

- Control of medical costs:
  - Evidence-based medical treatment guidelines (e.g., ACOEM *Guidelines*).
  - Utilization review of medical treatment, systematically applying the guidelines.
  - A revised dispute resolution system using a qualified medical evaluator (QME) selected from a panel whenever an agreed medical evaluator (AME) is not used.
  - Standardized and transparent medical fee schedules.
  - New fee schedule for inpatient hospital, hospital outpatient departments, and ambulatory surgery centers based on the Medicare fee plus 20 percent.
  - A new fee schedule for pharmaceuticals based on the Medi-Cal Fee Schedule.
  - Caps on the number of chiropractic, physical therapy and occupational therapy visits per claim.
  - Employer control of medical care through medical provider networks (MPNs).
- Changes to indemnity benefits:
  - Indemnity benefit weekly rate increases enacted in 2002 legislation catching up for inflation and indexing weekly TD benefits to maintain the target levels recommended by the 1972 National Commission on State Workers' Compensation Laws.
  - Increase in number of weeks of PD benefits enacted in 2002, adding 19.75 weeks for all awards of 20 percent disability or greater, phased in at 1 week for every percentage point for awards below 20 percent.
  - Decrease in number of weeks of PD benefits enacted in 2004, reducing 14.75 weeks from awards of 15 percent disability or greater, phasing in the reduction at 1 week for every percentage point for awards below 15 percent. For awards of 70 percent to 99.75 percent, 7 weeks of benefits were added for every percentage above 69.75 percent.
  - Duration of TD benefits, formerly limited only by the evidence in each case, was restricted by the 2004 legislation to 104 weeks of benefits within 2 years of first payment, amended in 2007 to 104 weeks within 5 years of date of injury.
- Changes in PD compensation:
  - PD rating based on American Medical Association (AMA) *Guides* prescribed by 2004 legislation, implemented by Permanent Disability Rating Schedule (PDRS) revision effective 1/1/2005.
  - Apportionment to causation, the conclusive presumption that previously awarded disability, continues to exist for the purpose of apportionment from a subsequent award.
  - Incentives for employers to offer return to work (RTW), with a change of + or – 15 percent in weekly PD benefits depending on whether an appropriate and timely offer is made.

These legislative changes will be described in greater detail in the following pages.

Reform Results

- The cost of workers' compensation insurance has dropped over 60 percent for insured employers.[8]

[8] WCIRB Summary of September 30, 2011, Insurer Experience Report, December 8, 2011.

- Annual medical paid costs went down 25 percent from their peak in 2003 to 2006, increased slightly (1.7 percent) between 2006 and 2007, and then increased by 18 percent between 2007 and 2010. Reduced payments to providers were the major contributing factor to the initial reductions in annual paid losses. Subsequently, expenses for actual medical care have been rising less rapidly than medical cost-containment expenses and direct payments to workers (which are mostly claim settlements).
- WCIRB notes that since the full implementation of reforms in 2005, the average cost of the medical losses per claim have increased at a rate of 6.5 percent per year during the post-reform period and 7.7 percent for the long-term pre-reform period. WCIRB projects medical losses to grow by the approximate average of the long-term pre-reform and recent post-reform medical severity trends (7 percent).[9]
- PD benefits incurred are down by about one-half to two-thirds.[10]
- Paid TD declined following the 2004 reforms, even before the two-year cap took effect. For the first time since the reforms, paid TD increased slightly in 2010.
- The indemnity claim frequency declined especially rapidly by about 30 percent just in the two years immediately after the enactment of the 2003-2004 reforms. WCIRB estimates that indemnity claim frequency for the first nine months of 2011 is 0.1 percent above the frequency for the first nine months of 2010, and is less than one-third of its all-time high in 1991.[11] However, there was 9 percent increase in frequency between the 2009 and 2010 accident years, the first increase in a decade.[12]

Savings from the workers' compensation reforms have been estimated at $13.7 billion per year for insurers.[13] Extending the estimates to include self-insured employers and the State, the reforms have reduced the direct cost of paying benefits plus loss adjustment expenses by a total of $19.6 billion per year. Insurance rates continued to decline into 2008 and then increased by 10 percent from 2008 through 2011.

Descriptions of Major Legislative Changes, 2002-2004

Medical Reforms

California's workers' compensation medical costs grew by over 120 percent from 1997 to 2004. Prior to the reforms enacted in 2003 and 2004, overall costs for workers' compensation medical treatment were estimated to be 50 percent to 100 percent higher than group health for similar conditions. Reforms were intended to control medical costs by means of including utilization controls, control over choice of providers, and fee schedules.

Utilization

According to the Workers' Compensation Research Institute (WCRI), the utilization of workers' compensation medical services in California was over 70 percent greater than other states. Several utilization measures were adopted to control this including:

- Caps on chiropractic, physical therapy, and occupational therapy visits, limiting each type of therapy to 24 visits per claim. According to WCIRB, following the enactment of workers' compensation reforms of SB 228, physical therapy utilization has been reduced by approximately 61 percent and chiropractic utilization by approximately 77 percent.

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[9] https://wcirbonline.org/wcirb/resources/rate_filings/pdf/2012_01_01_parta_rates.pdf, Exhibit 6.3, page A:B-27.
[10] WCIRB Report WCIRB Legislative Cost Monitoring Report, October 9, 2008.
[11] WCIRB Summary of September 30, 2011, Insurer Experience Report, December 8, 2011.
[12] https://wcirbonline.org/wcirb/resources/data_reports/pdf/093011_insurer_experience.pdf, Exhibit 7.
[13] CHSWC Calculations based on WCIRB Report "WCIRB Legislative Cost Monitoring Report, October 9, 2008."

- Evidence-based guidelines for treatment of common occupational injuries and illnesses. Scientifically based treatment guidelines were adopted to replace the nearly unlimited discretion of treating physicians, as well as potentially arbitrary denials by claim administrators.
- Elimination of the treating physician presumption of correctness on medical treatment issues for all dates of injury. Previously, an employer's or insurer's ability to restrain excessive or inappropriate treatment was readily thwarted by the presumption in favor of the treating physician's opinions.

The CHSWC Study by RAND indicates that the utilization controls brought overall service use in California's workers' compensation system more in line with other states. The impact of the utilization controls was greater on chiropractic care than other professional services. In particular, California's average payment per claim for evaluation and management services is still higher than other states due to the higher number of visits per claim and more services per visit[14].

Choice of Medical Providers

By default, injured workers must receive treatment from physicians designated by the employer or insurer for the first 30 days after reporting an injury. After 30 days, they have free choice of physicians. These choices may be altered by the employee, employer or insurer exercising various rights:

- If an employee has designated a personal physician prior to an injury, the employee has the right to be treated by that physician instead of a physician of the employer's choosing. Only employees for whom the employer provides group health coverage are eligible to predesignate, and the personal physician must meet requirements specified in Section 4600(d) of the Labor Code.

  Predesignation has been available but largely ignored for many years. However, significant conditions and restrictions were adopted in 2004 concurrently with the enactment of statutes authorizing medical provider networks (MPNs) (see below). The section was further amended in 2006 to allow designation of the medical group rather than just an individual physician. A valid predesignation takes precedence over the other provisions for choice of medical providers.

- If an employer has contracted with an approved workers' compensation managed health care organization (HCO), an employee injured while that contract is in force is required to receive treatment for the injury only in accordance with the HCO contract for the first 90 or 180 days after the report of the injury, depending on whether the employer also provides group health coverage. Statutes authorizing HCOs were enacted in the 1990s and remained unchanged by the 2003 and 2004 reforms. The emergence of MPNs (see below) with no time limits on medical control, however, has reduced the level of employer interest in HCOs.

- If a self-insured employer or the insurer of an insured employer has established an MPN approved by the Division of Workers' Compensation (DWC), an injured worker is required to receive all treatment within the MPN. There are provisions for transitioning patients into an MPN if treatment began outside the MPN for any reason. The employee has free choice of physicians within the MPN after the first visit, but the employee has very limited rights to treatment outside the MPN. Unlike the choice of providers in HCOs or the default 30-day control, an employee covered by an MPN must choose from network providers indefinitely. MPNs were authorized by SB 899 enacted in 2004, with the first MPNs beginning operations in 2005. As of September 2008, DWC lists 1,281 approved MPNs.

Fee Schedules

CHSWC/RAND studies found that the lack of fee schedules regarding certain medical services and the delays in updating existing fee schedules created administrative inefficiency and therefore higher costs.

[14] http://www.rand.org/pubs/monographs/MG1144.html.

CHSWC studies found that the California workers' compensation system had high pharmaceutical reimbursement rates relative to other systems, such as Medicaid and employer health benefits, and that when compared with other workers' compensation systems, California's pharmaceutical reimbursement rates were near the highest among the states reviewed. Workers' compensation reforms accomplished the following:

- Created a new fee schedule for hospital inpatient and outpatient departments and ambulatory surgery centers (ASCs) based on Medicare fees plus 20 percent. (SB 228)
- Created a new schedule for pharmaceuticals based on 100 percent of Medi-Cal. (SB 228)
- Required pharmacies and other providers of medical supplies and medicines to dispense a generic drug equivalent unless the prescribing doctor states otherwise in writing. (AB 749)
- Authorized employers and insurers to contract with pharmacies or pharmacy benefit networks pursuant to standards adopted by the DWC administrative director (AD). (AB 749)

After the adoption of the new pharmaceutical fee schedule, it became apparent that the Medi-Cal pharmaceutical fee schedule did not cover repackaged drugs dispensed by physicians, so they were still payable according to the old formula based on list price. CHSWC studies in collaboration with RAND, the University of California (UC), Berkeley, and the California Workers' Compensation Institute (CWCI) found that on average, physician-dispensed drugs cost 490 percent of what was paid to pharmacies for the same drugs. In some cases, including the most commonly prescribed drug dispensed by physicians, the mark-up exceeded 1,000 percent. The AD adopted regulations effective March 2007 restricting costs of repackaged drugs that are dispensed by physicians to be more in line with the Medi-Cal pharmacy fee schedule and what pharmacies are allowed to charge. Had this change been in effect in 2006, it would have saved about $263 million in paid costs that year.

Although the loophole for repackaged drugs was closed, other gaps remain in the fee schedules. Attention has recently shifted from repackaged drugs to compound drugs and medical foods as potentially costly products that are poorly managed under existing laws and regulations. Payments for compound drugs, convenience packaging of drugs (co-packs), and medical foods grew from 2.3 percent to 12 percent of medication expenses between first quarter of 2006 and first quarter of 2009.[15] The CHSWC/RAND study on compound drugs, "Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program: An Overview of the Issues" makes several recommendations on compound drugs, co-packs and medical foods[16]. AB 378 (Solario) was enacted in 2011 to address these issues. During the legislative process, the fact emerged that over-the-counter drugs, specially marketed through workers' compensation physicians, are similarly exploiting loopholes. AB 378 addresses all products sold by physicians, including these over-the-counter drugs.

Recent CHSWC/RAND studies on the inpatient hospital fee schedule and the outpatient facility fee services pointed out several problems that still exist with fee schedules. One of the fee schedule problems is that ambulatory surgery center (ASC) fees are at the same rates as hospital outpatient surgical departments, even though ASCs have lower costs and are paid less than hospitals under Medicare. The second fee schedule problem is the duplicate payment of spinal surgical implant hardware, because the full cost of the hardware is separately reimbursable even though the average cost of the hardware is already included in the global reimbursement for these procedures. CHSWC/RAND studies make recommendations for legislative and regulatory actions to correct these problems.

[15] Ireland and Swedlow, "The Cost and Utilization of Compound Drugs, Convenience Packs and Medical Foods in California Workers' Compensation," CWCI, August 2010.

[16] http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_UseofCompoundDrugsMedicalFoodsCo-Packs.pdf

Immediate Medical Care

For claims reported after April 19, 2004, SB 899 requires that within one day of receiving an employee claim form, the employer will authorize the provision of medical treatment and will continue to provide such treatment until such time as the claim is accepted or denied. The employer's liability for medical treatment prior to the time the claim is accepted or denied is limited to $10,000 (Labor Code Section 5402). No data are available on the extent of medical treatment being provided pursuant to the law.

DWC provided information on claims denial rates for 2002 through 2010 to assess if any significant increases in denied claims have occurred beginning in 2004 as a result of the SB 899 provisions related to immediate medical care. As shown in the following table, information from DWC indicates that the rates of claims denied in calendar years 2004 through 2006 are generally comparable to that at the 2003 level. From 2006 through 2010, the data show a slight increase in claim denial rate. The provision of immediate medical care does not appear to have affected denial rates, although there is a continuing trend of increasing denial rates over several years.

Table 6: Statewide Claims Denied[17]

Accident Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Reported Claims	892,717	853,553	806,106	760,835	737,024	700,826	643,824	553,632	523,577
Claims Denied	51,262	55,007	51,627	49,893	50,123	53,123	50,714	47,678	39,532
Claim Denial Rate	5.7%	6.4%	6.4%	6.6%	6.8%	7.6%	7.9%	8.6%	7.6%

Source: DWC

Indemnity Benefits

Permanent Disability Compensation

Changes to the Permanent Disability Rating Schedule

PD benefits are meant to compensate workers for their remaining disability after they have reached maximum medical improvement from their injuries. However, a CHSWC study by RAND found that the PD rating system in California prior to 2005 was procedurally complicated, expensive to administer and inconsistent:

- Earnings losses for similarly rated disabilities for different body parts varied dramatically.
- PD ratings varied among doctors evaluating the same or similar injuries, due in part to significant reliance on subjective criteria.

SB 899 revised the rating methodology for PD:

- One of the basic principles of a PD rating, "diminished ability to compete," was replaced by "diminished future earning capacity," which is defined as "a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees."

- The new PD rating schedule (PDRS), adopted January 1, 2005, was required to incorporate the American Medical Association (AMA) *Guides* for both descriptions and measurements of impairments and for the corresponding percentages of impairment. Evaluations according to the

[17] DWC's WCIS FROI and SROI Reports and Tables, Table 13, as of June 3, 2011, http://www.dir.ca.gov/dwc/wcis/WCIS_Reports.html.

AMA *Guides* are expected to be more predictable and consistent than evaluations under the more subjective rating system that was in place for almost a century.

- In a set of *en banc* decisions known as *Almaraz/Guzman* and *Ogilvie* in 2009, the Workers' Compensation Appeals Board (WCAB) interpreted these changes in a way that has cast doubt on the success of the reforms in achieving consistency, uniformity and objectivity. After the appeals ran their course, it appears that impairments may be evaluated "within the four corners" of the AMA *Guides* without being confined to the chapter and section that are specifically written to address a particular type of impairment, and the WCAB's method of rebutting the scheduled adjustment for diminished future earning capacity has been rejected.

Changes to Permanent Disability Indemnity Payments

PD compensation is payable as a weekly benefit for a number of weeks:

- The number of weeks depends entirely on the PD rating. The number of weeks is cumulative and progressive:
    - The number is cumulative, meaning that across the range of ratings from 1 percent to 99 percent, each additional percentage point of disability adds a specified number of weeks of benefits to the award.
    - The number is progressive, meaning that the number of weeks added for each point in the upper ranges is larger than the number added for each point in the lower ranges.
    - SB 899 reduced the number of weeks of PD benefits by one week for each of the first 14.75 percentage points of every disability rating. For the percentage points under 10, SB 899 reduced the weeks of indemnity payments from 4 to 3 weeks per point. For the percentage points from 10 percent to 14.75 percent, SB 899 reduced the weeks of indemnity payments from 5 to 4 weeks per point. Because an indemnity award is cumulative, this means that every award from 15 percent up to 69 percent is reduced by almost 15 weeks. Few awards reach 70 percent, but for those that do reach this range, SB 899 increased the number of weeks for each percentage point in the range of 70 percent to 99.75 percent from 9 weeks per point to 16 weeks per point.
- The weekly benefit amount depends on the employee's pre-injury earnings within a specified range. The range is low compared to most workers' wages, however, so most workers receive a maximum weekly rate rather than a full two-thirds of their pre-injury earnings.
- In a few cases, the weekly amount is affected by the PD rating. For most cases, the maximum weekly amount is $230 per week. For cases with ratings of 70 percent to 99 percent, the maximum weekly amount is $270. As noted above, most workers earn enough to qualify for the maximum weekly amount. These maximum amounts have not changed since 2006, when the last of the changes enacted in 2002 took effect.
- Under SB 899, the weekly amount may be adjusted up or down by 15 percent depending on whether the employer offers the employee return to work (RTW).

Changes to Permanent Disability Intended to Encourage Return to Work

To encourage employers to offer an opportunity for disabled workers to return to work, the 2004 reforms introduced an adjustment of the weekly benefit amount. If the employer offers work according to statutory criteria, the employer pays the remaining weeks of benefits at a 15 percent lower weekly amount. Conversely, if the employer does not offer work according to statutory criteria, the employer pays the remaining weeks at a 15 percent higher weekly amount. This adjustment applies only to an employer of 50 or more employees.

Based on the greater number of workers who return to their at-injury employers than the number who do not, it was expected that this RTW incentive would save about 3 percent in overall PD costs while targeting the increased benefit to the workers who need it more.

Experience shows that the expected savings have not materialized. More cases are being paid at the bumped up rate than at the bumped down rate, implying that more workers are not receiving the appropriate RTW offers within the specified timeframes. This is contrary to previous evidence that more workers returned to their at-injury employers. To further confound expectations, nearly 70 percent of awards are paid without being adjusted either up or down, even though only 37 percent of employees work for businesses that are exempt from this bump-up/bump-down incentive. Anecdotal reports indicate that the statutory criteria are not practical. It appears that the statutory criteria for an RTW offer are unrealistic. In 2008, DWC convened multiple meetings of a Return-to-Work Advisory Committee in an attempt to identify appropriate revisions to this and other incentives and supports for returning injured workers to employment. It now appears that the two-tiered PD system as it currently exists is not an effective incentive to promote RTW nor an effective means of targeting increased benefits to workers who lose their jobs due to disabilities.

Changes to Permanent Disability Apportionment

A permanent disability may be only partially attributable to an industrial injury and partially attributable to other factors such as prior injuries or other conditions. Apportionment is the process of determining the portion of PD which an employer is required to compensate. A simplified summary of the law prior to 2004 is that an employer was liable for all of the PD except that portion which the employer could prove would have existed even in the absence of the industrial injury.

SB 899 replaced the former statutes with new provisions, including the rule, “apportionment of PD shall be based on causation.” In some situations, this might be compared to weighing all the industrial and non-industrial factors and assigning liability in proportion to the industrial contribution to the PD award.

SB 899 adopted a presumption that any disability that has been previously awarded continues to exist. For example, if a worker with a previous disability award of 10 percent sustains an injury to the same part of the body and is then rated with a 15 percent disability, the 10 percent award may be subtracted from the award for the new injury. It is no longer necessary for the employer to prove that the worker still had the 10 percent disability immediately prior to the second injury.

The courts have resolved some of the disputes over interpretation of the new law of apportionment; however, many questions remain to be resolved.

Combined Effects of Changes to Permanent Disability

The savings from the combined effects of changes to PD are between $2.7 and $3.5 billion per year.[18] These savings resulted from:

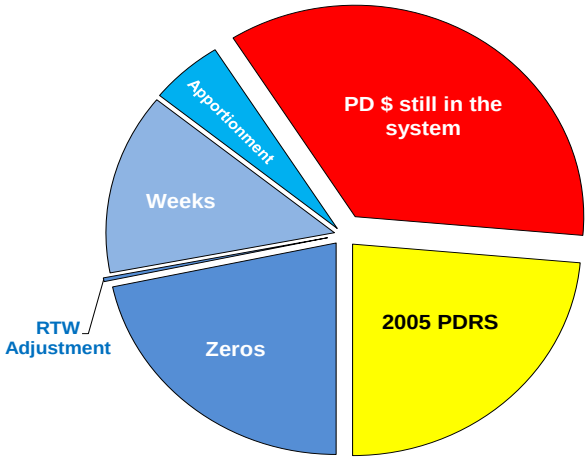
- A substantial fraction of cases that would have received PD ratings under the former PDRS do not have any impairment according to the AMA Guides. It is difficult to quantify the share of these “zeros”; however, current evidence suggests that as many as 25 percent of cases may be dropping out of the PD ratings entirely. If the cases that drop out are the ones that would have received low ratings under for pre-2005 schedule, the “zeros” do not, however, take out 25 percent of the PD dollars.
- The reduction in weeks at the lower end of all awards cuts the overall cost of PD by 16 percent, according to University of California (UC), Berkeley analysis.
- Apportionment is reducing PD awards by an average of 6 percent, according to a UC Berkeley analysis of Disability Evaluation Unit (DEU) ratings.
- The 15 percent up or down adjustment of weekly benefits depending on an RTW offer appears to be increasing costs.
- Average ratings under the new PDRS were initially approximately 40 percent lower than average ratings under the pre-2005 rating schedule. Average ratings have crept up in the years since the

[18] Based on WCIRB-projected pre-reform annual PD cost of $3.7 billion, extended to include self-insured and State ($3.7b * 1.43 = $5.3 billion). A fifty percent reduction is $2.65 billion. A two-thirds reduction is $3.5 billion.

2005 schedule was adopted. As of 2011, average ratings are 31.5 percent lower than average ratings under the old schedule, reducing the average value of non-zero PD awards by 40 percent.

The cumulative effect of all of these changes is to cut the systemwide cost of PD benefits by between one-half and two-thirds, as depicted in the following chart.

Figure 3: Permanent Disability Reductions, Permanent Disability Remaining, per SB 899



Data Source: WCIRB
Calculations: CHSWC, UC Berkeley

Temporary Disability Compensation

Temporary Disability Duration

Until 1979, TD benefits were limited to no more than 240 weeks of disability within five years of the date of injury. In 1978, a bill was enacted to remove the limit because of the hardship in the occasional case that required hospitalization for additional surgery more than five years after the date of injury. The cost was expected to be insignificant. The limits on temporary total disability were removed in 1979.

As interpreted by the courts, the amended statute allowed an extension without limit, as long as it was uninterrupted. This was the exact opposite of the expected scenario where separate periods of TD might be needed in the event of additional hospitalizations.

The result was that a few workers managed to extend “temporary” disability indefinitely, creating a few egregious examples of abuse of a well-intended humanitarian amendment. Later research showed that prior to the 2004 reforms, only about 8 percent of workers’ compensation TD claims involved payments exceeding 104 weeks. These claims often extended much longer, and the payments beyond 104 weeks represented approximately 34 percent of all TD payments.

SB 899 enacted in 2004 limited TD to 104 weeks of benefits within two years after the first payment. The reform raised concerns that the new limit was too restrictive. The commonly cited reason is that the two-year clock is running while a worker returns to work so that if more time is needed later, the worker is no longer eligible for TD benefits. In 2007, the Legislature passed and the Governor signed AB 338. The bill allows an injured worker to receive up to 104 weeks of aggregate disability payments within five years of the date of injury.

Temporary Disability Benefit Amount

The weekly amount of the TD benefit is set at two-thirds of the worker's average weekly wage, within an upper and a lower boundary. The upper boundary remained unchanged from 1996 until 2003, while inflation pushed wages up. TD benefits lagged farther and farther behind the target of two-thirds replacement of lost wages for many workers. The maximum amount was raised beginning in 2003, and now it is indexed for inflation so that the maximum recognized earnings are approximately 1.5 times the statewide average weekly wage. This means that the maximum TD rate is approximately equal to the statewide average weekly wage.

Return-to-Work Assistance and Incentives

Background

The goals of improving the impact of injuries on workers, as well as reducing the cost to employers and the impact on the California economy, are best served when injured workers return to sustained employment:

- The CHSWC/RAND study of PD found that permanently disabled workers who return to work at the same employer have less wage loss.
- The CHSWC/RAND RTW studies found that California has the poorest rate of RTW compared with other states and recommended that RTW incentives be implemented.

Although California had high PD costs, the poor rate of RTW produced a high rate of uncompensated wage loss compared to other states. A vocational rehabilitation program enacted in the 1970s was intended to help workers return to suitable gainful employment. Many stakeholders in the workers' compensation community reported dissatisfaction with the costs and outcomes of the vocational rehabilitation program. The proportion of rehabilitated injured workers working at the completion of their vocational rehabilitation plans declined during the 1990s.

In 2003, the Vocational Rehabilitation Program was repealed by AB 227 and replaced by a supplemental job displacement benefit (SJDB). SJDB is a voucher for education-related retraining or skills-enhancement for workers injured on or after January 1, 2004, who cannot return to their at-injury employers. In 2004, SB 899 provided that for workers injured before 2004, the vocational rehabilitation program would end January 1, 2009.

Return-to-Work Reforms

The reforms employed several approaches to improving RTW including:

- Tiered PD benefit depending on whether or not the employer offers RTW. The weekly PD benefit rate is increased by 15 percent if the employer does not make a timely RTW offer and is decreased by 15 percent if the employer does make the offer, providing an incentive for employers. This applies to employers of 50 or more employees.
- Worksite-modification reimbursements of up to $2,500 for employers to support accommodations by employers. This applies to employers of 50 or fewer employees.
- SJDB which helps pay for education for retraining or skills-enhancement for workers who could not return to work for the at-injury employer.
- Indirectly, but importantly, scientific standards for medical treatment which are expected to improve health outcomes and reduce the duration and severity of disability.

Evaluation of Return to Work After Reforms

It is unclear whether any of the direct approaches have improved California's RTW rate.

CHSWC has contracted with RAND to conduct a comprehensive study of the impact of recent RTW and vocational rehabilitation reform on employer costs and injured worker outcomes. Results from the CHSWC/RAND study indicate that the improvement in RTW began before the workers' compensation reforms were enacted and may not obviously be influenced by those reforms. For further information about this ongoing study, see the "Projects and Studies" section in this Annual Report.

Costs of Workers' Compensation in California

Employers pay the cost of workers' compensation either by paying premiums for workers' compensation insurance or by self-insuring with the consent of the Department of Industrial Relations (DIR). Only the State of California can be legally uninsured as an employer. The cost to insured employers is measured in terms of premium. Premium is measured before discounts that are given for deductibles because there are no adequate data on amounts paid in deductibles by employers. The cost to self-insured employers is measured mostly by incurred claims, similar to the analysis of insurance company losses and expenses. These two aspects of employer cost will be discussed in the following pages, and the loss and expense analysis for insurers appears later in this section.

Costs Paid by Insured Employers

In 2010, workers' compensation insurers earned $9.7 billion in premiums from California employers.[19]

The cost of workers' compensation insurance in California has undergone dramatic changes in the past ten years due to a combination of factors.

When workers' compensation premiums were deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances lower than their actual costs. Costs also increased beyond the amounts that were foreseen when premiums were determined and collected. Many insurers drew on their reserves to make up the difference, and several insurers became insolvent. Subsequently, the surviving insurers charged higher premium rates to meet costs and began to replenish surplus.

The California workers' compensation legislative reforms in the early 2000s, which were developed to control medical costs, update indemnity benefits and improve the assessment of PD, had significant impact on insurance costs.

As intended, these reforms reduced workers' compensation costs in California. It appears that the savings have been fully realized and the system may be returning to a trend of cost increases. The question now is whether the cost increases are merely the long-term trends of inflation and medical-cost growth, or whether the savings accomplished by the reforms are being eroded by an inability to maintain the early savings. Insurers report broad-based growth in medical spending, and judicial interpretations of the PD rating system portend increased litigation and higher PD payments. The cost of insurance continued to drop through the latest period for which written premium data are available, but filed rates have begun to climb again.

Workers' Compensation Written Premium

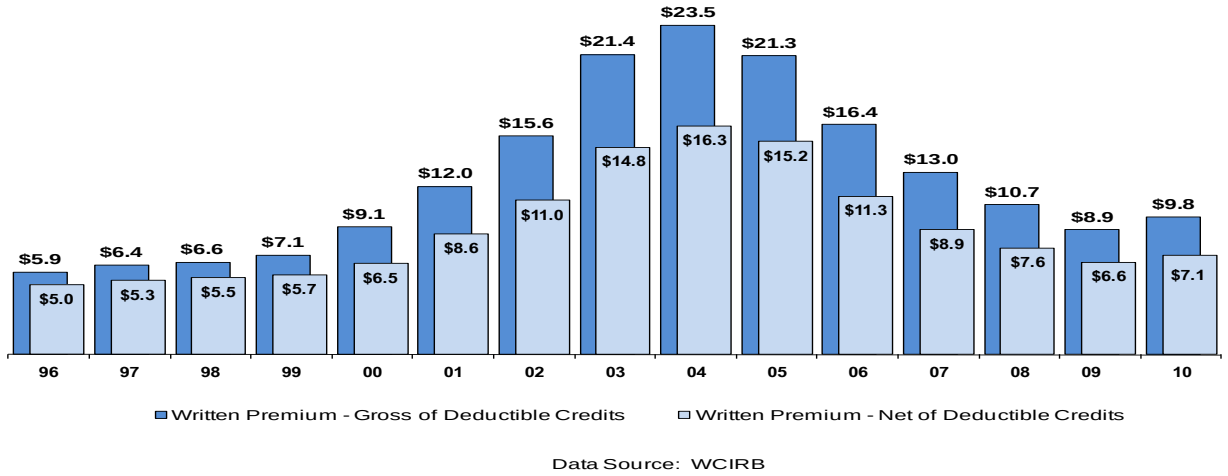
WCIRB defines written premium as the premium an insurer expects to earn over the policy period.

As shown in the following chart, workers' compensation written premium has undergone dramatic changes since 1996. Written premium increased slightly in the latter part of the 1990s, more than tripled

[19] Source: "2010 California's Workers' Compensation Losses and Expenses." WCIRB – June 21, 2011. Note that earned premium is not identical to written premium. The two measurements are related, and the choice of which measurement to use depends on the purpose.

from 1999 through 2004, and experienced a significant decline of over 60 percent from 2004 to 2009. From 2009 to 2010, there was a 10 percent increase in written premium.

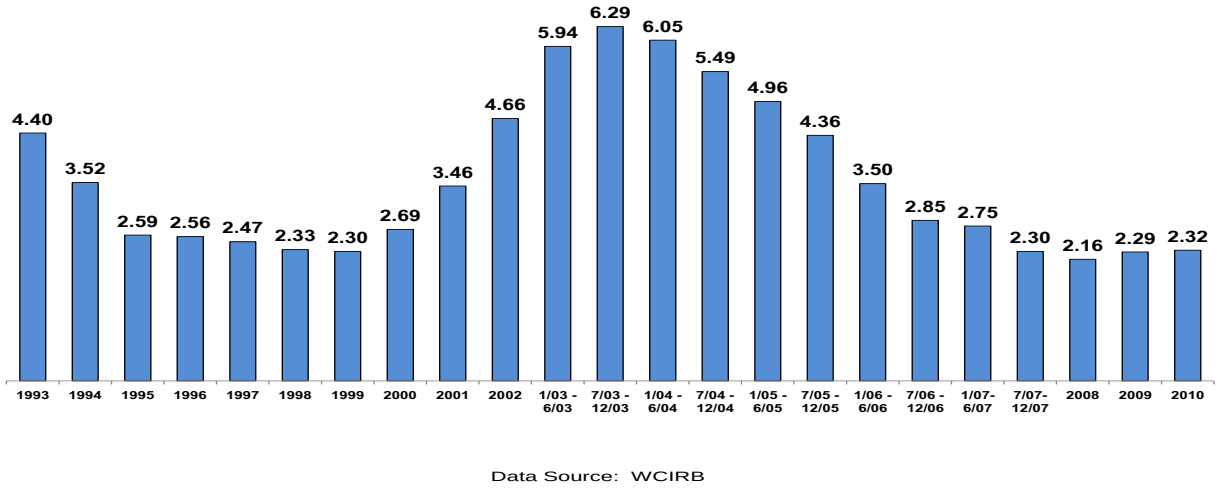
Figure 4: Workers' Compensation Written Premium as of September 30, 2011 (Billion $)



Workers' Compensation Average Premium Rate

The following chart shows the average workers' compensation premium rate per $100 of payroll. The average stabilized during the mid-to-late 1990s, and then rose significantly beginning in 2000 up to the second half of 2003. However, the average premium rate has dropped every year from the second half of 2003 to 2008 when it was $2.16, a decrease of almost 66 percent from the second half of 2003. From 2008 to 2010, the average premium rate increased by 7.4 percent.

Figure 5: Average Workers' Compensation Insurer Rate per $100 of Payroll, as of September 30, 2011 (Dollar $)

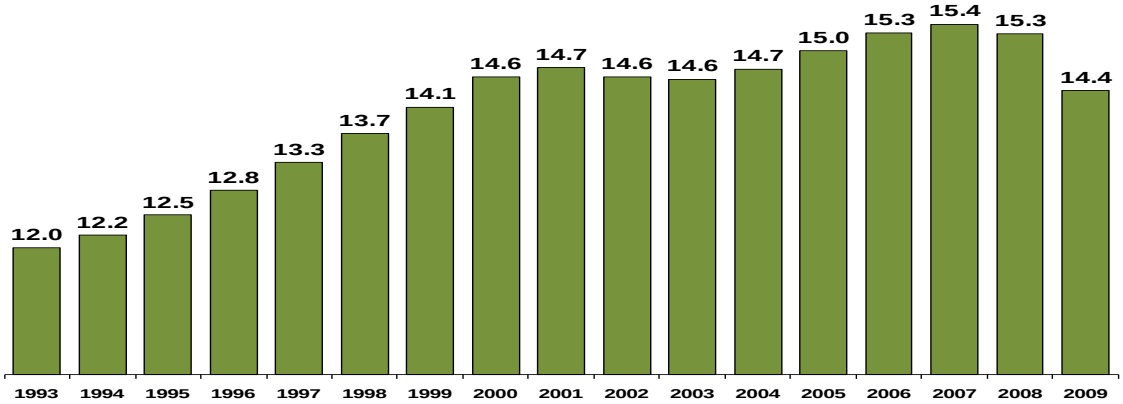


Workers Covered by Workers' Compensation Insurance

The estimated number of California workers covered by workers' compensation insurance grew by about 23 percent from 12 million in 1993 to 14.7 million in 2001. From 2001 through 2005, the number of

covered workers in California stabilized, averaging about 14.7 million per year. The estimated number of California workers covered by workers' compensation insurance grew by about 6 percent from 2003 to 2007, decreased slightly from 2007 to 2008, and then decreased by 6 percent from 2008 to 2009.

Figure 6: Estimated Number of Workers Covered by Workers' Compensation Insurance in California (Millions)

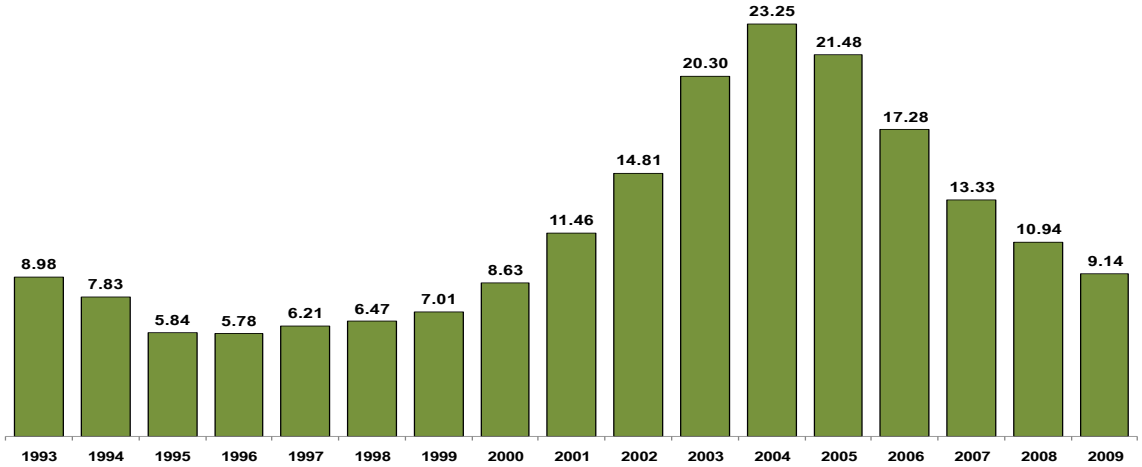


Data Source: National Academy of Social Insurance (NASI)

Total Earned Premium

WCIRB defines the earned premium as the portion of a premium that has been earned by the insurer for policy coverage already provided.

Figure 7: Workers' Compensation Earned Premium (Billion $)

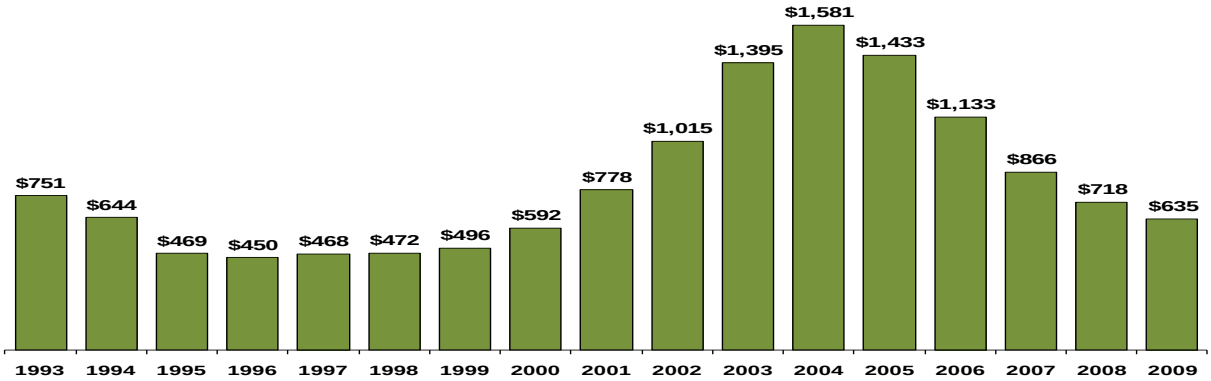


Data Source: WCIRB

Average Earned Premium per Covered Worker

As shown in the graph below, the average earned premium per covered worker dropped during the early-to-mid 1990s, leveled off for a few years, and more than tripled between 1999 and 2004. There was a 60 percent decrease in average earned premium per covered worker from 2004 to 2009.

Figure 8: Average Earned Premium per Covered Worker



Data Source: WCIRB and NASI
Calculations: CHSWC

Costs Paid by Self-Insured Private and Public Employers

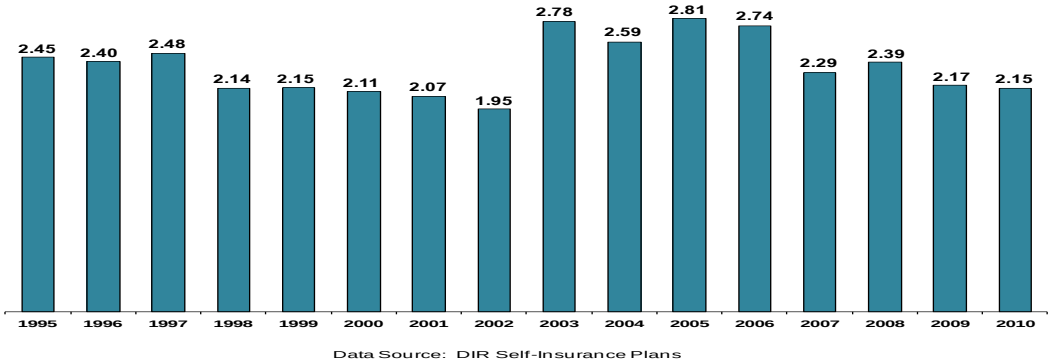
The permissible alternatives to insurance are private self-insurance, public self-insurance for governmental entities either individually or in joint power authorities (JPAs), and legally uninsured State government. Part of the cost of workers' compensation for self-insured employers can be estimated by the amounts of benefits paid in a given year and by changes in reserves. This method is similar to an analysis done by WCIRB for the insurance industry, but the data for self-insured employers are less comprehensive than for insurers. The most complete estimate of the cost to self-insured employers is still obtained by taking some multiple of the cost to insured employers, excluding the cost elements that only apply to insurance. As described in the sidebars at the beginning of this section, that multiplier is 0.5, and the estimated cost to self-insured employers and the State for 2010 is $4.97 billion.

Private Self-Insured Employers[20]

Number of Employees

The following chart shows the number of employees working for private self-insured employers between 1995 and 2010. A number of factors may affect the year-to-year changes. One striking comparison is to the average cost of insurance per $100 of payroll for insured employers, as described earlier. When insurance is inexpensive, fewer employers may be attracted to self-insurance, but when insurance becomes more expensive, more employers move to self-insurance.

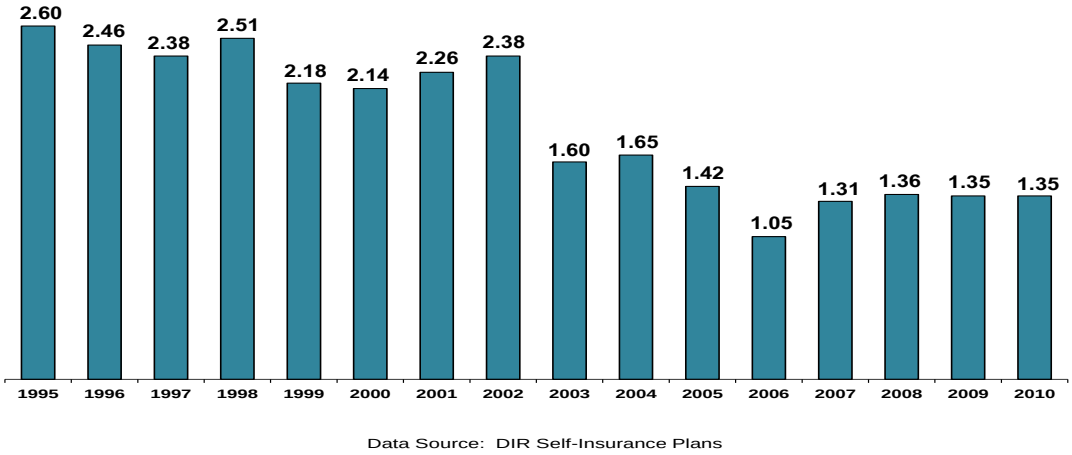
Figure 9: Number of Employees – Private Self Insured Employers (Million)



Indemnity Claims

The rate of indemnity claims per 100 employees of private self-insured employers reflects trends seen throughout the workers' compensation system. Frequency has been declining steadily for years. In addition, the reforms of the early 1990s and the reforms of 2003-2004 each produced distinct drops in frequency. Smaller year-to-year variations, including a small upswing in 1998 and a two-year upward trend from 2000 through 2002, are not correlated with any short-term variations in the insured market.

Figure 10: Number of Indemnity Claims per 100 Employees of Private Self-Insured Employers

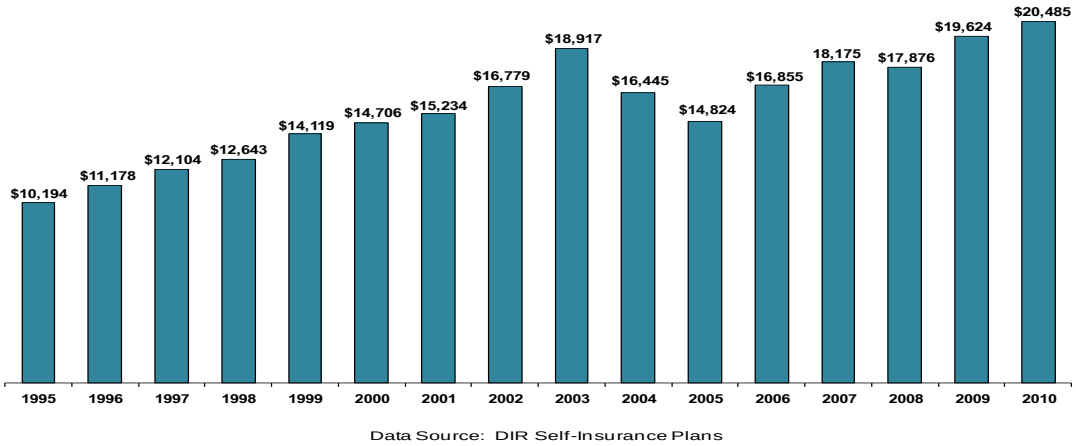


[20] Data for private self-insured employers are from DIR's Office of Self Insurance Plans correspondence received by CHSWC in September 2011.

Incurred Cost per Indemnity Claim

The following chart shows the incurred cost per indemnity claim for private self-insured employers, which has experienced changes similar to the changes for insurance companies. There has been a steady rise in the cost per indemnity claim until 2003, when the cost began to drop in response to the reforms of 2003 and 2004. The upward trend returned in 2006. Although the growth in cost per claim is back, the cost is now growing from a lower starting point than it would have been without the reforms.

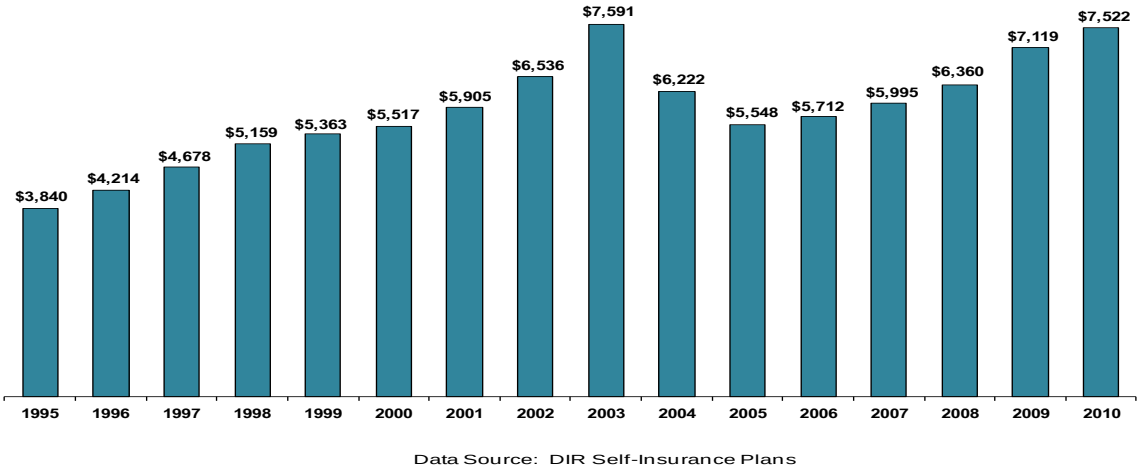
Figure 11: Incurred Cost Per Indemnity Claim of Private Self-Insured Employers



Incurred Cost per Indemnity and Medical Claim

The average cost of all claims, including both indemnity claims and medical-only claims is naturally lower than the average cost of indemnity claims. While lower, it shows a pattern similar to the trends for indemnity claims.

Figure 12: Incurred Cost per Claim – Indemnity and Medical of Private Self-Insured Employers

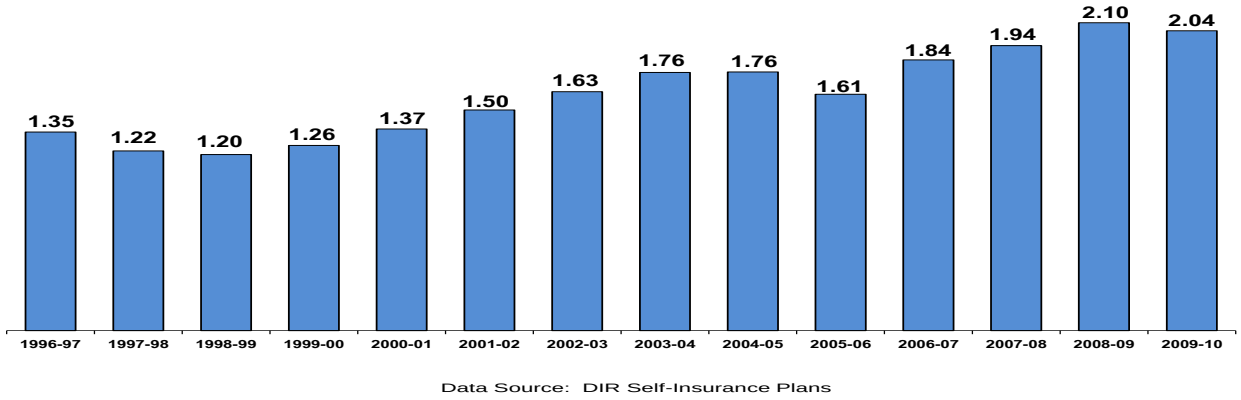


Public Self-Insured Employers[21]

Number of Employees

The following chart shows the number of public self-insured employers between fiscal years 1996-1997 and 2009-2010. The number of public self-insured employers declined between 1996-1997 and 1998-1999. Between 1998-1999 and 2003-2004, the number of employees working for public self-insured employers grew by 46.7 percent, then leveled off between 2003-2004 and 2004-2005, declined between 2004-2005 and 2005-2006, increased by 30 percent from 2005-2006 to 2008-2009, and then decreased by 3 percent from 2008-09 to 2009-2010.

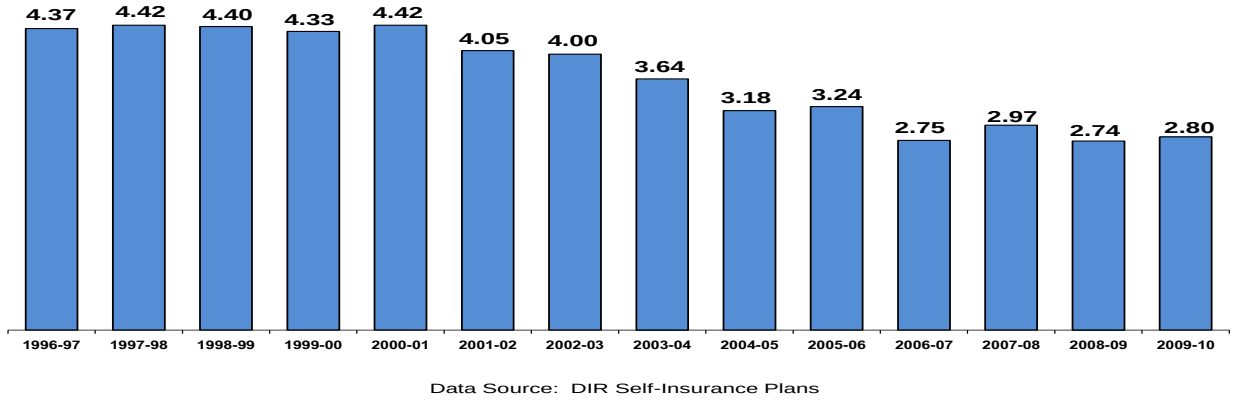
Figure 13: Number of Employees of Public Self-Insured Employers (Million)



Indemnity Claims

The number of indemnity claims by employees working for public self-insured employers remained steady between 1996-1997 and 2000-2001. Between 2000-2001 and 2004-2005, the number of indemnity claims decreased by 28 percent and then fluctuated between 2004-05 and 2009-10.

Figure 14: Number of Indemnity Claims per 100 Employees of Public Self-Insured Employers

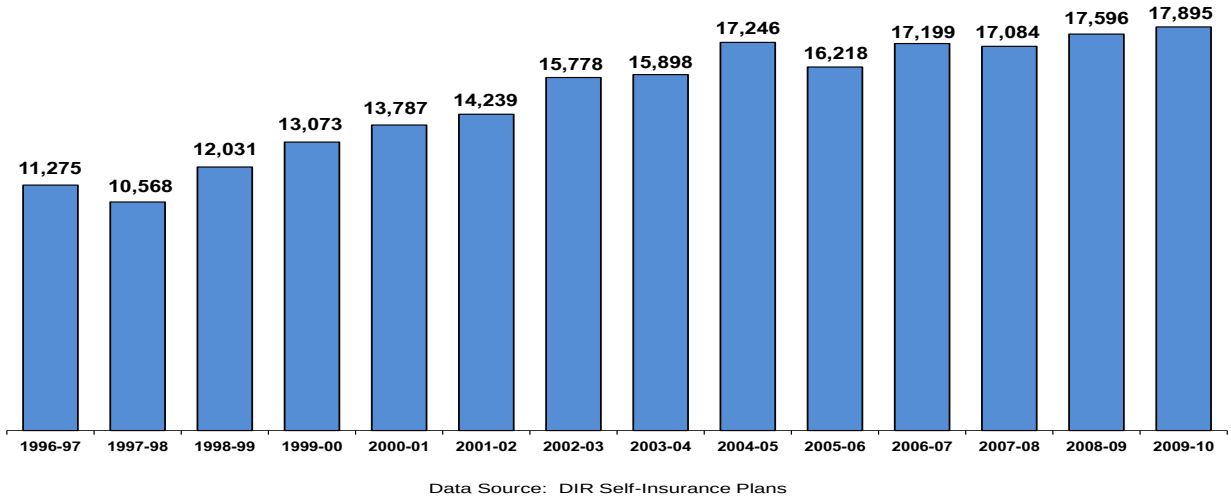


[21] Data for Public Self-Insured Employers are from DIR's Office of Self Insurance Plans correspondence received by CHSWC in February 2011.

Incurred Cost per Claim

The following chart shows the incurred cost per indemnity claim for public self-insured employers. Between 1996-1997 and 2009-2010, the incurred cost per indemnity claim increased by about 59 percent from $11,275 to $17,895.

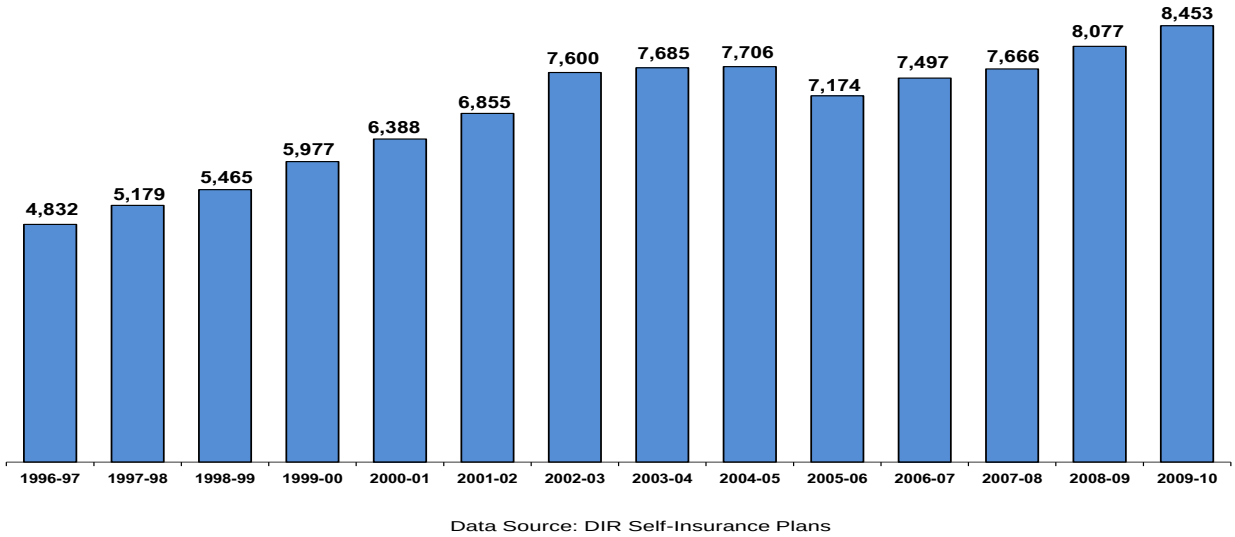
Figure 15: Incurred Cost per Indemnity Claim of Public Self-Insured Employers (Dollar $)



Incurred Cost per Indemnity and Medical Claim

The following chart shows the incurred cost per indemnity and medical claim for public self-insured employers. Between 1996-1997 and 2004-2005, the incurred cost per indemnity and medical claim increased by 95.5 percent, decreased by 7 percent between 2004-2005 and 2005-2006, and then increased by about 18 percent from 2005-2006 to 2009-2010.

Figure 16: Incurred Cost per Claim – Indemnity and Medical of Public Self-Insured Employers (Dollar $)



Workers' Compensation System Expenditures: Indemnity and Medical Benefits

Overall Costs

Methodology for Estimating

The estimated percentages of total system costs are based on insured employer costs provided by WCIRB. The assumption is that these data apply also to self-insureds. Since self-insured employers and the State are estimated to be 34 percent of total California workers' compensation claims, the total system costs are calculated by increasing WCIRB data for insured employers to reflect that proportion.

Growth of Workers' Compensation Costs

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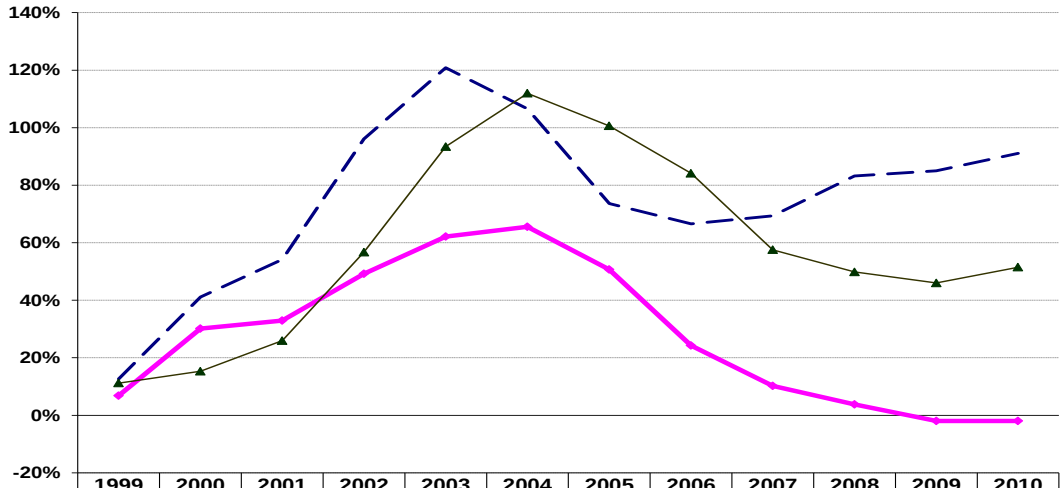
Figure 17: Workers' Compensation Costs: Percent Growth by Year Compared with 1998



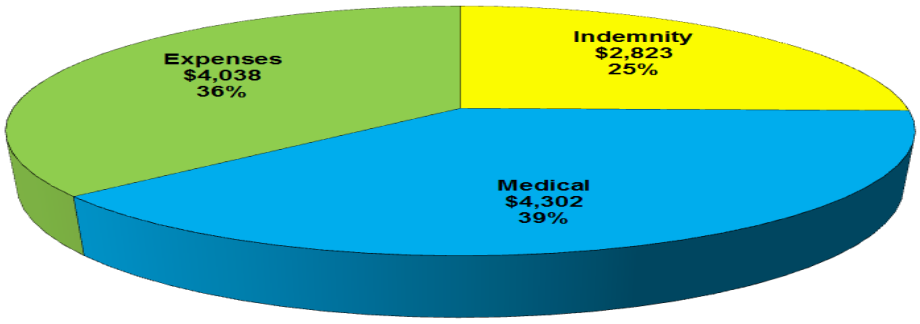
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Medical Paid	13%	41%	54%	96%	121%	107%	74%	67%	69%	83%	85%	91%
Indemnity Paid	7%	30%	33%	49%	62%	66%	51%	24%	10%	3.8%	-1.9%	-2.0%
Expenses	11%	15%	26%	57%	93%	112%	101%	84%	58%	50%	46%	51%

Data Source: WCIRB

Distribution of Workers' Compensation Costs by Type

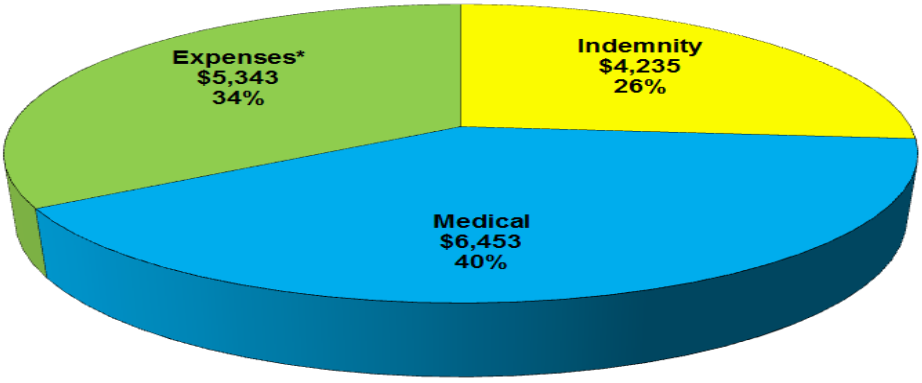
The two charts below show the distribution of workers' compensation paid costs for insured employers and systemwide.

Figure 18: Estimated Distribution of Insured Employers' Workers' Compensation Paid Costs, 2010 (Million $)



Data Source: WCIRB

Figure 19: Estimated Distribution of Systemwide Workers' Compensation Paid Costs, 2010 (Million $)



* The distribution shown in this chart includes both insured and self-insured employers' costs. For insured costs, Expenses include allocated loss adjustment expenses, unallocated loss adjustment expenses, commissions and brokerage, other acquisition expenses, and premium taxes. Self-insured employers would not encounter some of those types of expenses.

Please note that Insurer Pre-Tax Underwriting losses ($1,559 million in 2010) were excluded from the chart since they were not a component of both insured and self-insured costs.

Data Source: WCIRB with calculations by CHSWC

Indemnity Benefits

WCIRB provided data for the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 66 percent of total California workers' compensation claims, estimated indemnity benefits are shown on the following chart for the total system, insured employers, self-insured employers, and the State of California.

Table 7: Systemwide Estimated Costs of Paid Indemnity Benefits

Indemnity Benefits (Thousand $)	2009	2010	Change
Temporary Disability	$1,988,901	$2,110,355	$121,453
Permanent Total Disability	$143,006	$174,162	$31,156
Permanent Partial Disability	$1,710,879	$1,690,614	-$20,265
Death	$102,496	$100,476	-$2,020
Funeral Expenses	$1,949	$1,695	-$254
Life Pensions	$98,835	$109,164	$10,329
Voc Rehab/Non-transferable Education Voucher	$71,458	$48,062	-$23,397
Total	$4,117,524	$4,234,527	$117,003

Paid by Insured Employers

Indemnity Benefits (Thousand $)	2009	2010	Change
Temporary Disability *	$1,362,261	$1,406,903	$44,642
Permanent Total Disability *	$97,949	$116,108	$18,159
Permanent Partial Disability *	$1,171,835	$1,127,076	-$44,759
Death *	$70,203	$66,984	-$3,219
Funeral Expenses	$1,335	$1,130	-$205
Life Pensions	$67,695	$72,776	$5,081
Voc Rehab/Non-transferable Education Voucher *	$48,944	$32,041	-$16,903
Total	$2,820,222	$2,823,018	$2,796

Paid by Self-Insured Employers and the State**

Indemnity Benefits (Thousand $)	2009	2010	Change
Temporary Disability	$626,640	$703,452	$76,811
Permanent Total Disability	$45,057	$58,054	$12,997
Permanent Partial Disability	$539,044	$563,538	$24,494
Death	$32,293	$33,492	$1,199
Funeral Expenses	$614	$565	-$49
Life Pensions	$31,140	$36,388	$5,248
Voc Rehab/Non-transferable Education Voucher	$22,514	$16,021	-$6,494
Total	$1,297,302	$1,411,509	$114,207

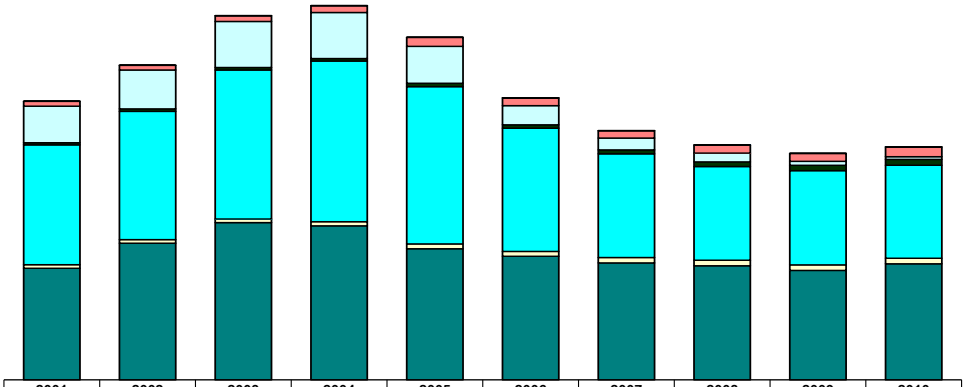
* Single Sum Settlement and Other Indemnity payments have been allocated to the benefit categories.

** Figures estimated based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 34 percent of all California workers' compensation claims.

Trends in Paid Indemnity Benefits

The estimated systemwide paid indemnity benefits for the past several years are displayed in the chart below. After the reforms of 2003 and 2004, paid indemnity benefits dropped to below the 2001 levels. The permanent partial disability that peaked in 2004 saw one of the biggest declines after the reforms. The TD benefits were steadily declining from 2005 to 2009 despite the TD benefit increases of AB 749 and the impact of the two-year limit not taking effect until April 2006. From 2009 to 2010, the TD benefits increased 6 percent.

Figure 20: Workers' Compensation Paid Indemnity Benefit by Type Systemwide Estimated Costs (Million $)



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Funeral Expenses	$2.3	$2.4	$2.0	$2.1	$2.0	$2.2	$1.9	$2.2	$1.9	$1.7
Permanent Total Disability	$87	$86	$102	$124	$161	$141	$132	$147	$143	$174
Voc Rehab/ Education Vouchers	$664	$707	$838	$838	$673	$347	$217	$158	$71	$48
Life Pensions	$39	$46	$48	$46	$60	$63	$72	$84	$99	$109
Permanent Partial Disability	$2,179	$2,331	$2,709	$2,923	$2,862	$2,242	$1,885	$1,705	$1,711	$1,691
Death	$66	$66	$67	$72	$85	$87	$97	$99	$102	$100
Temporary Disability	$2,029	$2,484	$2,858	$2,802	$2,385	$2,247	$2,127	$2,075	$1,989	$2,110
Total	$5,065	$5,723	$6,623	$6,808	$6,229	$5,130	$4,532	$4,271	$4,118	$4,235

Data Source: WCIRB
Calculations: CHSWC

Supplemental Job Displacement Benefits Costs

The reforms of 2003 eliminated vocational rehabilitation (VR) for injuries arising on or after January 1, 2004, and replaced it with a supplemental job displacement benefit (SJDB). The VR statutes were repealed entirely effective January 1, 2009. Consequently, the expenditures for VR are decreasing rapidly as the remaining pre-2004 cases run off. SJDB expenditures are taking their place, but at a much lower level.

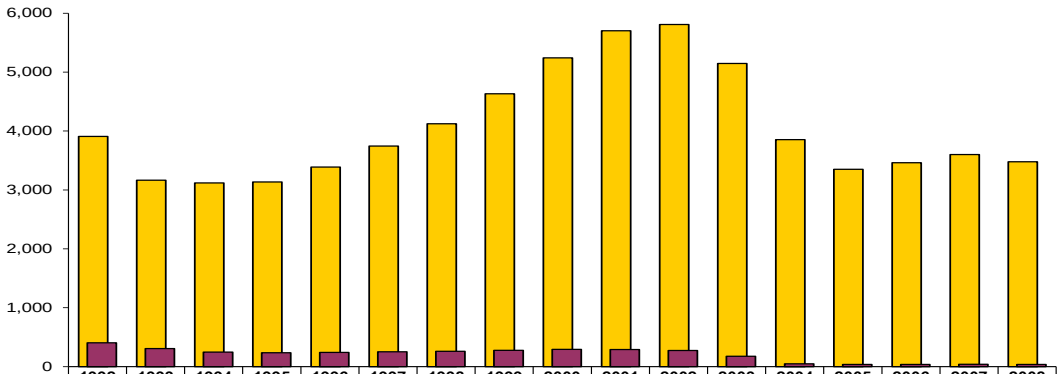
Supplemental Job Displacement Benefit Vouchers

AB 227 created a system of non-transferable educational vouchers effective for injuries occurring on or after January 1, 2004. WCIRB's estimate of the cost of educational vouchers is based on information compiled from the most current WCIRB Permanent Disability Claim Survey. In total, 18.3 percent of accident year 2004 PD claims involved educational vouchers, and the average cost of the educational vouchers was approximately $5,900. For the 2005 accident year at first survey level, 20.7 percent of sampled PD claims were reported as involving educational vouchers with an estimated average cost of approximately $5,600.

Vocational Rehabilitation and Supplemental Job Displacement Benefit Vouchers Incurred Costs

AB 227, enacted in 2003, in combination with clean-up language in SB 899 enacted in 2004, repealed the workers' compensation VR benefit for dates of injury on or after January 1, 2004. VR benefits are available only to eligible workers who were injured before 2004 and were available only through December 31, 2008. VR is essentially over, although some litigation continues over the wind-up of VR under particular circumstances. The chart below presents the most recent data available through 2008 on VR costs including SJDB vouchers (non-transferable educational vouchers) beginning from policy year 2003.

Figure 21: Vocational Rehabilitation Benefits and SJDB Vouchers Costs Compared with Total Incurred Losses, WCIRB 1st Report Level (Million $)



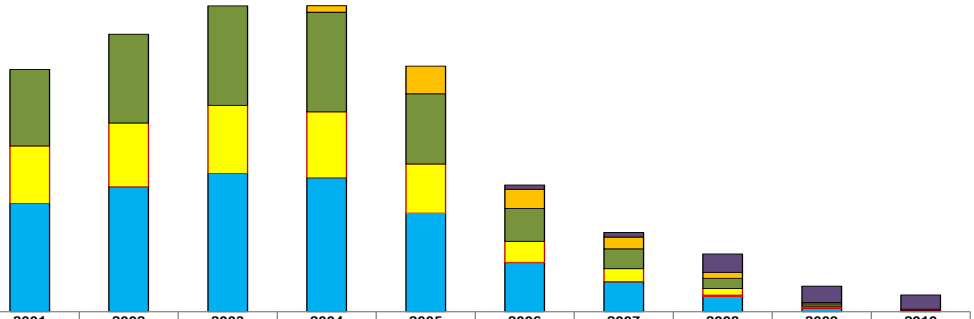
Policy Year	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Incurred Losses	3,907	3,164	3,120	3,136	3,389	3,744	4,123	4,631	5,243	5,702	5,809	5,147	3,855	3,351	3,463	3,601	3,478
Voc Rehab Benefits **	404	308	246	236	241	253	261	278	292	291	275	177	49	38	38	40	37

* The Vocational Rehabilitation statutes are repealed entirely effective January 1, 2009, and replaced with Supplemental Job Displacement Benefits.
** Policy year 2003 "vocational rehabilitation benefits" contain a mix of vocational rehabilitation costs and non-transferable educational voucher costs. Policy year 2004 and later "vocational rehabilitation benefits" contain mainly non-transferable educational voucher costs.

Data Source: WCIRB

The following chart shows the amounts paid for each component of the VR benefit including newly introduced VR settlement and SJDB vouchers for the period from 2001 through 2010.

Figure 22: Paid Vocational Rehabilitation Benefits and SJDB Vouchers for Insured Employers (Million $)



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Education Vouchers	N/A	N/A	N/A	N/A	N/A	8.0	8.6	35.1	31.1	27.1
V/R Settlement*	N/A	N/A	N/A	12	53	37.0	22.5	11.5	2.6	0.6
Education & Training	146	170	190	191	135	62.8	38.2	19.5	4.4	1.1
Evaluation	111	122	130	127	94	40.3	24.5	12.5	2.8	0.7
Other Voc. Rehab	N/A	N/A	N/A	N/A	N/A	0.6	0.9	2.7	1.5	1.0
Maintenance Allowance	207	239	265	257	189	94.0	57.1	29.3	6.6	1.6
Total	464	532	586	586	471	242.7	151.8	110.7	48.9	32.0

* Vocational Rehabilitation Settlements were allowed on injuries occuring on or after January 1, 2003, pursuant to Assembly Bill No.749

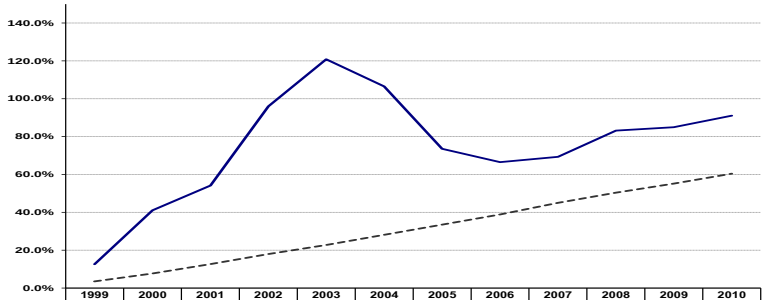
Data Source: WCIRB

Medical Benefits

Workers' Compensation Medical Costs vs. Medical Inflation

The following chart compares the percent growth of California's workers' compensation medical costs paid by insurers and self-insured employers in each consecutive year from 1998 with the percent growth of the medical component of the Consumer Price Index (CPI) in each consecutive year from 1998. The medical component of the CPI is also known as the "Medical CPI," an economic term used to describe price increases in health care services.

Figure 23: Growth of Workers' Compensation Medical Costs Compared to Growth of Medical Inflation Since 1998

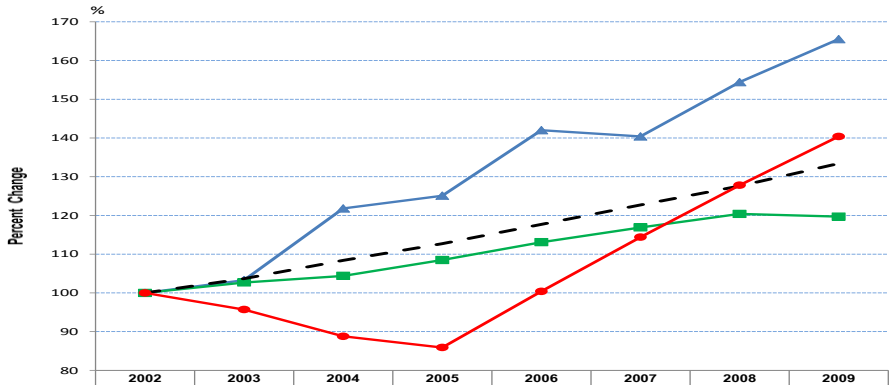


	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Change in Workers' Comp Medical Costs as Compared to 1998	12.6%	41.1%	54.2%	96.0%	120.8%	106.5%	73.6%	66.5%	69.3%	83.2%	85.0%	91.0%
Change in Medical CPI as Compared to 1998	3.5%	7.7%	12.7%	18.0%	22.7%	28.1%	33.5%	38.9%	45.0%	50.4%	55.1%	60.4%

Data Source: WCIRB; Bureau of Labor Statistics

The chart below compares the cumulative growth in paid medical expenses per indemnity claim to rates of growth in California employer health premium for individual Preferred Provider Organization (PPO) coverage, overall California inflation and medical CPI from 2002 to 2009. The cumulative increases in both the average workers' compensation medical expenses per indemnity claim (40.4 percent) and the average monthly premium for individual PPO coverage (65.5 percent) between 2002 and 2009 outpaced the 19.7 percent and 33.4 percent increases in overall California inflation and the Medical CPI, respectively.

Figure 24: Cumulative Growth in Paid Medical Expenses per Indemnity Claim at 12 Months Compared to Rates of Growth in California Employer Health Premium for Individual PPO Coverage, Overall CA Inflation and the Medical CPI, 2002-2009. (Index Value for 2002=100)



	2002	2003	2004	2005	2006	2007	2008	2009
Premium for Individual PPO Coverage	100	103.3	121.8	125.1	142.0	140.4	154.4	165.5
Overall CA Inflation	100	102.7	104.4	108.5	113.1	116.9	120.4	119.7
Medical CPI	100	103.7	108.4	112.7	117.7	122.7	127.6	133.4
Paid Medical Expenses Per Indemnity Claim at 12 Months	100	95.7	88.8	85.9	100.4	114.4	127.8	140.4

Data Source: RAND

Distribution of Medical Benefits: Where Does the Workers' Compensation Dollar Go?

WCIRB provided data for the cost of medical benefits paid by insured employers. Assuming that insured employers comprise approximately 66 percent of total California workers' compensation claims, estimated medical benefits are shown on the following chart for the total system, insured employers, self-insured employers, and the State of California.

Table 8: Systemwide Estimated Costs - Medical Benefits Paid

Medical Benefits (Thousand $)	2009	2010	Change
Physicians	$2,146,507	$2,259,095	$112,588
Capitated Medical	$5,074	$7,862	$2,788
Hospital	$1,526,788	$1,641,869	$115,081
Pharmacy	$495,816	$541,752	$45,936
Payments Made Directly to Patient	$1,205,766	$1,229,853	$24,087
Medical-Legal Evaluation	$233,019	$253,067	$20,048
Medical Cost-Containment Programs*	$468,254	$519,975	$51,721
Total	$6,081,223	$6,453,471	$372,248

Paid by Insured Employers

Medical Benefits (Thousand $)	2009	2010	Change
Physicians	$1,470,210	$1,506,063	$35,853
Capitated Medical	$3,475	$5,241	$1,766
Hospital	$1,045,745	$1,094,579	$48,834
Pharmacy	$339,600	$361,168	$21,568
Payments Made Directly to Patient	$825,867	$819,902	-$5,965
Medical-Legal Evaluation	$159,602	$168,711	$9,109
Medical Cost-Containment Programs*	$320,722	$346,650	$25,928
Total	$4,165,221	$4,302,314	$137,093

Paid by Self-Insured Employers**

Medical Benefits (Thousand $)	2009	2010	Change
Physicians	$676,297	$753,032	$76,735
Capitated Medical	$1,599	$2,621	$1,022
Hospital	$481,043	$547,290	$66,247
Pharmacy	$156,216	$180,584	$24,368
Payments Made Directly to Patient	$379,899	$409,951	$30,052
Medical-Legal Evaluation	$73,417	$84,356	$10,939
Medical Cost-Containment Programs*	$147,532	$173,325	$25,793
Total	$1,916,002	$2,151,157	$235,155

* Figures for medical cost-containment programs are based on a sample of insurers who reported medical cost containment expenses to WCIRB. The calendar year 2010 medical cost containment program costs reflected in this table only include the costs reported as medical loss. The total cost of this program for 2010, including that reported as allocated loss adjustment expense, was $354 million.

** Figures estimated are based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 34 percent of all California workers' compensation claims.

Trends in Paid Medical Benefits

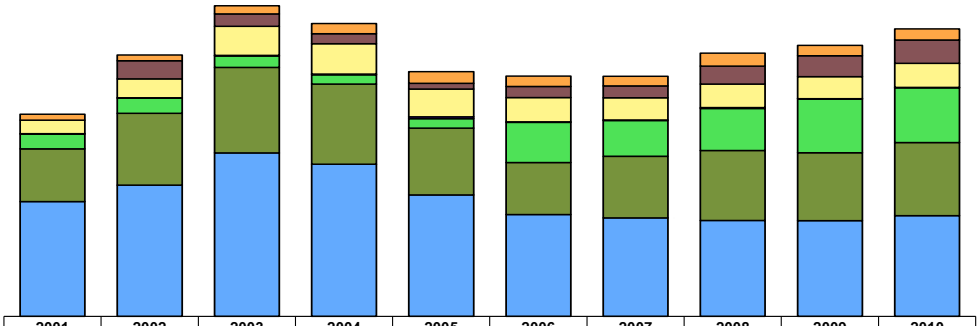
The estimated systemwide paid medical costs for the past several years are displayed in the chart below. The following trends may result from the impact of recent workers' compensation reforms and economic recession.

The chart below indicates that the payments in 2010 for hospitals, physicians, and pharmacies remained below pre-reform levels, while cost containment program costs and direct payment to patients increased greatly.

The cost of the total medical benefit increased by 54 percent from 2001 to 2003, decreased by 23 percent from 2003 to 2007, and then increased again by 20 percent from 2007 to 2010. Payments to physicians increased by 43 percent from 2001 to 2003, dropped by 42 percent from 2003 to 2009, and then increased 5 percent from 2009 to 2010. Pharmacy costs increased by 124 percent from 2001 through 2004, declined overall by 27 percent from 2004 to 2009, and increased again by 9 percent from 2009 to 2010. Hospital costs increased by 62 percent from 2001 to 2003, declined by 39 percent from 2003 to 2006, and then increased by 41 percent from 2006 to 2010. Direct payments to patients averaged $270 million from 2001 to 2005, increased sharply 4 times from 2005 to 2006, and then increased again 37 percent from 2006 to 2010. Expenditures on medical cost-containment programs in 2005 were less than a third of what they were in 2002 and then increased 4 times from 2005 to 2010.[22] Medical-legal evaluation costs decreased by 5 percent from 2001 to 2002, more than doubled overall between 2002 and 2008, and then decreased by about 12 percent from 2008 to 2010.

The apparent increases in the medical payments made to injured workers and medical cost containment programs were in part the result of availability of more detailed reporting of payments into specific recipient/payee categories.

Figure 25: Workers' Compensation Paid Medical Benefits by Type Systemwide Estimated Costs (Million $)



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Medical-Legal Evaluation	$134	$127	$183	$229	$263	$232	$214	$289	$233	$253
Med Cost Cntnmnt Prgrms*	N/A	$408	$279	$223	$127	$250	$268	$406	$468	$520
Pharmacy	$305	$424	$651	$684	$624	$545	$497	$526	$496	$542
Capitated Medical	$7.6	$8.8	$13.0	$15.2	$40.5	$13.5	$11.6	$19.8	$5.1	$7.9
Direct Payments to Patient	$330	$340	$256	$208	$213	$900	$804	$944	$1,206	$1,230
Hospital	$1,186	$1,612	$1,918	$1,798	$1,500	$1,168	$1,382	$1,569	$1,527	$1,642
Physicians	$2,573	$2,943	$3,669	$3,415	$2,723	$2,285	$2,210	$2,153	$2,147	$2,259
Total	$4,537	$5,864	$6,970	$6,571	$5,492	$5,393	$5,386	$5,906	$6,081	$6,453

* The calendar year 2010 Medical Cost Containment Program (MCCP) costs reflected in this chart only include the costs reported as medical loss ($347 million). The total cost of MCCP for insured employers in 2010, including that reported as allocated loss adjustment expense, was $354 million for insured employers. The portion of MCCP reported as medical loss was multiplied by 1.5 to extrapolate to systemwide costs.

Source: WCIRB
Calculations: CHSWC

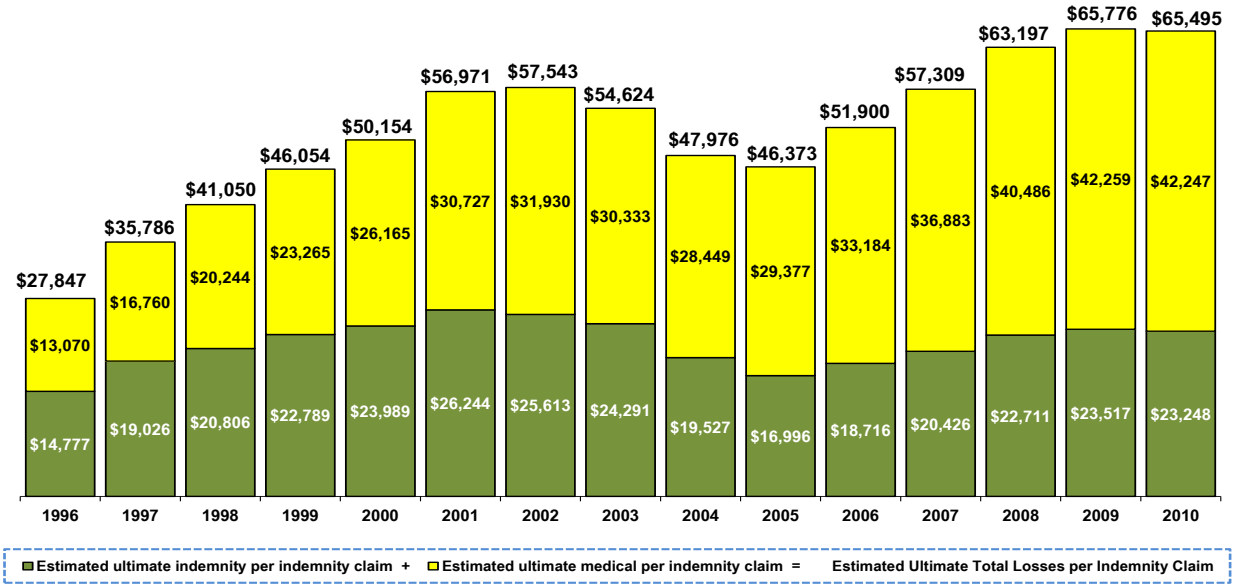
[22] Medical cost containment program costs on claims covered by policies incepting prior to July 1, 2010, are considered medical loss, and those covered by policies incepting July 1, 2010, and beyond are considered allocated loss adjustment expenses.

Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply.

The total average cost of indemnity claims more than doubled from 1996 to 2002, then decreased by 19.4 percent from 2002 to 2005, reflecting the impact of AB 227, SB 228 and SB 899. However, the total indemnity and medical average costs per claim increased by about 42 percent between 2005 and 2009. In 2010, the total indemnity and medical average costs per claim stayed at about the 2009 level.

Figure 26: Estimated Ultimate Total Loss* per Indemnity Claim as of September 30, 2011



* Excludes medical-only

Source: WCIRB

Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

Average Cost per Claim by Type of Injury

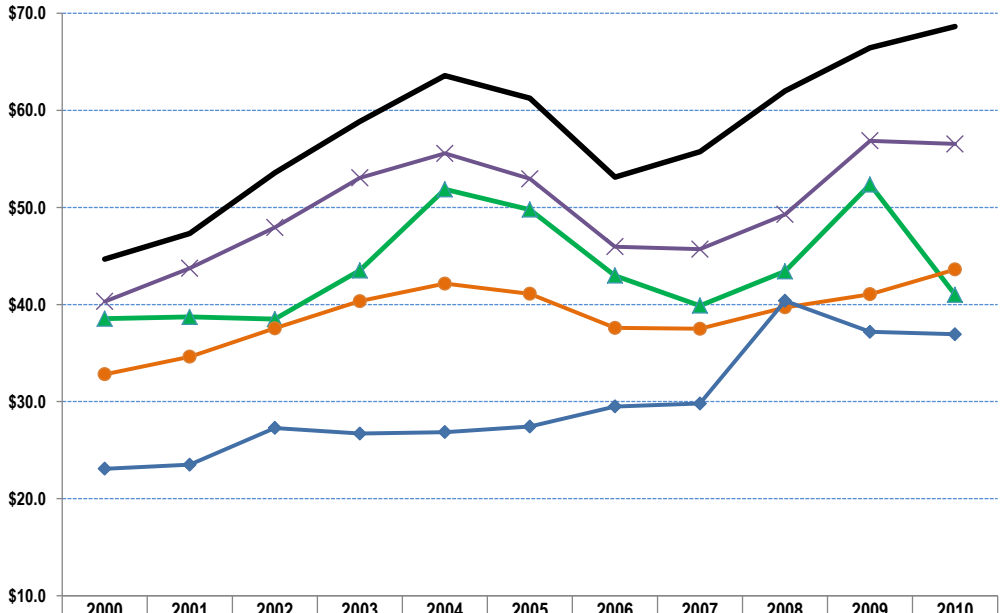
As shown in the following chart, from 2000 to 2004, there was an increase in average costs of all types of injuries. The average cost of slip and fall injuries increased by 42 percent and the average cost of back injuries increased by 38 percent, followed by a 34.5 percent increase in the average cost of other cumulative injuries and a 28 percent increase in the average cost of carpal tunnel/repetitive motion injuries (RMI).

From 2004 to 2007, the average costs declined for all of the types of injuries shown below, with the exception of psychiatric and mental stress. The average cost of other cumulative injuries decreased by 23 percent, and the average cost of back injuries decreased by almost 18 percent, followed by a 12 percent decrease in the average cost of slip and fall injuries and an 11 percent decrease in the average cost of carpal tunnel/RMI injuries.

From 2007 and 2010, the average cost of back injuries increased by about 24 percent, followed by a 23 percent increase in the average cost of slip and fall injuries and a 16 percent increase in the average cost of carpal tunnel/RMI injuries. The average cost of other cumulative injuries increased by 31 percent from 2007 to 2009, and then decreased 21 percent from 2009 to 2010.

Average costs of psychiatric and mental stress claims increased overall by 75 percent between 2000 and 2008, and then decreased by about 9 percent from 2008 to 2010.

Figure 27: Average Cost per Claim by Type of Injury, 2000-2010 (Thousand $)



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Slip and Fall	$44.7	$47.3	$53.6	$58.9	$63.6	$61.3	$53.1	$55.7	$62.0	$66.5	$68.6
Back Injuries	$40.3	$43.7	$47.9	$53.0	$55.6	$53.0	$46.0	$45.7	$49.3	$56.9	$56.5
Other Cumulative Injuries	$38.5	$38.7	$38.5	$43.5	$51.9	$49.8	$43.0	$39.9	$43.4	$52.4	$41.0
Carpal Tunnel / RMI	$32.8	$34.6	$37.6	$40.3	$42.2	$41.1	$37.6	$37.5	$39.7	$41.1	$43.6
Psychiatric and Mental Stress	$23.1	$23.5	$27.3	$26.7	$26.9	$27.4	$29.5	$29.8	$40.4	$37.2	$36.9

Data Source: WCIRB

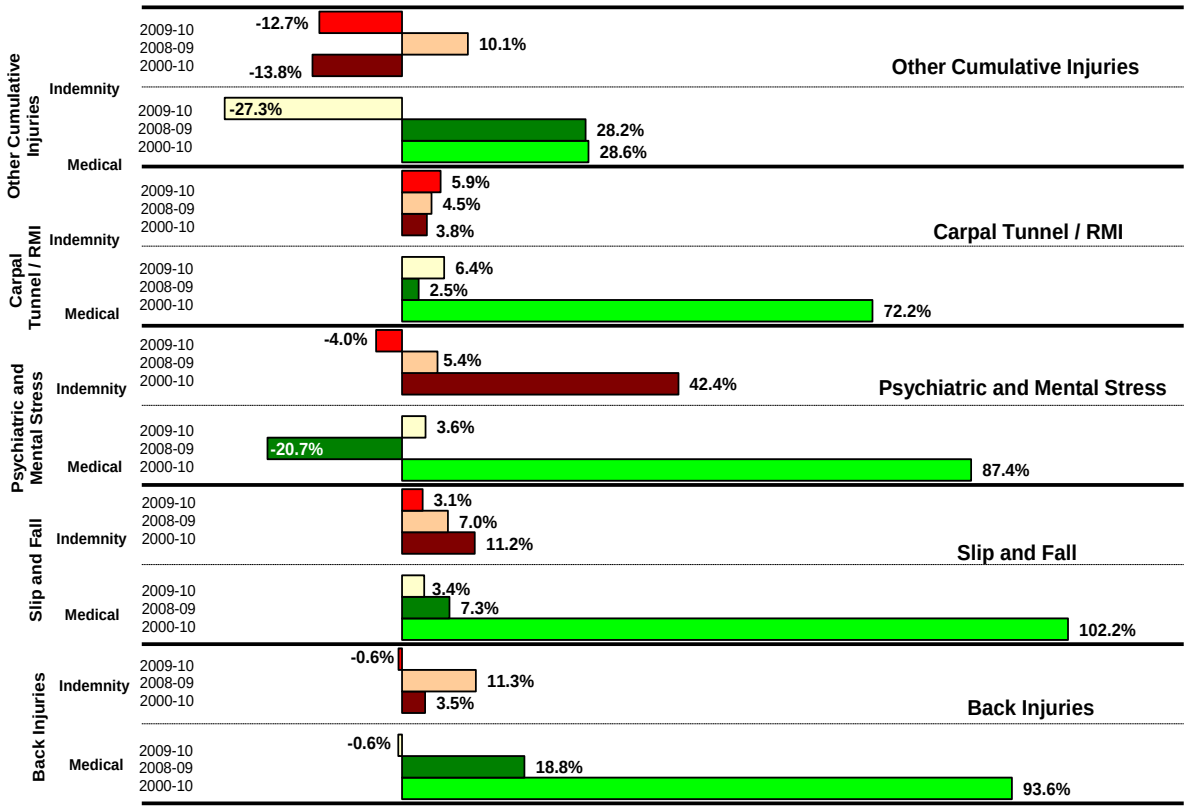
Changes in Average Medical and Indemnity Costs per Claim by Type of Injury

The chart below illustrates the impact of the reforms on selected types of injury. The long-term trend from 2000 to 2010 shows increases in medical costs for all these types of injury. The same trend for indemnity costs shows 14 percent decrease for other cumulative injuries and increases for the psychiatric and mental stress, slips and falls, back injuries, and carpal tunnel/RMI injuries.

From 2008 to 2009, medical costs increased for every type of injury, with the exception of 21 percent decrease in average cost of claim for slip and fall injuries. In the same year, indemnity costs showed increases for all types of injury.

From 2009 to 2010, medical costs increased for carpal tunnel/RMI, psychiatric and mental stress, and slip and fall types of injury. In the same year, medical costs decreased 27 percent for other cumulative injuries and 0.6 percent for back injuries. From 2009 to 2010, indemnity costs increased for carpal tunnel/RMI and slip and fall claims and decreased almost 13 percent for other cumulative injuries, followed by 4 percent decrease in average cost of claim for psychiatric and mental stress and 0.6 percent decrease in back injury claims.

Figure 28: Percent Change in Average Medical and Indemnity Costs per Claim by Type of Injury (From 2000 through 2010, from 2008 through 2009, and from 2009 through 2010)



Data Source: WCIRB

Medical-Legal Expenses

Changes to the medical-legal process over the years have been intended to reduce both the cost and the frequency of litigation. Starting in 1989, legislative reforms restricted the number of medical-legal evaluations needed to determine the extent of permanent disability (PD). The qualified medical evaluator (QME) designation was intended to improve the quality of medical evaluations in cases where the parties did not select an agreed medical evaluator (AME). Legislation in 1993 attempted to limit workers' compensation judges to approving the PD rating proposed by one side or the other (Labor Code Section 4065, known as "baseball arbitration"). In addition, the 1993 legislation established a presumption in favor of the evaluation by the treating physician (Labor Code Section 4602.9), which was expected to reduce litigation and reduce costs.

In 1995, CHSWC contracted with University of California (UC), Berkeley to assess the impact of workers' compensation reform legislation on the workers' compensation medical-legal evaluation process.

This ongoing study has determined that during the 1990s, the cost of medical-legal evaluations dramatically improved. As shown in the following discussion, this was due to reductions in all the factors that contribute to the total cost. However, baseball arbitration proved to be impractical, and the treating physician's presumption turned out to cost more than it saved. AB 749, enacted in 2002, repealed baseball arbitration and partially repealed the primary treating physician's presumption, except when the worker had pre-designated a personal physician or personal chiropractor for injuries occurring on or after January 1, 2003. This partial repeal was carried further by SB 228 enacted in 2003 to all dates of injury, except in cases where the employee has pre-designated a personal doctor or chiropractor. Finally, in 2004, SB 899 completely repealed the primary treating physician's presumption.

The reforms of SB 899 also changed the medical dispute resolution process in the workers' compensation system by eliminating the practice of each attorney obtaining a QME of his or her own choice. The new provisions required that the dispute resolution process through an AME or a single QME applies to all disputes including compensability of claim and PD evaluation.

In cases where attorneys do not agree on an AME, SB 899 limits the attorneys to one QME jointly selected by process of elimination from a state-assigned panel of three evaluators. In cases without attorneys, the injured worker selects the QME from the state-assigned panel, similar to the process established since 1989 for non-attorney cases.

After a significant decrease of medical-legal expenses starting in 1989 when legislative reforms restricted the number and lowered the cost of medical-legal evaluations, there was again a significant increase in average medical-legal costs beginning in the 2000 accident year. In 2008, the average cost of medical-legal evaluations was $1,591, or more than double from the 2000 accident year, reaching the highest level since 1989. In the workers' compensation system, the medical-legal cost is reported as a component of medical cost and comprises from 2 to 5 percent of the paid medical cost. A decline in medical costs shortly after passage of major reform measures in 2003 and 2004, followed by an increase starting in 2006, raised the question of how much of the changes in medical costs was attributable to changes in medical-legal costs. The table below shows the share of medical-legal costs in workers' compensation medical costs paid from 1999 to 2010.

Table 9: Percent of Medical-Legal Evaluation Costs in Total Medical Costs

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Percent of Medical-Legal Evaluation Costs in Total Medical Costs	3.7	3.6	3.0	2.2	2.6	3.5	4.8	4.3	4.8	4.9	3.8	3.9

Source: WCIRB Losses and Expenses Report, Exhibit 1.4

Increases in both the number and cost of medical-legal evaluations are expected to result from two recent California Workers' Compensation Appeals Board *en banc* decisions (described elsewhere in this Annual Report). The *Almaraz/Guzman* and *Ogilvie* decisions may require more reports and more complex reports for the assessment of permanent impairment and disability, and as result, an increase in litigation and medical-legal costs.

Throughout the discussion of the cost of medical-legal reports, it will be important to remember that the quality of medical-legal reports has an impact on the cost of the system and the timeliness of benefit delivery which may very well overshadow the direct cost of the medical-legal reports.

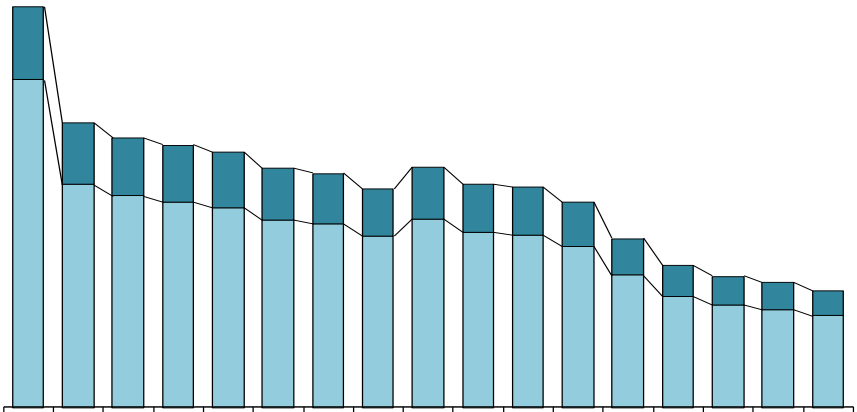
The medical-legal analysis that follows uses data from the WCIRB *Permanent Disability Survey*. Accident year 2008 is the latest year for which sufficiently mature data reports are available.

Permanent Disability Claims

The following chart displays the number of permanent partial disability (PPD) claims during each calendar year since 1992. Through 1993, WCIRB created these data series from Individual Case Report Records submitted as part of the Unit Statistical Report. Since that time, the series has been discontinued, and estimates for 1994 and subsequent years are based on policy year data adjusted to the calendar year and information on the frequency of all claims, including medical-only claims, which are still available on a calendar year basis.

The data presented in the medical-legal section of this report are current and based on the latest available data through accident year 2008.

Figure 29: PPD Claims at Insured Employers by Year of Injury (Thousands)



	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Major (PD rating of 25% or more)	25.5	21.4	20.3	19.8	19.2	18.0	17.6	16.4	18.0	16.8	16.6	15.5	12.7	10.7	9.9	9.4	8.8
Minor (PD rating less than 25%)	114.4	77.7	73.7	71.7	69.7	65.4	64.0	59.7	65.6	61.0	60.1	56.1	46.1	38.7	35.7	34.0	31.9
Total Claims	139.9	99.1	94.0	91.5	88.9	83.4	81.6	76.1	83.6	77.8	76.7	71.6	58.8	49.4	45.6	43.4	40.7

Data Source: WCIRB

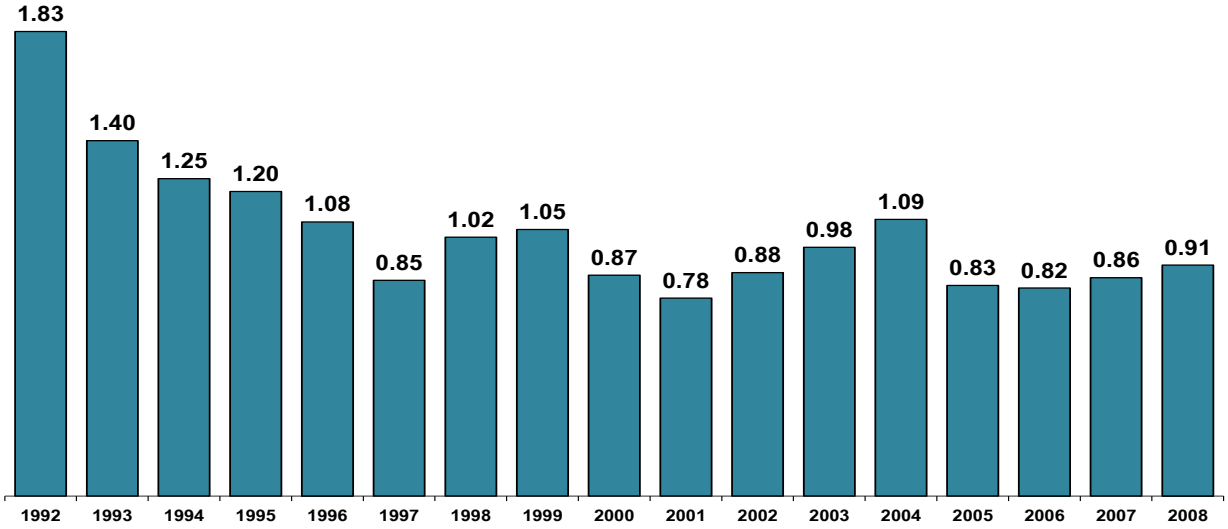
Medical-Legal Evaluations per Claim

The following chart illustrates that the average number of medical-legal evaluations per claim declined from 1.83 evaluations in 1992 to 0.78 in 2001. This decline of 57 percent is attributed to 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 evaluations even further. Earlier CHSWC reports evaluating the treating physician

presumption did not find that these reforms had significant effect on the average number of evaluations per claim. SB 899 enacted in 2004 completely repealed the primary treating physician's presumption (Labor Code Section 4062.9).

Figure 30: Number of Medical-Legal Evaluations per Workers' Compensation Claim (At 40 months from the beginning of the accident year)



Data Source: WCIRB

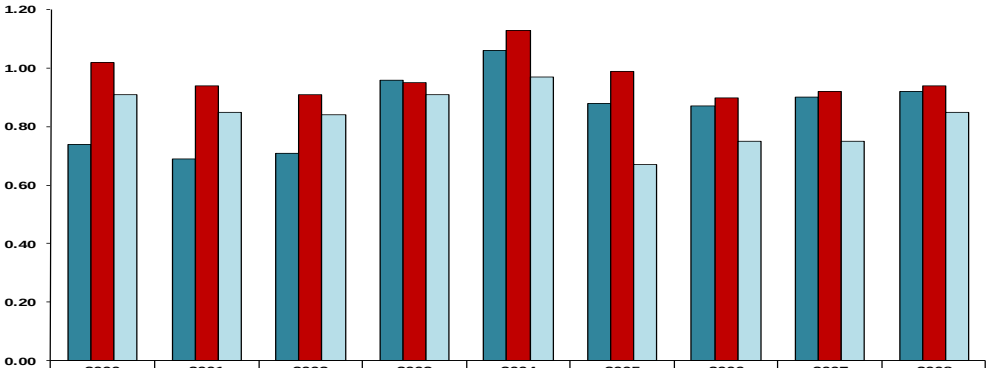
Between 2001 and 2004, the average number of medical-legal evaluations per claim increased by 29.5 percent. The increase from 2001 to 2004 could be driven by a number of factors that are discussed below. In 2005 accident year, the average number of medical-legal evaluations per claim decreased by almost 25 percent compared to accident year 2004, and then increased by 11 percent from 2006 to 2008 accident year. The decrease in average number of evaluations per claim from 2004 to 2006 accident year was likely due to the SB 899 provision requiring a single QME or AME even in represented cases for injuries beginning January 1, 2005.

Medical-Legal Reporting by California Region

The different regions of California are often thought to have different patterns of medical-legal reporting. The revisions to the WCIRB *Permanent Disability Survey*, undertaken at the recommendation of CHSWC and instituted for the 1997 accident year, explored new issues. A zip code field was added to analyze patterns in different regions.

The following chart demonstrates the frequency with which medical-legal evaluations were used between 2000 and 2008 in different regions. As the number of evaluations per claim continued to decline between 2000 and 2002, the differences between regions became more pronounced. Between 2002 and 2004, the average number of medical-legal evaluations per claim for each region increased and then decreased again from 2004 to 2005, with the lowest number of medical-legal evaluations per claim (0.67) in nine years for Southern California. From 2005 to 2008, for the average number of evaluations per claim, there was a 27 percent increase in the Southern California region, a 4.5 percent increase in the Northern region, and 5 percent decrease in the Central California region.

Figure 31: Average Number of Medical-Legal Evaluations per Claim by Region (at 34 months after beginning of accident year)



	2000	2001	2002	2003	2004	2005	2006	2007	2008
Northern California	0.74	0.69	0.71	0.96	1.06	0.88	0.87	0.90	0.92
Central California	1.02	0.94	0.91	0.95	1.13	0.99	0.90	0.92	0.94
Southern California	0.91	0.85	0.84	0.91	0.97	0.67	0.75	0.75	0.85

Data Source: WCIRB

Prior to 2003, the Southern California region has had higher numbers for both the average cost per evaluations and the average number of evaluations per claim than the Northern California region. However, starting with 2003, the number of medical-legal evaluations per claim in the Northern California region grew higher than in the Southern California region. The number of medical-legal evaluations per claim in the Central California region was the highest among all three regions in seven out of the nine years.

Different regions of California have different patterns of medical-legal reporting. Also, regions with a higher share of workers' compensation claims in the system have a bigger impact on the average number of medical-legal evaluations per claim and average cost of medical-legal evaluations in the State. As the table below indicates, the Southern California region has the highest number of workers' compensation claims in the system, followed by the Northern California region.

Table 10: Distribution of Medical-Legal Claims by Region[23]

	2004 1st level	2005 1st level	2006 1st level	2007 1st level	2008 1st level
Southern	58.1%	63.1%	61.8%	63.5%	61.6%
Central	16.3%	13.5%	13.6%	12.5%	14.0%
Northern	25.7%	23.4%	24.6%	24.0%	24.4%

Average Cost per Medical-Legal Evaluation

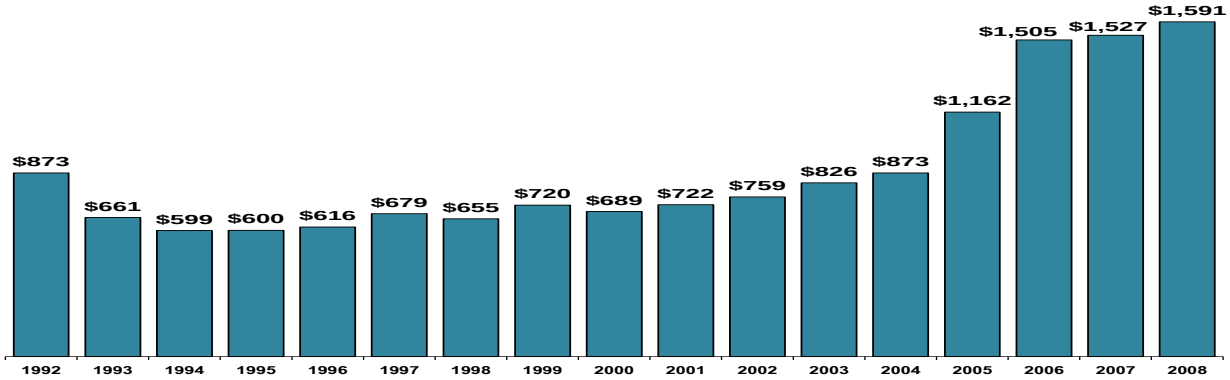
The average cost of a medical-legal evaluation declined from 1992 to the mid-1990s and then increased from the mid-1990s to 2000 by 15 percent. Between 2000 and 2008, the average cost of a medical-legal evaluation more than doubled.

There are two reasons why the average cost per medical-legal evaluation declined from 1992 to 1995. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which medical-legal evaluations are reimbursed. These restrictions were introduced in early 1993

[23] Based on WCIRB's *PD Survey* random sample.

and enforced at the beginning of August 1993. Second, during this period, the average cost of a medical-legal evaluation was also being affected by the frequency of psychiatric evaluations. On average, psychiatric evaluations are the most expensive evaluations by specialty of provider. The relative portion of all evaluations that is made up of psychiatric evaluations has declined since hitting a high during 1990-1991, leading to a substantial improvement in the overall average cost per evaluation.

Figure 32: Average Cost of a Medical-Legal Evaluation (at 40 months from the beginning of the accident year)

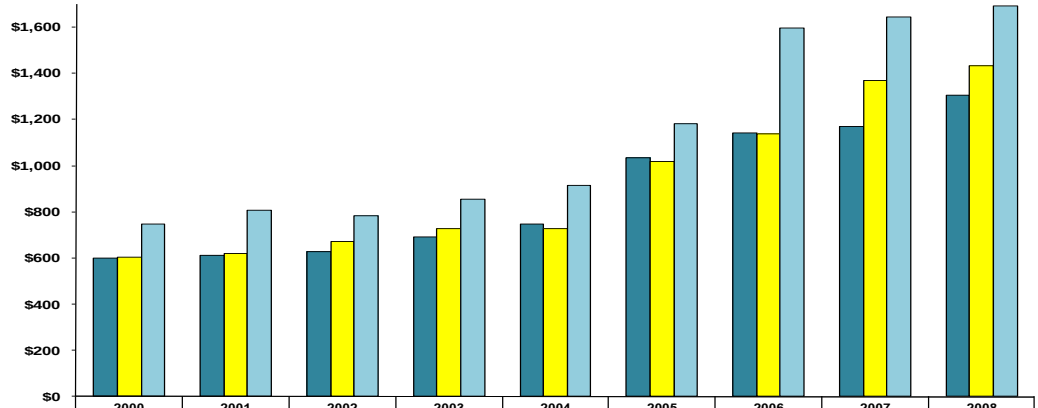


Data Source: WCIRB

In 2008, the average cost of a medical-legal evaluation increased by 82 percent compared to the 2004 average medical-legal cost per evaluation and reached its highest level since 1992.

Since the mid-1990s, the average cost of a medical-legal evaluation has increased, even though the reimbursement under the medical-legal fee schedule did not change from 1993 until 2006.[24] The revised *PD Survey* by WCIRB includes additional questions that reveal some of the potential causes of this increase in costs. The changes indicate various types of fee schedule classifications as well as geography factors.[25]

Figure 33: Average Cost of a Medical-Legal Evaluation by Region (at 34 months from the beginning of accident year)



	2000	2001	2002	2003	2004	2005	2006	2007	2008
Northern California	$601	$613	$627	$693	$747	$1,033	$1,141	$1,171	$1,304
Central California	$604	$621	$670	$728	$728	$1,017	$1,136	$1,367	$1,431
Southern California	$746	$806	$783	$854	$914	$1,182	$1,598	$1,643	$1,693

Data Source: WCIRB

[24] The new Medical-Legal Fee Schedule became effective for dates of service on or after July 1, 2006.
[25] Issues for injury years before 1997 cannot be examined because the WCIRB survey revision of that year prevents comparisons.

The survey data show that, on average, evaluations done in the Southern California region have always been substantially more expensive. Increases in the average cost are being driven by claims in the Southern California region as can be seen from the table below.

Table 11: Regional Contributions to the Increase of the Average Medical-Legal Costs: 2000-2008

Region	Distribution of Medical-Legal Evaluations by Region in 2000	Distribution of Medical-Legal Evaluations by Region in 2008	Change in Average Cost 2000-2008	Contribution of Each Region to the Average Cost
Southern California	58.6%	60.0%	$947	65.5%
Central California	16.5%	15.0%	$827	14.3%
Northern California	24.5%	25.0%	$703	20.2%

Cost Drivers

The primary cost driver for California and its Southern region is not the price paid for specific types of evaluations.[26] Rather, the mix of codes under which the evaluations are billed has changed to include a higher percentage of the most complex and expensive evaluations and fewer of the least expensive type.[27] The two tables below show the costs and description from the Medical-Legal Fee Schedule.

Table 12: Medical-Legal Evaluation Cost for Dates of Service Before July 1, 2006[28]

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up	$250
ML-102 Basic	$500
ML-103 Complex	$750
ML-104 Extraordinary	$200/hour

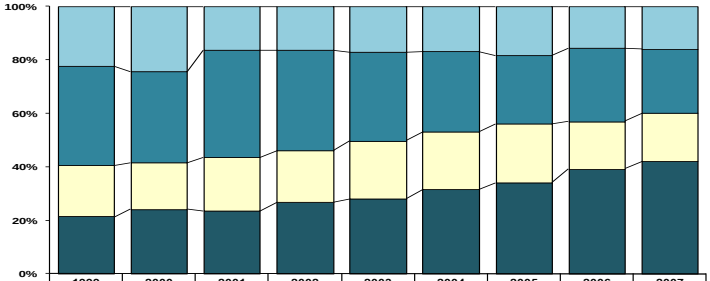
Table 13: Medical-Legal Evaluation Cost for Dates of Service on or After July 1, 2006[29]

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up	$62.50/15 minutes or $250/hr
ML-102 Basic (flat rate)	$625
ML-103 Complex (flat rate)	$937.50
ML-104 Extraordinary	$62.50/15 minutes or $250/hr
ML-105 Testimony	$62.50/15 minutes or $250/hr
ML-106 Supplemental	$62.50/15 minutes or $250/hr

[26] An additional category "Other than ML-101, ML-102, ML-103, or ML-104" was included by WCIRB in types of evaluations for PD Survey 2007. It was extended to "Other than ML-101, ML-102, ML-103, ML-104, or ML-105" for 2008 and after.
[27] WCIRB also noted that much of the increase in the average cost of a medical-legal evaluation is attributable to increases in a proportion of more complex medical-legal evaluations. Claims Subcommittee meeting minutes for July 28, 2008.
[28] Please note that Agreed Medical Evaluators receive 25 percent more than the rates shown in both of the tables.
[29] Two categories ML-105 and ML-106, created by Title 8 CCR, Sections 9793 & 9795, June, 2006, became applicable to 2008 and later claims. The functions of medical testimony and supplemental evaluations were moved into these two new categories from their previous status.

The following three charts indicate that from 1999 to 2007, the distribution of evaluations both in the Southern California and the Northern and Central regions has shifted the statewide distribution of medical-legal evaluations away from ML-101 and ML-102 types to include a higher percentage of ML-104 evaluations with "Extraordinary" complexity.[30]

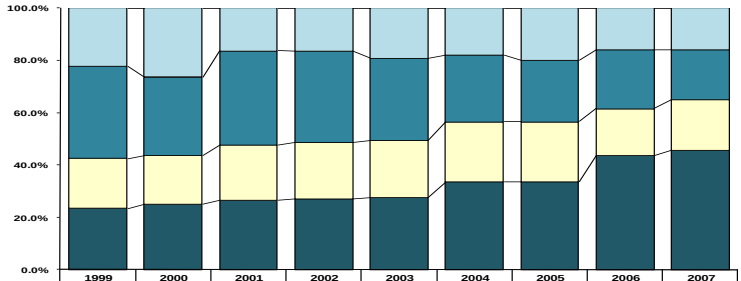
Figure 34: Distribution of Medical-Legal Evaluations by Type (California)



	1999	2000	2001	2002	2003	2004	2005	2006	2007
ML-101 Follow-up/Supplemental	22.4%	24.3%	16.5%	16.4%	17.2%	17.0%	18.5%	15.6%	16.1%
ML - 102 Basic	37.0%	34.2%	40.0%	37.4%	33.2%	30.0%	25.5%	27.5%	23.8%
ML - 103 Complex	19.2%	17.4%	20.0%	19.1%	21.7%	21.5%	22.0%	17.8%	18.0%
ML - 104 Extraordinary	21.4%	24.1%	23.5%	26.7%	27.9%	31.5%	34.0%	39.1%	42.1%

Data Source: WCIRB

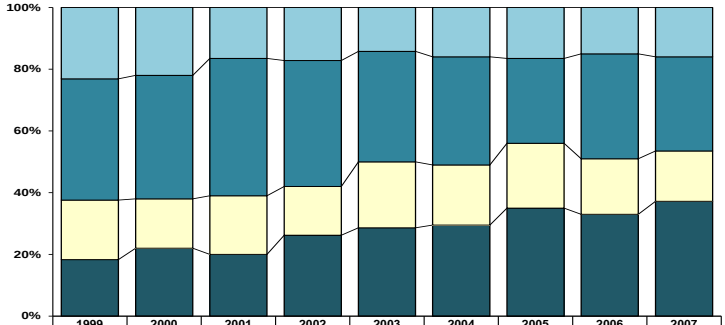
Figure 35: Distribution of Medical-Legal Evaluations by Type (Southern California)



	1999	2000	2001	2002	2003	2004	2005	2006	2007
ML - 101 Follow-up/ Supplemental	22.2%	26.4%	16.4%	16.5%	19.3%	18.0%	20.0%	16.0%	16.1%
ML - 102 Basic	35.3%	30.1%	36.1%	35.0%	31.3%	25.5%	23.5%	22.5%	19.1%
ML - 103 Complex	19.1%	18.5%	21.0%	21.5%	22.0%	23.0%	23.0%	18.0%	19.3%
ML - 104 Extraordinary	23.4%	25.0%	26.5%	27.0%	27.4%	33.5%	33.5%	43.5%	45.7%

Data Source: WCIRB

Figure 36: Distribution of Medical-Legal Evaluations by Type (Northern and Central California)



	1999	2000	2001	2002	2003	2004	2005	2006	2007
ML - 101 Follow-up/ Supplemental	23.1%	22.0%	16.5%	17.2%	14.2%	16.0%	16.5%	15.0%	16.0%
ML - 102 Basic	39.3%	40.0%	44.5%	40.8%	35.8%	35.0%	27.5%	34.0%	30.5%
ML - 103 Complex	19.3%	16.0%	19.0%	15.8%	21.4%	19.5%	21.0%	18.0%	16.3%
ML - 104 Extraordinary	18.3%	22.0%	20.0%	26.2%	28.6%	29.5%	35.0%	33.0%	37.2%

Data Source: WCIRB

[30] Category "Other than ML-101, ML-102, ML-103, or ML-104" was excluded for 2007 AY from three charts representing the distribution of medical-legal evaluations by type for comparability purposes. This category comprised 2 percent of medical-legal evaluations in 2007.

As shown by the charts above, from 1999 to 2007, evaluations with "Extraordinary" complexity doubled from 23.4 percent to 45.7 percent in the Southern California region, more than doubled from 18.3 percent to 37.2 percent in Northern and Central regions, and as a result of that shift, doubled from 21.4 percent to 42.1 percent statewide. For the same period, the share of medical-legal evaluations billed as ML-102 Basic (the least expensive code), was between 4 percentage points and 11.5 percentage points smaller in the Southern region compared to Northern and Central California.

The distribution of medical-legal evaluations by categories of "fee schedule type" applicable to 2008 and later claims show that on average, one-third of medical-legal evaluations are classified as Extraordinary both in the Northern and Central California and the Southern region of California. Fifty-six (56) percent of medical-legal evaluations in Northern and Central California and 60 percent of evaluations in the Southern California region are billed under the time-based codes such as ML-101, ML-104 or ML-106 that are priced at $62.50 for every 15 minutes for QMEs or $78.13 for every 15 minutes for AMEs. Some medical-legal evaluation activities are not separately billable under all medical-legal fee codes. For example, reviewing medical-legal consultation reports could not be separately billed under flat-rated codes as ML-102 or ML-103 as opposed to the way it could be done under time-based codes. This makes billing a medical-legal evaluation under a time-based code more profitable in the majority of evaluations.

Table 14: Distribution of Medical-Legal Evaluations by Type, 2008

Types of evaluation	Amount Presumed Reasonable	California	Southern region	Northern and Central regions
ML - 101 Follow-up	$62.50/15 minutes or $250/hr	10%	11%	8%
ML - 102 Basic	$625	20%	16%	24%
ML - 103 Complex	$937.50	15%	15%	15%
ML - 104 Extraordinary	$62.50/15 minutes or $250/hr	34%	37%	30%
ML - 105 Testimony	$62.50/15 minutes or $250/hr	1%	1%	0%
ML - 106 Supplemental	$62.50/15 minutes or $250/hr	13%	11%	17%
Other		7%	9%	5%

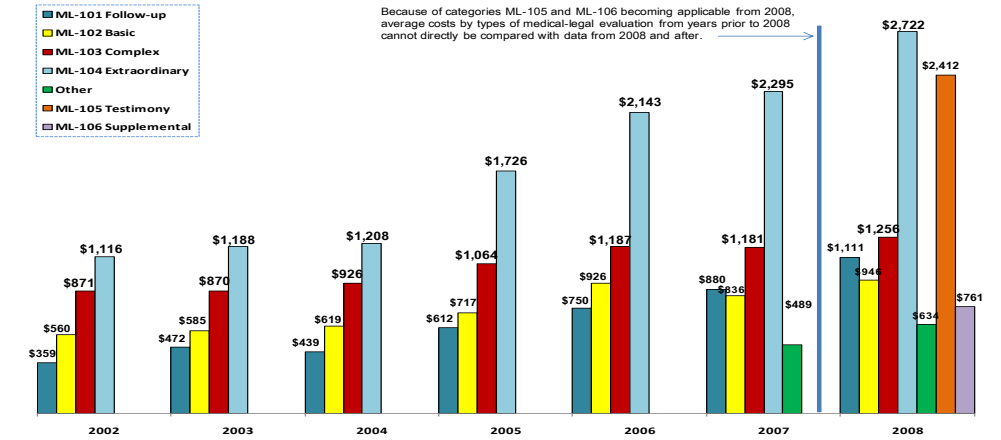
Increases to the medical-legal fee schedules for dates of services on or after July 1, 2006, could have also contributed to the higher average cost per evaluation.[31] The chart below shows that the average cost per evaluation in each type of evaluation was higher in the 2007 accident year sample compared to the 2002 accident year. The biggest increases were for the Complex and Extraordinary cases.

In addition, the medical-legal evaluations in 2007 accident year had both a higher average cost of Extraordinary evaluations ($2,295 and $1,116 respectively) and a higher share of Extraordinary evaluations (42.1 percent and 26.7 percent respectively) than in accident year 2002. In 2007, the pattern of average costs of evaluations had changed. From 2002 to 2006, the average cost of a Basic medical-legal evaluation was higher than the average cost of a Follow-Up/Supplemental evaluation. However in 2007, the average cost of a Basic medical-legal evaluation became lower than the average cost of a Follow-up/Supplemental evaluation. The share of medical-legal evaluations billed under Basic code was decreasing from 2001 to 2007 from 40 percent to 23.8 percent.

According to the chart below, the average costs of medical-legal evaluations billed under codes applicable to 2008 and later claims showed overall a higher level than the average costs in 2007 accident year.

[31] According to California Society of Industrial Medicine and Surgery (CSIMS), from July 1, 2006, a revised Medical-Legal Fee Schedule (MLFS) was expected to provide an across-the-board 25 percent increase in physician fees for medical-legal reports. The Bulletin of CSIMS, Spring 2006, Vol.27, No.2

Figure 37: Average Cost of a Medical-Legal Evaluation by Type and Accident Year

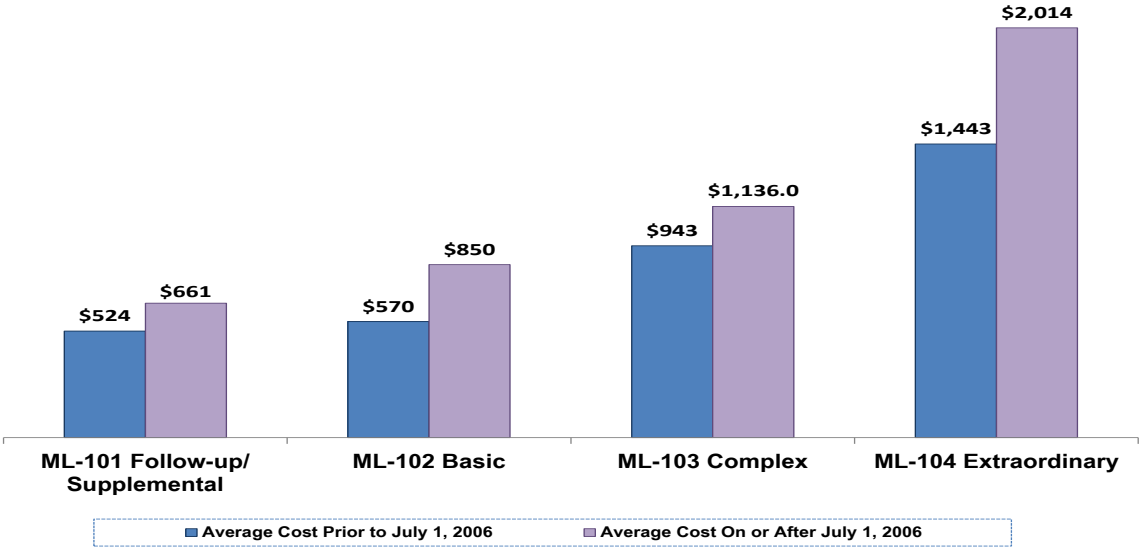


Note: Category "Other" is applicable to 2007 and later claims. Categories ML-105 and ML-106 are applicable to 2008 and later claims.

Data Source: WCIRB

The chart below shows that the average cost of Extraordinary medical-legal evaluations increased by 40 percent after July 1, 2006, when the new Medical-Legal Fee Schedule became effective.

Figure 38: Average Cost of Medical-Legal Evaluation by Type Before and After the Effective Date of the New Medical-Legal Fee Schedule (Calculations are based on PD Survey 2005 2nd Level)

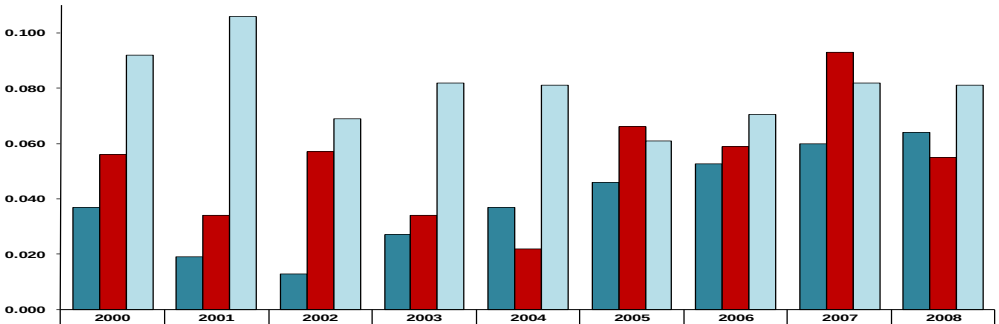


Data Source: WCIRB

Another possible explanation for the differing trends in the average cost per evaluation and the increasing frequency of the most complex evaluations in California could be an increase in both the frequency and number of psychiatric evaluations per claim. There was an increase in psychiatric evaluations from 6.9 percent of total medical-legal evaluations in the 2002 sample to 9.2 percent in the 2008 sample. The average number of psychiatric evaluations per claim in California increased by 39 percent from 0.062 in 2002 to 0.086 in 2008. Psychiatric evaluations are nearly always billed under the ML-104 code that is the most expensive. The average cost of a psychiatric evaluation doubled in 2008 from $1,528 in 2002. It also increased by 9.3 percent, from $2,860 in 2007 to $3,125 in 2008. As the chart below shows, the psychiatric evaluations are more common in Southern California and that has the biggest impact on both the frequency and cost of medical-legal evaluations statewide. The frequency of psychiatric evaluations in

this Southern region increased from 8.4 percent to 10.5 percent from 2002 to 2008, while the average cost of psychiatric evaluations increased by 93 percent from $1,533 to $2,961 in the same period. In addition, the number of psychiatric evaluations per claim increased by 6 percent in Northern California from 2007 to 2008, exacerbated by 10 percent increase in the average cost of a psychiatric evaluation from $3,085 in 2007 to $3,404 in 2008 .

Figure 39: Average Number of Psychiatric Evaluations per PPD Claim by Region



	2000	2001	2002	2003	2004	2005	2006	2007	2008
Northern California	0.037	0.019	0.013	0.027	0.037	0.046	0.053	0.060	0.064
Central California	0.056	0.034	0.057	0.034	0.022	0.066	0.059	0.093	0.055
Southern California	0.092	0.106	0.069	0.082	0.081	0.061	0.071	0.082	0.081

Data Source: WCIRB

According to WCIRB's estimates based on the PD Claim Survey, claims with psychiatric evaluations increased from 6.4 percent of all medical-legal evaluations by physician specialty in 2005 to 12.8 percent in 2010, and the cost of psychiatric evaluations as a percent of the cost of all medical-legal evaluations by physician specialty increased from 13.6 percent in 2005 to 24.1 percent in 2010.

The average cost of a psychiatric medical-legal evaluation was the highest in comparison to average costs of other medical-legal evaluations by physician type, averaging $3,220 in 2010, or 1.9 times the average cost of all medical-legal evaluations, and showed a 73 percent increase from its 2005 level. According to WCIRB's distribution of total workers' compensation medical costs paid by physician type, payments to psychiatrists increased from 1.4 percent in 2005 to 2 percent in 2010.

The recent data on the QME process presented in CHSWC studies in collaboration with UC Berkeley indicate a significant increase in the share of QME panels assigned to psychiatrist/psychologist specialties. The demand for psychiatric specialties as a part of all specialties increased from 6.5 percent in 2005 to 12.7 percent in 2010.

Total Medical-Legal Cost Calculation

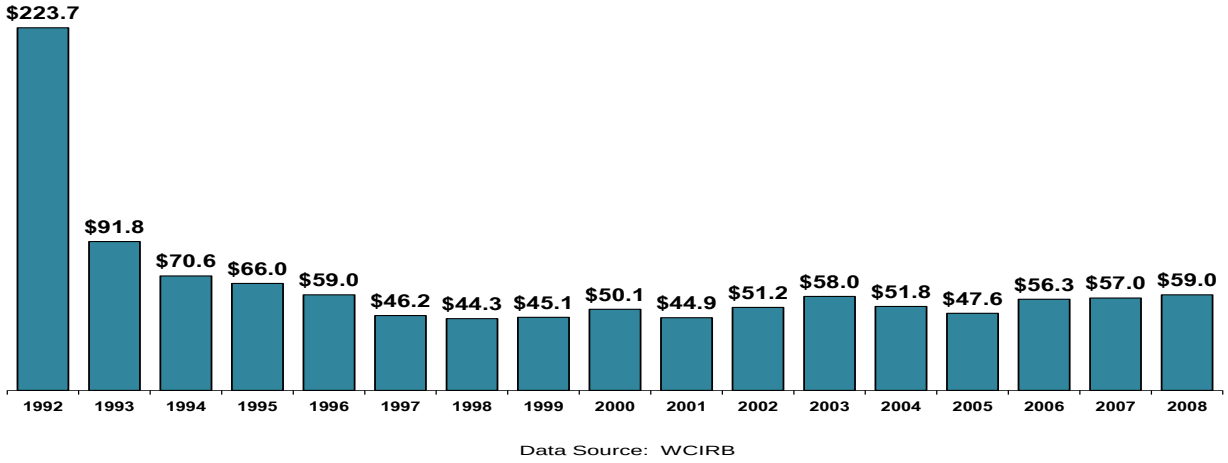
Total medical-legal costs are calculated by multiplying the number of permanent partial disability (PPD) claims by the average number of medical-legal evaluations per claim and by the average cost per medical-legal evaluation:

Total Medical-Legal Cost = Number of PPD Claims x Average Evaluations/Claim x Average Cost/Evaluation

Medical-Legal Costs

During the 1990s, the cost of medical-legal evaluation improved dramatically. For the insured community, the total cost of medical-legal evaluations performed on PPD claims by 40 months after the beginning of the accident year declined from a high of $223.7 million in 1992 to an estimated $59.0 million for injuries occurring in 2008, a 73.6 percent decrease from 1992 accident year.

Figure 40: Medical-Legal Costs on PPD Claims at Insured Employers (in Million $, 40 months after beginning of accident year)



Sources of Improvement in Medical-Legal Costs

The changes in total medical-legal cost for insurers reflect changes in all three components of the cost structure. The number of medical-legal examinations per claim dropped sharply after procedural changes enacted in 1989 took effect January 1, 1991. The new procedures for disputes over permanent disability or medical treatment required represented parties to attempt agreement on an AME before selecting their own QMEs, and then it limited the number of QMEs. In the case of an unrepresented worker, an exam could only be obtained from a QME selected from a panel of three QMEs assigned by DWC. These changes cut into the business of "medical mills" which had referred patients back and forth for multiple evaluations when there was no actual dispute. Beginning in 1994, disputes over the compensability of a claim were also brought into the AME/QME model. Furthermore, the first threshold for compensability of psychiatric injuries took effect in 1990. Beginning in 2005, represented cases also became subject to a requirement to select a QME from a panel rather than each party picking its own QME. All of these changes contributed to the reduction in number of examinations per claim. Declining claim frequency also contributed to reducing the total number of medical-legal evaluations. Costs have begun to trend upward again due to rising costs per examination. The complexity of impairment rating under the AMA *Guides*, new rules for apportionment, and the criteria for medical treatment decisions under the Medical Treatment Utilization Schedule are among the reasons cited for rising costs per exam.

The changes in claim frequency, evaluations per claim, and cost per evaluation are all summarized in the following table.

Table 15: Sources of Change in Medical-Legal Costs

	1990	2008	Change 1990-2008
Number of PPD Claims	167,700	40,700	-75.7%
Average Number of Evaluations per PPD Claim	2.53	0.91	-64.0%
Average Cost of Evaluation	$986	$1,591	+61.4%

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

INTRODUCTION

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the overall performance of the health and safety and workers' compensation systems to determine whether they meet the State's constitutional objective to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character."

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

Through studies and comments from the community, as well as administrative data, CHSWC has compiled the following information pertaining to the performance of California's systems for health and safety and workers' compensation. Explanations of the data are included with the graphs.

- Workers' Compensation Appeals Board (WCAB) Workload
  - DWC Opening Documents
  - DWC Hearings
  - DWC Decisions
  - DWC Lien Filings and Decisions
- DWC Audit and Enforcement Program
- Disability Evaluation Unit
- Medical Provider Networks and Healthcare Organizations
- Information and Assistance Unit
- Uninsured Employers Benefits Trust Fund
- Adjudication Simplification Efforts
  - DWC Information System
  - Carve-outs – Alternative Workers' Compensation Systems
- Division of Labor Standards Enforcement (DLSE)
- Anti-Fraud Efforts

WCAB WORKLOAD

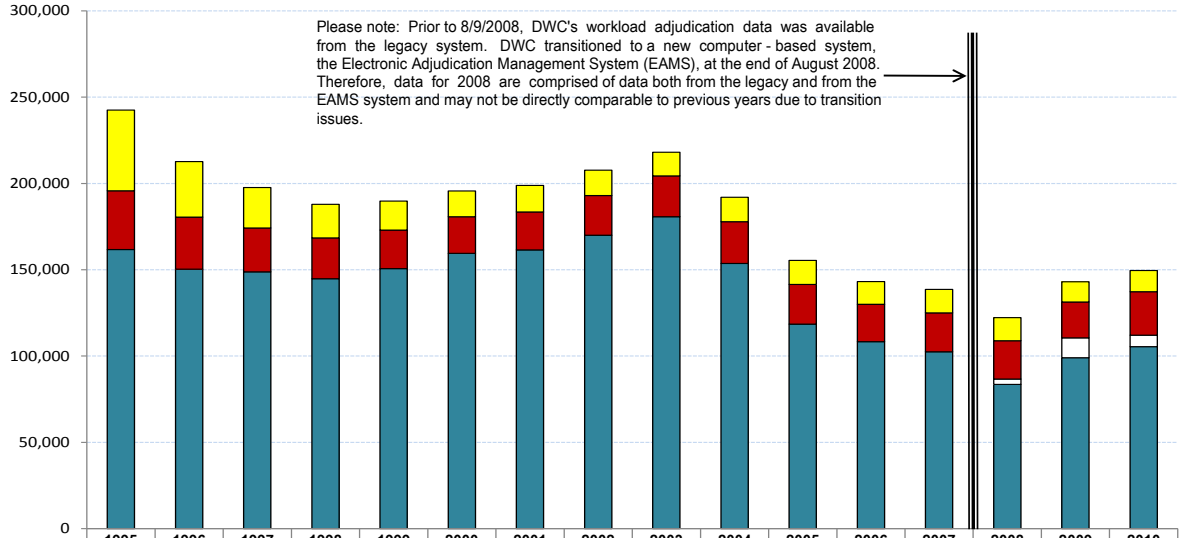
Division of Workers' Compensation Opening Documents

Three types of documents open a Workers' Compensation Appeals Board (WCAB) case. The graph on the next page 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 (DWC).

Prior to August 2008, Division of Workers' Compensation (DWC) workload adjudication data were available from the legacy system. At the end of August 2008, DWC transitioned to a new computer-based system, the Electronic Adjudication Management System (EAMS).Therefore, data for 2008 are comprised of data both from the legacy and from the EAMS system and may not be directly comparable to previous years due to transition issues.[32]

As the following graph shows, the total number of Opening Documents declined overall during the second part of the 1990s, with a slight increase from 1998 to 1999. This increase from 1998 to 1999 continued over five years up to 2003 and then decreased by 36.4 percent from 2003 to 2007.

Figure 41: DWC Opening Documents



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Original C&R	46,777	32,223	23,344	19,526	16,809	14,884	15,374	14,729	13,665	14,115	13,868	13,156	13,602	13,297	11,705	12,290
Original Stips	34,056	30,143	25,467	23,578	22,394	21,288	22,052	22,972	23,600	24,281	23,015	21,723	22,513	22,246	20,767	25,155
Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3,136	11,558	6,659
Applications	161,724	150,344	148,787	144,855	150,612	159,467	161,469	169,996	180,782	153,625	118,524	108,313	102,498	83,528	99,012	105,468
Total	242,557	212,710	197,598	187,959	189,815	195,369	198,895	207,697	218,047	192,021	155,407	143,192	138,613	122,207	143,042	149,572

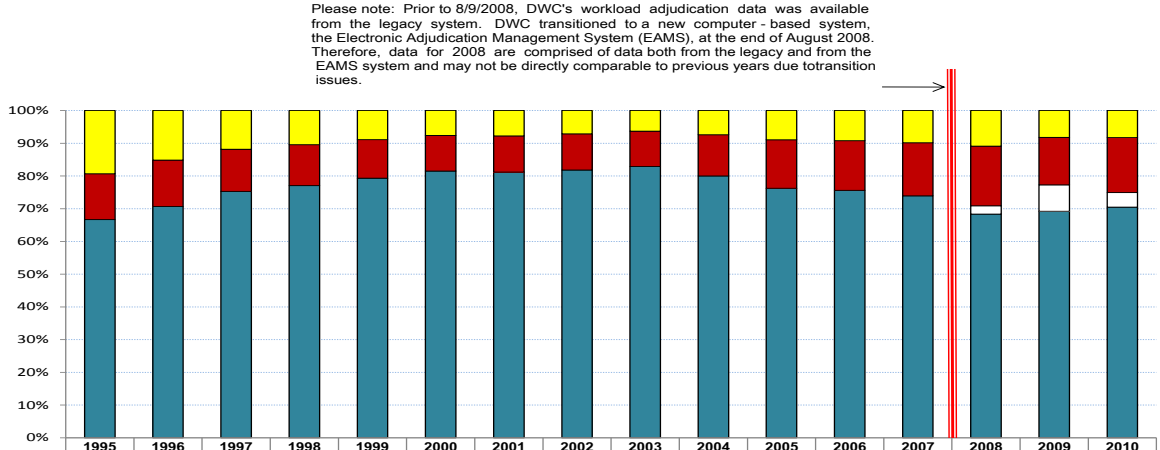
Data Source: DWC

Mix of DWC Opening Documents

As the graph on the next page shows, the proportion or mix of the types of case-opening documents received by DWC varied during the second half of 1990s. The proportion of Applications was rising from 1995 through 2003 and declining slightly from 2003 to 2007**.** The proportion of Original (case-opening) Stips averaged 12 percent from 1995 to 2003 and then increased from 2003 to 2007. The proportion of original C&Rs declined from 1995 to 2003 and then increased from 2003 to 2007.

[32] Analysis of trends for WCAB workload data include 2009 and 2010 EAMS calendar year data only for aggregate numbers, but the same analysis for categories within major types of WCAB workload use only legacy data available through 2007. Analysis of trends using both EAMS and legacy data within major types of WCAB workload through 2010 was not possible due to several reasons, including the introduction of new categories in EAMS and the redefinition of previously existing categories.

Figure 42: Percentage by Type of Opening Documents



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Original C&R	19%	15%	12%	10%	9%	8%	8%	7%	6%	7%	9%	9%	10%	11%	8%	8%
Original Stips	14%	14%	13%	13%	12%	11%	11%	11%	11%	13%	15%	15%	16%	18%	15%	17%
Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3%	8%	4%
Applications	67%	71%	75%	77%	79%	82%	81%	82%	83%	80%	76%	76%	74%	68%	69%	71%

Data Source: DWC

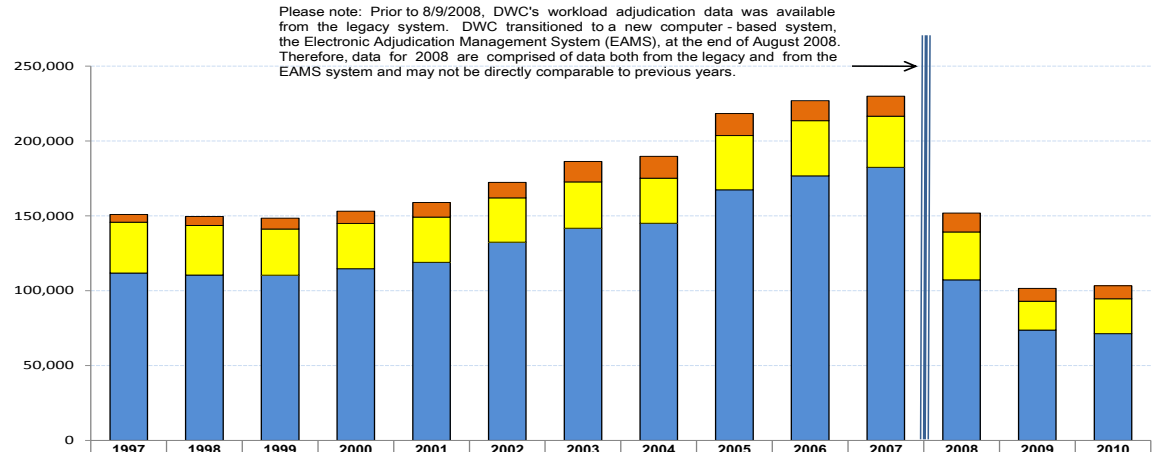
Division of Workers' Compensation Hearings

Numbers of Hearings

The graph below indicates the numbers of different types of hearings held in DWC from 1997 through 2010. The total number of hearings held increased by 52 percent from 1997 to 2007.

Expedited hearings for certain cases, such as determination of medical necessity, may be requested pursuant to Labor Code Section 5502(b). Per Labor Code Section 5502(d), Initial 5502 Conferences are to be conducted in all other cases within 30 days of the receipt of a Declaration of Readiness (DR) and Initial 5502 Conference. Trials are to be held within 75 days of the receipt of a DR if the issues were not settled at the Initial 5502 Conference.

Figure 43: DWC Hearings Held



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Expedited Hrg	5,077	5,944	7,247	8,195	9,693	10,321	13,722	14,640	14,662	13,353	13,307	12,612	8,614	8,743
Initial 5502 Trials	34,011	33,114	30,811	30,245	30,285	29,635	30,967	30,100	36,235	36,788	34,110	31,967	19,249	23,229
Initial 5502 Conf	111,811	110,498	110,412	114,705	118,921	132,389	141,703	145,022	167,417	176,731	182,454	107,260	73,735	71,388
Total	150,899	149,556	148,470	153,145	158,899	172,345	186,392	189,762	218,314	226,872	229,871	151,839	101,598	103,360

Data Source: DWC

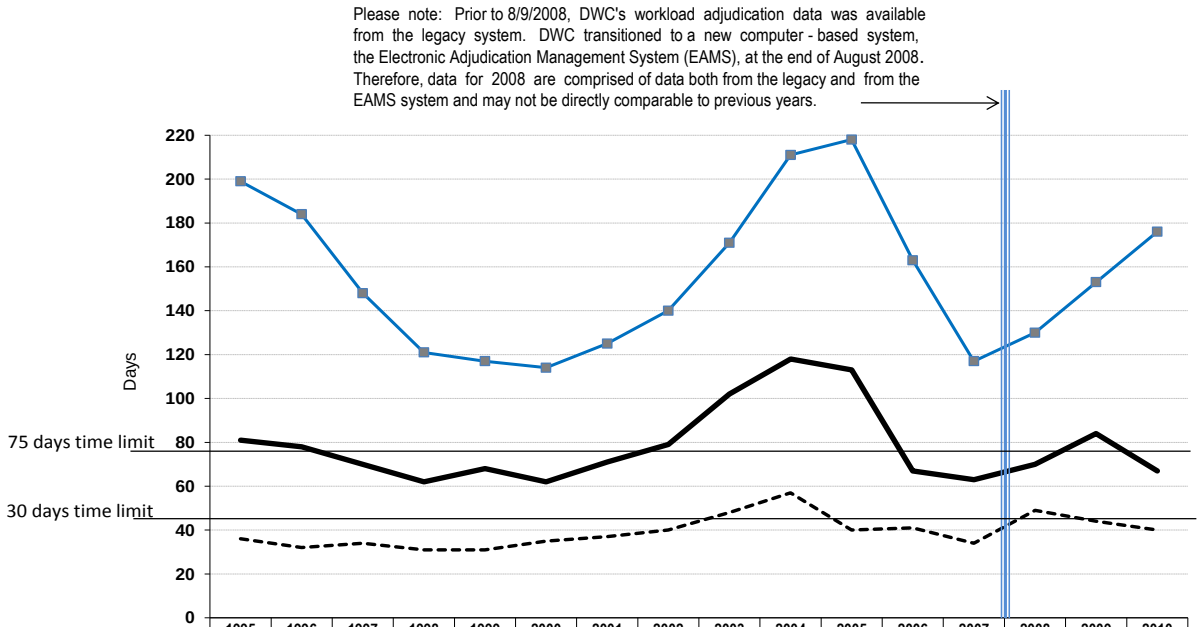
Timeliness of Hearings

California Labor Code Section 5502 specifies the time limits for various types of hearings 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 DR.
- A trial must be held within 75 days of the request if a settlement conference has not resolved the dispute.
- An expedited hearing must be held within 30 days of the receipt of the DR.

As the following chart shows, the average elapsed time from a request to a DWC hearing decreased in the mid-1990s to late-1990s and then remained fairly constant. From 2000 to 2004, all of the average elapsed times have increased from the previous year's quarter and none were within the statutory requirements. However, between 2005 and 2007, the average elapsed time from the request to a trial decreased by 46 percent, the average elapsed time for conferences decreased by 44 percent, and the average time for expedited hearings decreased by 15 percent.

Figure 44: Elapsed Time in Days from Request to DWC Hearing (4th Quarter)



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
First 5502 Conference	81	78	70	62	68	62	71	79	102	118	113	67	63	70	84	67
First 5502 Trial	199	184	148	121	117	114	125	140	171	211	218	163	117	130	153	176
Expedited Hearing	36	32	34	31	31	35	37	40	48	57	40	41	34	49	44	40

Source: DWC

From 2008 through 2010, the longer waiting times for regular trials (top line) coincide with the reduction in available court hours due to hiring freezes and furloughs. Governor Schwarzenegger's July 31, 2008 Executive Order froze hiring and barred the use of retired annuitants. Beginning February 1, 2009, judges and staff were placed on furlough two days a month.[33] Effective July 1, 2009, the furloughs were increased to three days per month.[34] With just over 20 working days a month, the furloughs represented

[33] Executive Order S-16-08
[34] Executive Order S-13-09

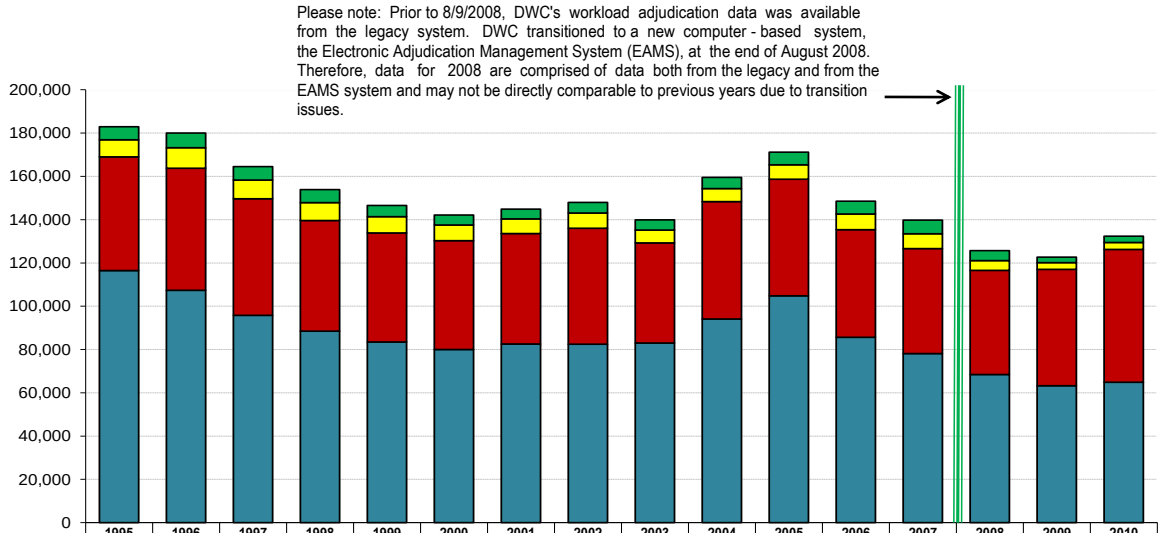
cuts of first 10 percent and then 15 percent of available hours for hearing and resolving cases. The fact that the time to expedited hearing (bottom line, dotted) grew shorter from 2008 through 2010 shows that the courts gave priority to scheduling the urgent issues that are statutorily designated for expedited hearing.

Division of Workers' Compensation Decisions

DWC Case-Closing Decisions

As the chart below, the number of decisions made by DWC that are considered to be case-closing declined during the second part of the 1990s, increased overall from 2000 to 2005**,** and then decreased by 18.4 percent from 2005 to 2007.

Figure 45: DWC Case-Closing Decisions



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
F & O	6,043	6,780	6,261	6,021	5,205	4,606	4,470	4,866	4,677	5,221	5,873	5,883	6,331	4,666	2,499	2,907
F & A	7,890	9,450	8,656	8,290	7,487	7,313	6,786	6,996	5,910	5,989	6,634	7,265	6,865	4,475	3,124	3,210
Stipulation	52,537	56,368	53,863	51,074	50,371	50,223	51,113	53,640	46,248	54,216	53,889	49,748	48,469	48,140	53,721	61,388
C & R	116,485	107,407	95,760	88,501	83,512	80,039	82,506	82,433	83,060	94,153	104,829	85,641	78,120	68,444	63,298	64,903
Total Case Closing	182,955	180,005	164,540	153,886	146,575	142,181	144,875	147,935	139,895	159,579	171,225	148,537	139,785	125,726	122,642	132,408

Data Source: DWC

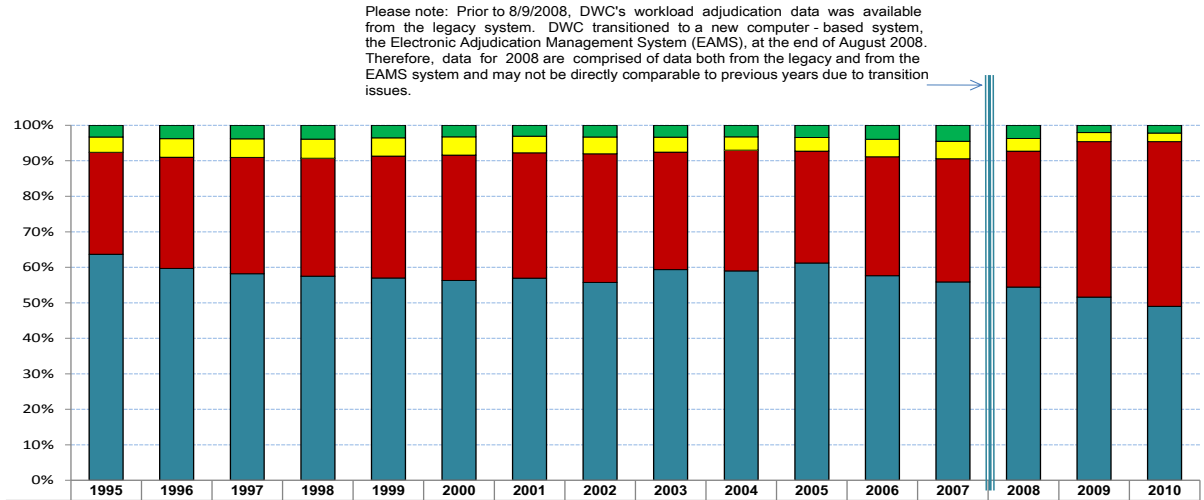
Mix of DWC Decisions

As shown on the previous charts and the chart below, again, the vast majority of the case-closing decisions rendered during the 1990s were in the form of a WCAB judge's approval of Stips and C&Rs which were originally formulated by the case parties.

During the period from 1995 through 2007, there was an overall increase in proportion of Stips and overall decrease in proportion of C&Rs. This reflects the large decrease in the issuance of C&Rs through the 1990s. This pattern of increasing proportion of Stips and decreasing proportion of C&Rs continued into the period from 2008 to 2010,

Only a small percentage of case-closing decisions evolved from an Finding & Award (F&A) or Finding & Order (F&O) issued by a WCAB judge after a hearing.

Figure 46: DWC Decisions: Percent Distribution by Type of Decisions



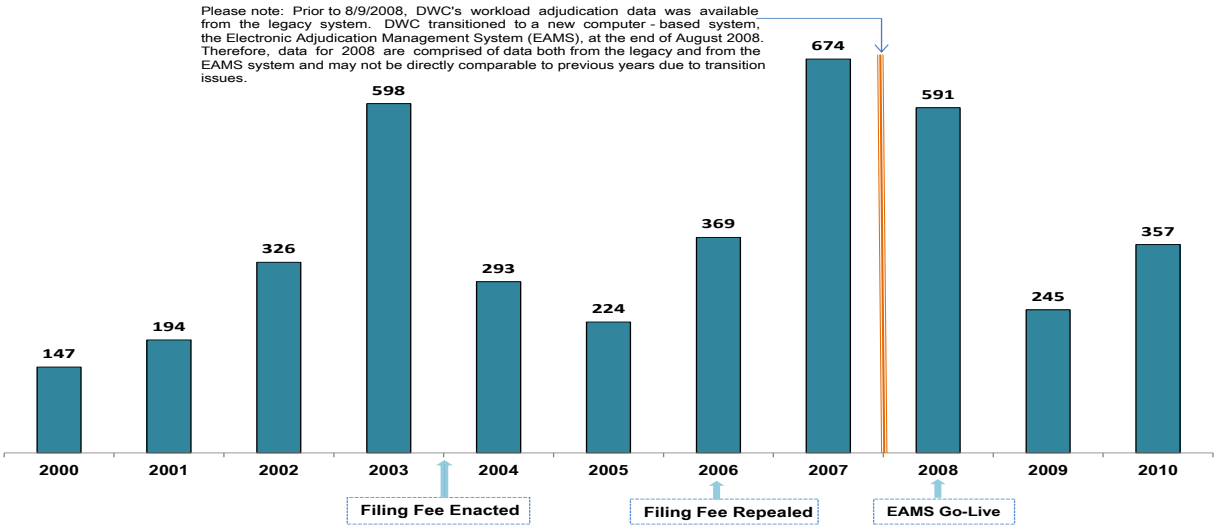
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
F & O	3.3%	3.8%	3.8%	3.9%	3.6%	3.2%	3.1%	3.3%	3.3%	3.3%	3.4%	4.0%	4.5%	3.7%	2.0%	2.2%
F & A	4.3%	5.2%	5.3%	5.4%	5.1%	5.1%	4.7%	4.7%	4.2%	3.8%	3.9%	4.9%	4.9%	3.6%	2.5%	2.4%
Stips	28.7%	31.3%	32.7%	33.2%	34.4%	35.3%	35.3%	36.3%	33.1%	34.0%	31.5%	33.5%	34.7%	38.3%	43.8%	46.4%
C & R	63.7%	59.7%	58.2%	57.5%	57.0%	56.3%	56.9%	55.7%	59.4%	59.0%	61.2%	57.7%	55.9%	54.4%	51.6%	49.0%

Data Source: DWC

Division of Workers' Compensation Lien Filings and Decisions

As shown in the chart below, the number of liens has increased by over 300 percent between 2000 and 2003, decreased by 63 percent between 2003 and 2005, and then increased again by 200 percent between 2005 and 2007. From 2009 to 2010, there was a 46 percent increase in the number of liens filed.

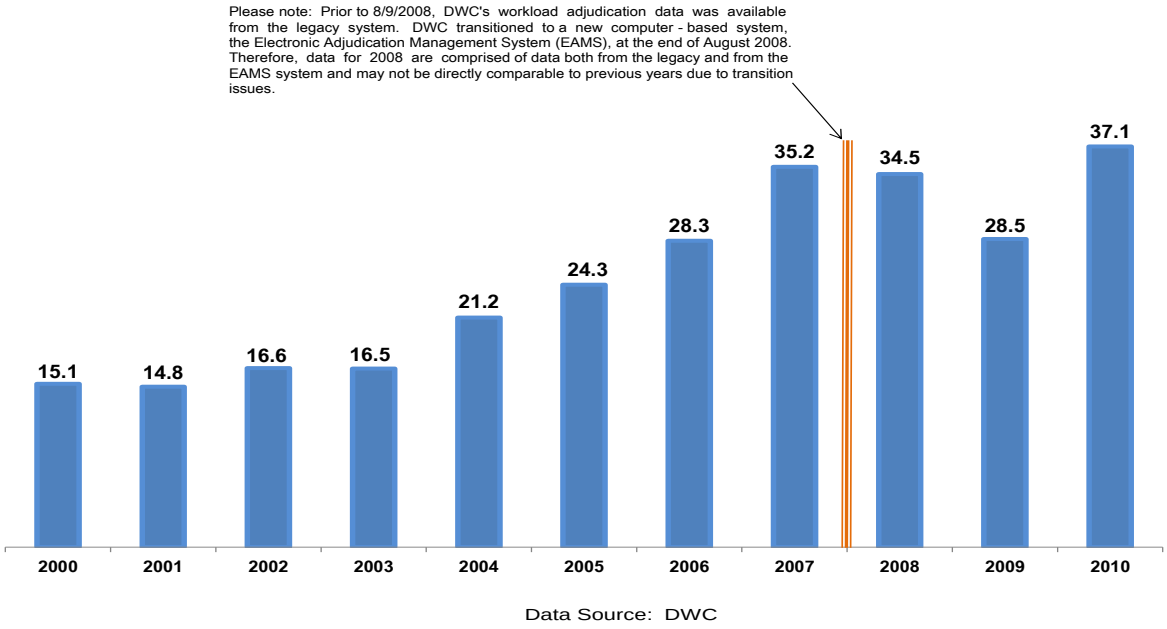
Figure 47: Number of Liens Filed, 2000-2010



Data Source: DWC

The following chart generally shows 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.

Figure 48: DWC Lien Decisions, 2000-2010



See "Report on Liens" (CHSWC, 2011) for a complete description**.**
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReport.pdf

DIVISION OF WORKERS' COMPENSATION AUDIT AND ENFORCEMENT PROGRAM

Background

The 1989 California workers' compensation reform legislation established an audit function within the Division of Workers' Compensation (DWC) to monitor the performance of workers' compensation insurers, self-insured employers, and third-party administrators to ensure that industrially injured workers are receiving proper benefits in a timely manner.

The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of workers' compensation benefits to industrially injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.

Assembly Bill 749 Changes to the Audit Program

Assembly Bill (AB) 749, effective January 1, 2003, resulted in major changes to California workers' compensation law and mandated significant changes to the methodologies for file selection and assessment of penalties in the audit program.

Labor Code Sections 129 and 129.5 were amended to ensure that each audit unit will be audited at least once every five years and that good performers will be rewarded. A profile audit review (PAR) of every audit subject will be done at least every five years. Any audit subject that fails to meet a profile audit standard established by the Administrative Director (AD) of the DWC will be given a full compliance audit (FCA). Any audit subject that fails to meet or exceed the FCA performance standard will be audited again within two years. Targeted PARs or FCAs may also be conducted at any time based on information indicating that an insurer, self-insured employer, or third-party administrator is failing to meet its obligations.

To reward good performers, profile audit subjects that meet or exceed the PAR performance standard will not be liable for any penalties but will be required to pay any unpaid compensation. FCA subjects that meet or exceed standards will only be required to pay penalties for unpaid or late paid compensation, as well as any unpaid compensation.

Labor Code Section 129.5(e) was amended to provide for civil penalties up to $100,000 if an employer, insurer, or third-party administrator has knowingly committed or (rather than "and") has performed with sufficient frequency to indicate a general business-practice act discharging or administering its obligations in specified improper manners. Failure to meet the FCA performance standards in two consecutive FCAs will be rebuttably presumed to be engaging in a general business practice of discharging and administering compensation obligations in an improper manner.

Review of the civil penalties assessed is obtained by written request for a hearing before the Workers' Compensation Appeals Board (WCAB) rather than by application for a writ of mandate in the Superior Court. Judicial review of the Board's F&O is as provided in Sections 5950 et seq.

Penalties collected under Section 129.5 and unclaimed assessments for unpaid compensation under Section 129 are credited to the Workers' Compensation Administration Revolving Fund (WCARF).

Overview of Audit Methodology

Selection of Audit Subjects

Audit subjects, including insurers, self-insured employers and third-party administrators, are selected randomly for routine audits.

The bases for selecting audit subjects for targeted audits are specified in 8 California Code of Regulations (CCR) Section 10106.1(c), effective January 1, 2003:

- Complaints regarding claims handling received by DWC.
- Failure to meet or exceed FCA Performance Standards.
- High numbers of penalties awarded pursuant to Labor Code Section 5814.
- Information received from the Workers' Compensation Information System (WCIS).
- Failure to provide a claim file for a PAR.
- Failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit.

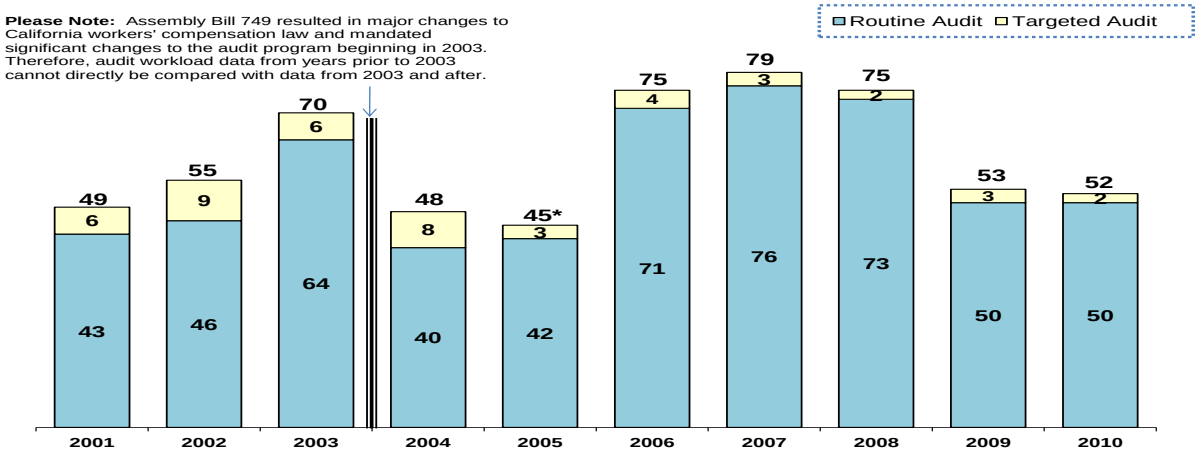
Audit and Enforcement Unit Data

The following charts and graphs depict workload data from 2000 through 2010. As noted on the charts, data before 2003 cannot be directly compared with similar data in 2003 and after because of the significant changes in the program effective January 1, 2003.

Routine and Targeted Audits

The following chart shows the number of routine audits and targeted audits and the total number of audits conducted each year.

Figure 49: Routine and Targeted Audits



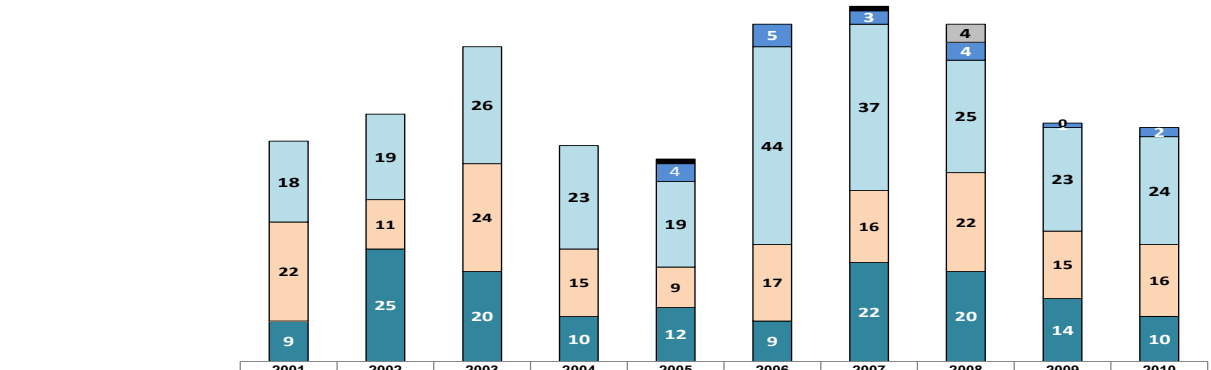
* Note: An additional target audit was conducted based on a return agreement in a previous stipulation of civil penalty in 2000.

Data Souce: DWC Audit and Enforcement Unit

Audits by Type of Audit Subject

The following chart depicts the total number of audit subjects each year with a breakdown by whether the subject is an insurance company (insurer), a self-insured employer, or a third-party administrator.

Figure 50: DWC Audits by Type of Audit Subject



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
UEBTF +	N/A	N/A	N/A	N/A	N/A	N/A	N/A	4	0	N/A
Self-Insured and TPA +	0	0	0	0	1	0	1	0	0	N/A
Insurer and TPA +	0	0	0	0	4	5	3	4	1	2
Third-Party Administrators +	18	19	26	23	19	44	37	25	23	24
Self-Insured Employers +	22	11	24	15	9	17	16	22	15	16
Insurance Companies +	9	25	20	10	12	9	22	20	14	10
= Total	49	55	70	48	45	75	79	75	53	52

Data Source: DWC Audit and Enforcement

Selection of Files to be Audited

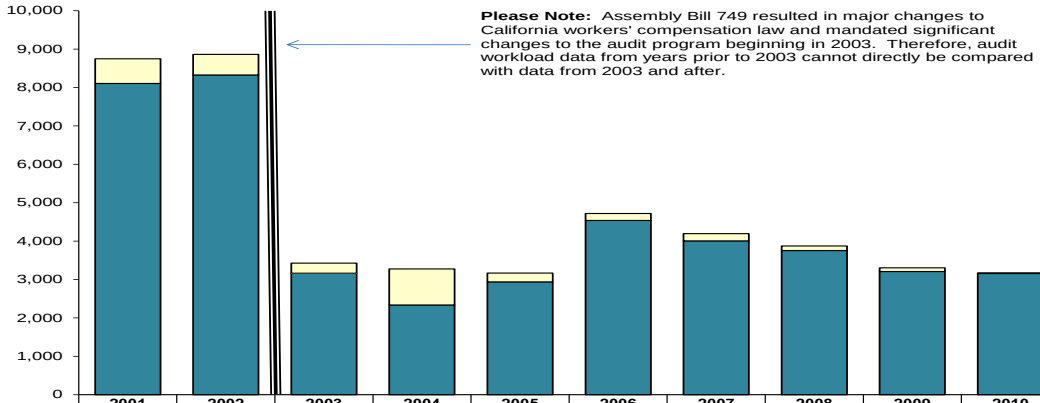
The majority of claim files are selected for audit on a random basis, with the number of indemnity and denied cases being selected based on the numbers of claims in each of those populations of the audit subject:

- Targeted files are selected because they have attributes that the audits focus on.

- Additional files include claims chosen based on criteria relevant to a targeted audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total number of claims at the adjusting location and the number of complaints received by DWC related to claims-handling practices. Types of claims include indemnity, medical-only, denied, complaint and additional.

The following chart shows the total number of files audited each year, broken down by the method used to select them.

Figure 51: Files Audited by Method of Selection



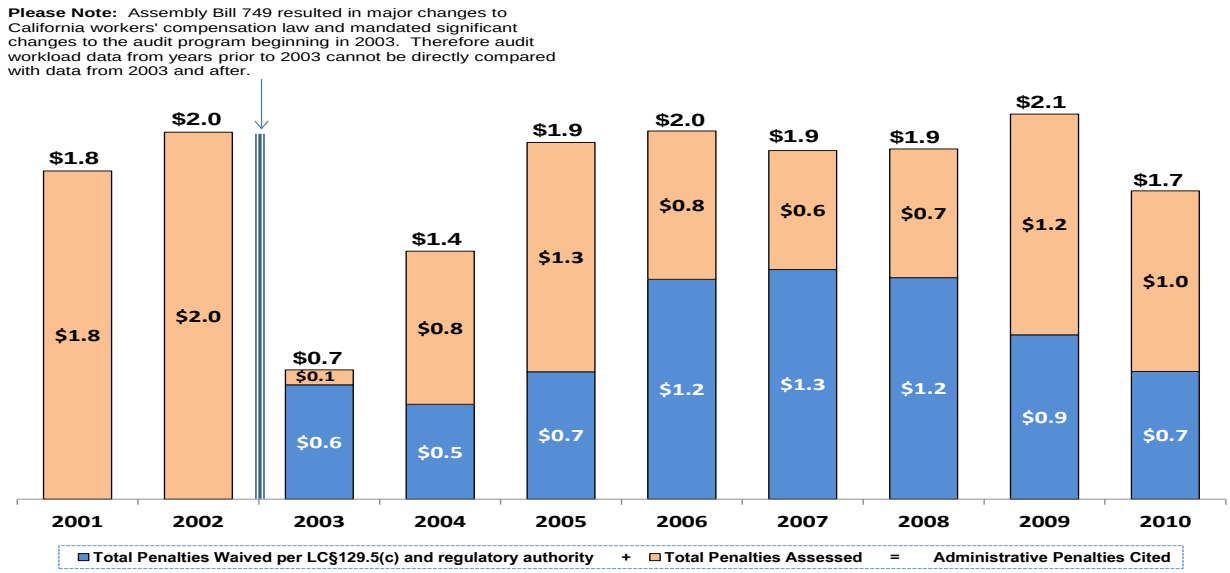
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Target	644	532	262	939	228	180	191	118	96	15
Random	8,105	8,329	3,163	2,337	2,940	4,538	4,004	3,755	3,208	3,156
Total Files Audited	8,749	8,861	3,425	3,276	3,168	4,718	4,195	3,873	3,304	3,171

Data Source: DWC Audit and Enforcement Unit

Administrative Penalties

As shown in the following chart, the administrative penalties cited have changed significantly since the reform legislation changes to the Audit and Enforcement Program beginning in 2003.

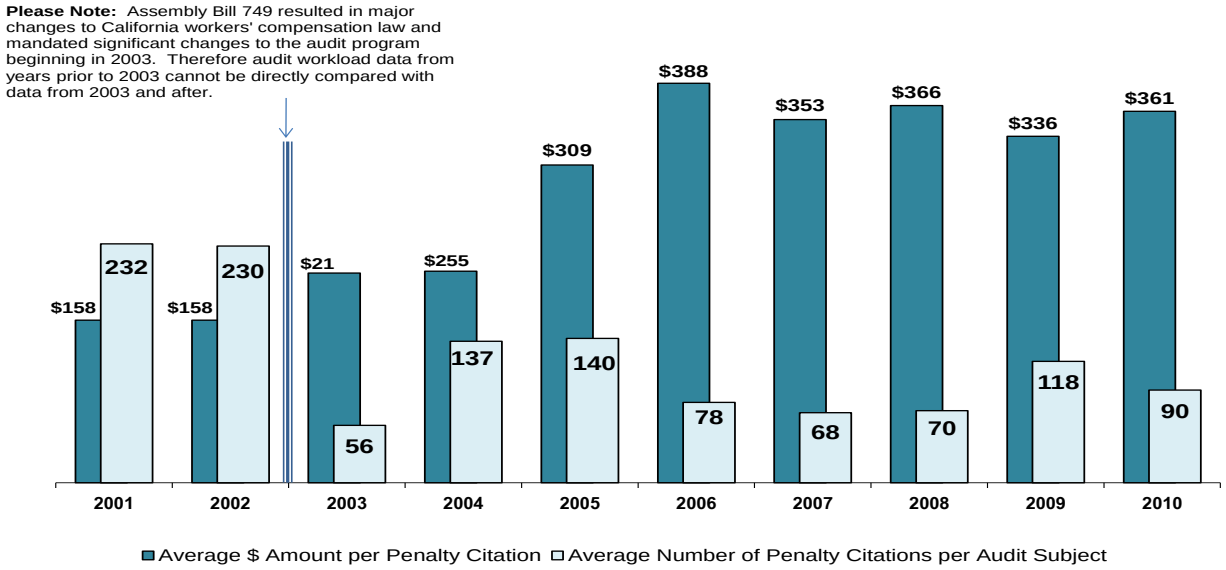
Figure 52: DWC Audit Unit – Administrative Penalties Cited (Million $)



Data Source: DWC Audit and Enforcement Unit

The following chart shows the average number of penalty citations per audit subject each year and the average dollar amount per penalty citation.

Figure 53: Average Amount per Penalty Citation and Average Number of Penalty Citations per Audit Subject



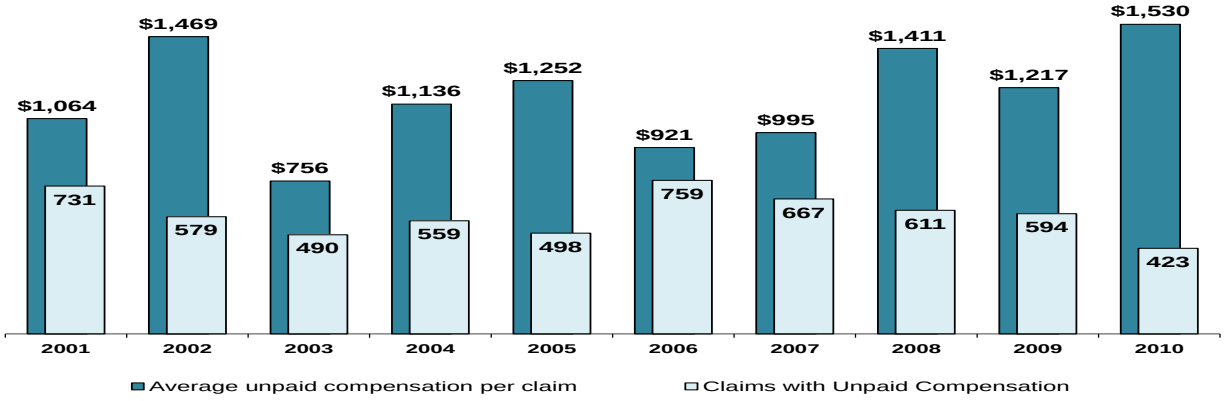
Source: DWC Audit and Enforcement Unit

Unpaid Compensation Due To Claimants

Audits identify claim files in which injured workers were owed unpaid compensation. The administrator is required to pay these employees within 15 days after receipt of a notice advising the administrator of the amount due, unless a written request for a conference is filed within 7 days of receipt of the audit report. When employees due unpaid compensation cannot be located, the unpaid compensation is payable by the administrator to WCARF. In these instances, application by an employee can be made to DWC for payment of monies deposited by administrators into this fund.

The following chart depicts the average number of claims per audit where unpaid compensation was found and the average dollar amount of compensation due per claim.

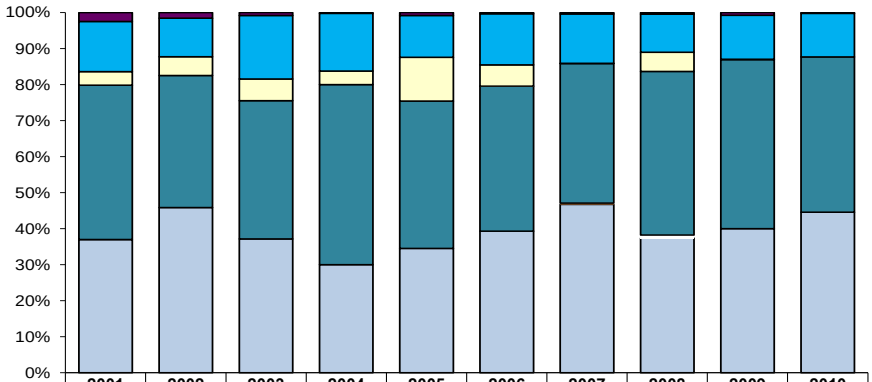
Figure 54: Average Amount of Unpaid Compensation per Claim and Number of Claims



Data Source: DWC Audit and Enforcement Unit

The following chart shows unpaid compensation each year, broken down by percentage of the specific type of compensation that was unpaid.

Figure 55: Distribution of Unpaid Compensation by Type



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Interest and penalty and/or unreimbursed medical expenses	2.5%	1.6%	0.8%	0.2%	0.8%	0.3%	0.4%	0.4%	0.8%	0.2%
Self-imposed increases for late indemnity payments	13.9%	10.7%	17.6%	16.0%	11.6%	14.2%	13.7%	10.6%	12.2%	12.1%
Voc. Rehab Maintenance Allowance	3.7%	5.2%	6.0%	3.8%	12.1%	5.9%	0.1%	5.3%	0.1%	N/A
Permanent Disability	42.9%	36.6%	38.4%	50.0%	40.9%	40.3%	38.8%	45.4%	46.9%	43.1%
Death Benefits	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.4%	0.9%	0.0%	N/A
TD & salary continuation in lieu of TD	36.9%	45.8%	37.1%	30.0%	34.5%	39.3%	46.7%	37.3%	40.0%	44.6%

Data Source: DWC Audit and Enforcement Unit

For further information …

DWC Annual Audit Reports may be accessed at http://www.dir.ca.gov/dwc/audit.html.

CHSWC "Report on the Division of Workers' Compensation Audit Function" (1998) http://www.dir.ca.gov/CHSWC/FinalAuditReport.html.

DISABILITY EVALUATION UNIT

The DWC Disability Evaluation Unit (DEU) determines permanent disability (PD) ratings by assessing physical and mental impairments in accordance with the Permanent Disability Rating Schedule (PDRS). The ratings are used by workers' compensation judges, injured workers, and insurance claims administrators to determine PD benefits.

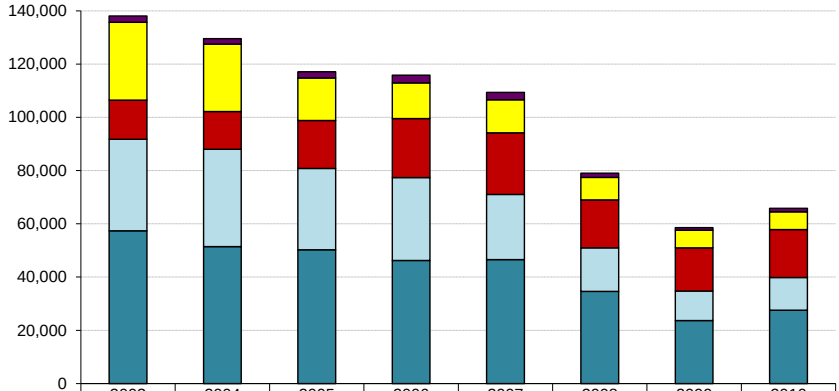
DEU prepares three types of ratings: formal, done at the request of a workers' compensation judge; consultative, done at the request of an attorney or DWC Information & Assistance (I&A) Officer; and summary, done at the request of a claims administrator or injured worker. Summary ratings are done only on non-litigated cases, and formal consultative ratings are done only on litigated cases.

The rating is a percentage that estimates how much a job injury permanently limits the kinds of work the injured employee can do. It is based on the employee's medical condition, date of injury, age when injured, occupation when injured, how much of the disability is caused by the employee's job, and his or her diminished future earning capacity. It determines the number of weeks that the injured employee is entitled to PD benefits.

The following two charts depict DEU's workload. The first chart shows the written ratings produced each year by type between 2003 and 2010. The second chart illustrates the total number of written and oral ratings between 2003 and 2007. From 2008, statistics on Oral Ratings are not maintained.

DEU written ratings declined by 15 percent between 2003 and 2005, leveled off between 2005 and 2006, and declined by 6.6 percent between 2006 and 2007. Between 2007 and 2010, the number of DEU written ratings declined by 40 percent. The decline in written ratings between 2007 and 2010 is due to a number of factors including: the introduction of AMA *Guides* and case decisions such as *Ogilvie and Almaraz/Guzman* which increased rating complexity; transition to a new electronic adjudication management system (EAMS) leading to a learning curve for personnel; hiring freezes that caused clerical shortages; and more consistent tabulation of rating production with the introduction of the EAMS system.

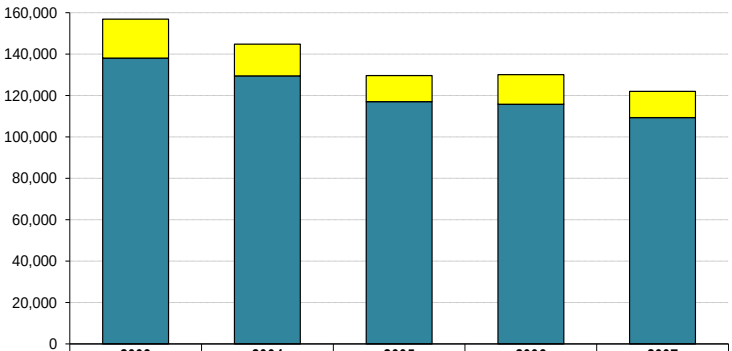
Figure 56: DEU Written Ratings, 2003-2010



	2003	2004	2005	2006	2007	2008	2009	2010
Formal Ratings	2,386	1,995	2,299	2,874	2,786	1,584	942	1,317
Summary - Treating Doctor	29,198	25,385	15,922	13,422	12,361	8,440	6,610	6,662
Summary - Panel QME	14,753	14,147	18,001	22,139	23,142	18,027	16,243	18,033
Consultative - Walk-In	34,369	36,563	30,553	31,181	24,528	16,383	11,065	12,256
Consultative - Other	57,367	51,442	50,275	46,210	46,530	34,607	23,682	27,576
Total Written Ratings	138,073	129,532	117,050	115,826	109,347	79,041	58,542	65,844

Data Source: DWC Disability Evaluation Unit

Figure 57: DEU Oral and Written Ratings by Type, 2003-2007



	2003	2004	2005	2006	2007
Oral Ratings	18,856	15,283	12,591	14,273	12,662
Written Ratings	138,073	129,532	117,050	115,826	109,347
Total Ratings	156,929	144,815	129,641	130,099	122,009

* From 2008, statistics on Oral Ratings are not mantained.

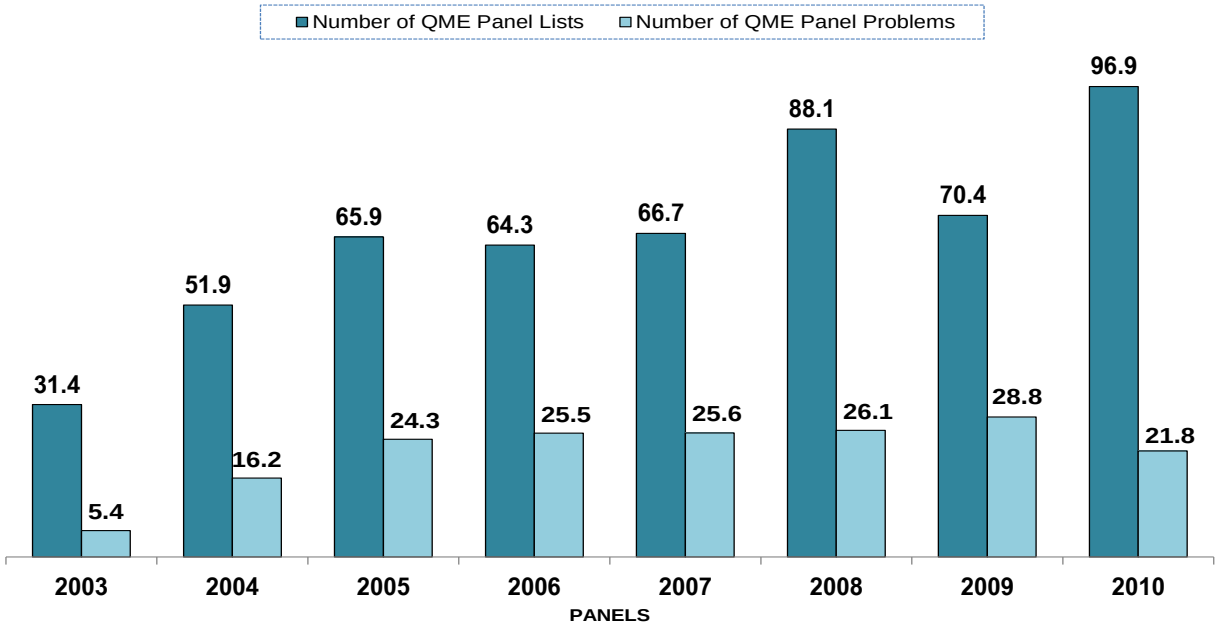
Source: DWC Disability Evaluation Unit

QUALIFIED MEDICAL EVALUATOR PANELS

DWC assigns panels composed of three Qualified Medical Evaluators (QMEs) from which an injured worker without an attorney selects the evaluator for a medical dispute. Beginning in 2005, a similar process became effective for cases where the worker has an attorney. This resulted in an increased number of QME panels. The changes contributed to a larger percentage of problems with the panel assignments.

The chart below indicates the number of QME Panel Lists issued each year and the number of problems with the original QME panel issued necessitating a replacement list. Some of the problems with panel assignment include parties not submitting documentation or submitting inadequate documentation, parties not being eligible for a QME panel, or DWC needing additional information in order to make a determination for panel eligibility.

Figure 58: Number of Qualified Medical Evaluator (QME) Panel Lists and Panel Problems (Thousand)



Data Source: DWC

MEDICAL PROVIDER NETWORKS AND HEALTH CARE ORGANIZATIONS[35]

Medical Provider Networks

Background

In recent years, the California workers' compensation system has seen significant increases in medical costs. Between 1997 and 2003, workers' compensation medical treatment expenses in California increased by an estimated 138 percent,[36] outpacing the costs for equivalent medical treatment provided in non-industrial settings. To abate this rise in costs, major reforms were made in 2003 and 2004. One such effort was the signing into law of Senate Bill (SB) 899 in April of 2004. One major component of SB 899 was the option for self-insured employers or insurers to establish a medical provider network (MPN), as promulgated in Labor Code Section 4616 et. seq. MPNs were implemented beginning January 1, 2005.

An MPN is a network of providers established by an insurer, self-insured employer, a Joint Powers Authority (JPA), the State, a group of self-insured employers, a self-insurer security fund, or the California Insurance Guarantee Association (CIGA) to treat work-related injuries.

The establishment of an MPN gives significant medical control to employers. With the exception of employees who have a pre-designated physician, according to California Labor Code Section 4600, employers that have established an MPN control the medical treatment of employees injured at work for the life of the claim as opposed to 30 days of medical control that employers had prior to SB 899. Having an MPN means the employer has more control with regard to who is in the network and who the injured worker sees for care for the life of the claim. The employer gets to choose who the injured worker goes to on the first visit; after the first visit, the injured worker can go to a doctor of his/her choosing in the MPN.

Before the implementation of an MPN, insurers and employers are required to file an MPN application with the Division of Workers' Compensation (DWC) for review and approval, pursuant to Title 8 CCR § 9767.1 et. seq.

Application Review Process

California Labor Code Section 4616(b) mandates that DWC review and approve MPN plans submitted by employers or insurers within 60 days of plan submission. If DWC does not act on the plan within 60 days, the plan is deemed approved by default.

Upon receipt of an MPN application, DWC does an initial cursory review of all applications received. The result of the review is communicated to each applicant in a "complete" or "incomplete" letter, as applicable. Applicants with sections missing in their application will be asked to complete the missing part(s). Applicants with a complete application will receive a "complete" letter indicating the target date of when the full review of their application will be completed. The clock for the 60-day time frame within which DWC should act starts from the day a complete application is received at DWC.

The full review of an application involves a thorough scrutiny, using a standard checklist, to see if the application followed the statutory and regulatory requirements set forth in California Labor Code Section 4616 et. seq. and the California Code of Regulations sections 9767.1 et. seq. The full review culminates with an approval letter if no deficiency is discovered in the submitted application. Applicants with deficient applications are sent a disapproval letter listing deficiencies that need to be corrected. This process is repeated until the application is approved.

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[35] The information in this section was provided by the DWC Medical Unit, with minor edits by CHSWC staff.

[36] Based on the WCIRB annual report *California Workers' Compensation Losses and Expenses* prepared pursuant to § 11759.1 of the California Insurance Code.

Material modification filings go through a similar review process as an initial application. Except in cases where an applicant was approved under the emergency regulations and is now updating the application to the permanent regulations, reviews of material modifications are done only for those sections of the applications affected by the material change.

Applications Received and Approved

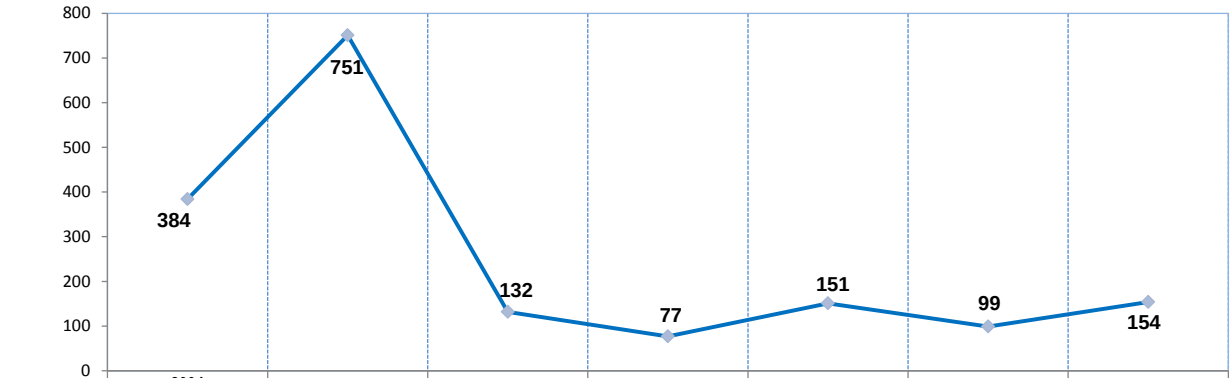
The table below provides a summary of MPN program activities from the inception of the MPN program in November 1, 2004, to December 31, 2010. During this time, the MPN program received 1,748 MPN applications. Of these, 27 were ineligible as they were erroneously submitted by insured employers who under the MPN regulations are not eligible to set up an MPN. As of December 31, 2010, 1,600 applications were approved. Of these, 986 were approved under the emergency regulations and the remaining 614 under the permanent regulations. Nineteen (19) approved applications were revoked by DWC. The reason for revocation was the applicants' erroneous reporting of their status as self-insured when in fact they were insured entities. One hundred and fifty-one (151) were withdrawn after approval and forty-nine (49) were withdrawn before approval. The reasons for the withdrawals were either that the applicant decided not to pursue an MPN or there was a duplicative submission of the same application. Fifty-eight (58) were terminated after approval. The reason for the termination was the applicant's decision to stop using the MPN.

Table 16: MPN Program Activities from November 1, 2004, to December 31, 2010

MPN Applications:	**Number**
Received	1,748
Approved	1,600
Material Modifications	2,146
Withdrawn	200
Revoked	19
Ineligible	27
Terminated	58

The chart below shows the time of receipt of MPN applications by month and year. The bulk of applications, 43 percent (751), were received in 2005. About 8 percent (132) were received in 2006, 4 percent (77) were received in 2007, 9 percent (151) were received in 2008, 6 percent (99) were received in 2009, and 9 percent (154) were received in 2010.

Figure 59: Number of MPN Applications Received by Month and Year of Receipt (Total = 1,748)

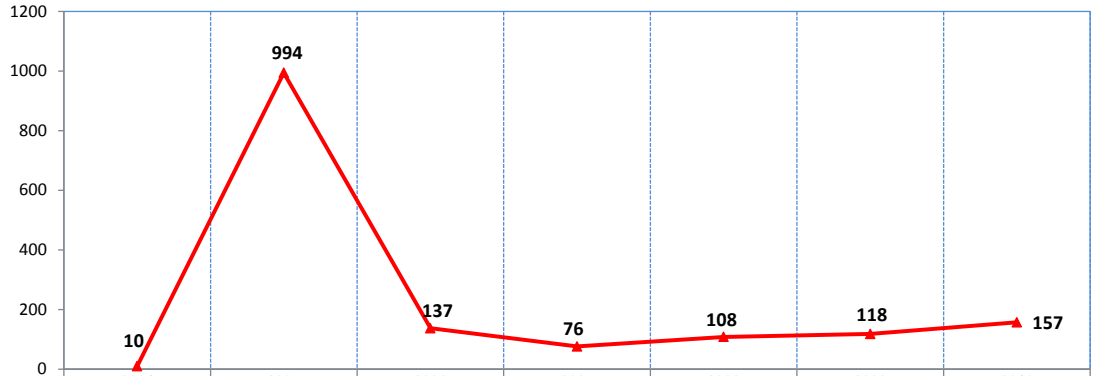


	2004 (NOV-DEC)	2005	2006	2007	2008	2009	2010
JANUARY		175	29	3	15	11	4
FEBRUARY		169	14	6	9	12	7
MARCH		74	12	8	10	12	12
APRIL		95	9	5	10	9	10
MAY		63	18	4	4	7	13
JUNE		71	5	5	4	9	20
JULY		35	4	14	15	6	15
AUGUST		12	7	5	6	1	22
SEPTEMBER		20	18	3	18	8	9
OCTOBER		12	5	7	33	2	15
NOVEMBER	124	13	10	4	17	10	10
DECEMBER	260	12	1	13	10	12	17
TOTAL	384	751	132	77	151	99	154

Data Source: DWC

The chart below shows that 62 percent (994) of MPN applications were approved in 2005, while only 9 percent (137) were approved in 2006, 5 percent (76) were approved in 2007, 7 percent (108) were approved in 2008, 7 percent (118) were approved in 2009, and 10 percent (157) were approved in 2010.

Figure 60: Number of MPN Applications Approved by Month and Year (Total = 1,600)



	2004	2005	2006	2007	2008	2009	2010
JANUARY		29	10	6	6	15	10
FEBRUARY		138	6	8	2	12	14
MARCH		288	18	11	10	10	11
APRIL		121	20	4	5	10	14
MAY		129	27	5	8	36	9
JUNE		71	10	6	17	11	25
JULY		89	9	7	9	5	2
AUGUST		75	8	6	9	9	21
SEPTEMBER		36	14	6	8	5	13
OCTOBER		9	3	3	6	3	7
NOVEMBER		0	2	10	14	0	10
DECEMBER	10	9	10	4	14	2	21
TOTAL	10	994	137	76	108	118	157

Data Source: DWC

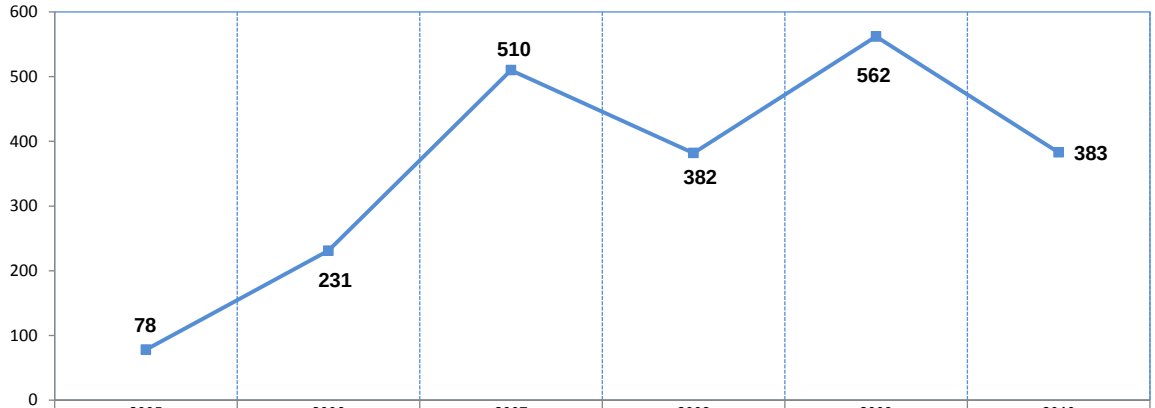
Material Modifications

MPN applicants are required by Title 8 CCR §9767.8 to provide notice to DWC for any material change to their approved MPN application. In addition, MPN applicants approved under the emergency regulations must update their application to conform to the permanent MPN regulations when providing notice of material change to their approved application.

As of December 31, 2010, 871 applicants had filed 2,146 material modifications with DWC. Some applicants filed more than one material modification. Four hundred and twenty-five (425) applicants filed two or more material modification filings while 1 applicant had 29 filings.

The following chart shows how many material modification filings were received at DWC.

Figure 61: Number of MPN Material Modifications Received by Month and Year (Total = 2,146)



	2005	2006	2007	2008	2009	2010
JANUARY		21	20	44	32	20
FEBRUARY	1	12	62	18	49	39
MARCH		13	12	41	52	16
APRIL	1	2	18	14	66	45
MAY		6	74	15	26	25
JUNE	7	9	72	13	40	26
JULY	2	5	40	35	47	40
AUGUST	26	13	62	2	19	23
SEPTEMBER	9	60	33	68	41	22
OCTOBER	10	22	42	68	55	69
NOVEMBER	11	44	22	55	60	50
DECEMBER	11	24	53	9	75	8
TOTAL	78	231	510	382	562	383

Data Source: DWC

MPN Applicants

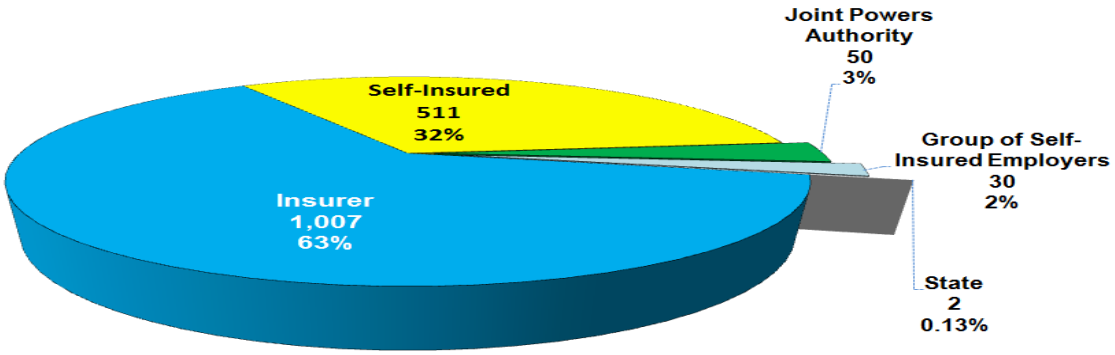
The table below shows the numbers of MPN applicants by type of applicant. The majority, 42 percent, of MPN applications were filed by insurers, followed by self-insured employers (18 percent).

Table 17: Distribution of Approved MPN Applications by Type of Applicant

Type of Applicant	2004	2005	2006	2007	2008	2009	2010
Insurer	7	611	68	32	80	91	66
Self-Insured	3	346	55	37	23	19	28
Joint Powers Authority		33	4	4	3	2	4
Group of Self-Insured Employers		2	10	3	2	6	7
State		2					
Total for all years=1,600	10	994	137	76	108	118	157

The chart below shows the distribution of MPN applicants by type.

Figure 62: Distribution of All Approved MPN Applications by Type of Applicant, 2004 - 2010 (Total = 1,600)



Data Source: DWC

HCO Networks

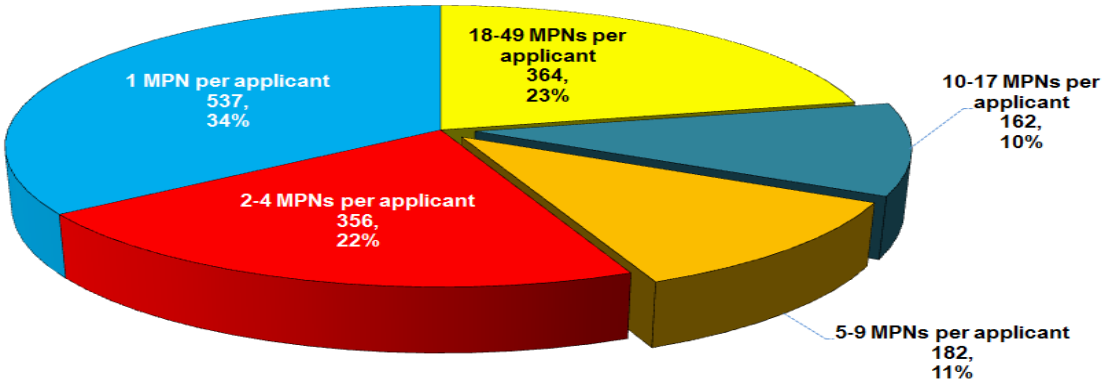
HCO networks are used by 491 (28.1 percent) of the approved MPNs. The distribution of MPNs by HCO is shown in the table below. First Health HCO has 16.4 percent of the MPN market share followed by Corvel HCO, which has 6.8 percent, and Medex, which has 2.7 percent. There seems to be a decrease in the use of HCO networks for MPNs.

Table 18: Number of MPN Applicants Using HCO Networks

Name of HCO	Number	% Applications Received	% Applications Approved
CompAmerica (First Health)	286	17.9%	16.4%
Corvel	118	7.4%	6.8%
Medex	48	3.0%	2.7%
CompPartners	5	0.3%	0.3%
Net-Work	1	0.1%	0.1%
Intracorp	0	0.0%	0.0%
Promesa	1	0.1%	0.1%
Astrasano	2	0.1%	0.1%
Prudent Buyer (Blue Cross)	30	1.9%	1.7%
Total Using HCO	**491**	**30.7%**	**28.1%**

MPN applicants are allowed to have more than one MPN. As the pie chart below shows, 66 percent of applicants have more than one MPN, including 23 percent with 18 to 51 MPNs. The names of MPN applicants with 10 or more approved MPNs are shown in the table below. ACE American Insurance Company leads with 51 MPNs followed by Zurich American Insurance Company with 38 MPNs, and American Home Assurance Company with 36 MPNs.

Figure 63: Distribution of Approved MPNs by Number of MPNs per Applicant, 2010



Data Source: DWC

Table 19: Names of MPN Applicants with 10 or More Approved MPNs

Name of Applicant	Number of MPNs
ACE American Insurance Company	51
Zurich American Insurance Company	38
American Home Assurance Company	36
Fidelity and Guaranty Insurance Company	29
National Union Fire Insurance Company of Pittsburgh, PA	29
The Insurance Company of the State of Pennsylvania	29
Discover Property & Casualty Insurance Company	25
United States Fidelity and Guaranty Company	24
Fidelity and Guaranty Insurance Underwriters, Inc.	23
Old Republic Insurance Company	23
ARCH Insurance Company	19
New Hampshire Insurance Company	19
Safety National Casualty Corporation	19
American Zurich Insurance Company	17
Commerce and Industry Insurance Company	17
XL Specialty Insurance Company	17
Hartford Insurance Company of the Midwest	16
Chartis Property Casualty Company	14
Granite State Insurance Company	14
American Guarantee and Liability Insurance Company	12
Greenwich Insurance Company	12
Continental Casualty Company	11
Hartford Accident and Indemnity Company	11
Landmark Insurance Company	11
Zurich American Insurance Company of Illinois	10

Employers/Insurers with MPN

Neither the number nor the name of insured employers using MPNs can be obtained from MPN applications. Insurers are not required to report who among their insured employers are using their MPN. The list of self-insured employers with a self-reported number of covered employees greater than 5,000 is shown below. This list includes some large self-insured companies such as Albertsons, AT&T, Intel, Safeway, Home Depot, Target Corporation, Raley's, and Lowe's.

MPN Complaints

The MPN program has set up a complaint investigation system. Complaints are received by phone, fax, email and mail. Since January 2006, DWC has received 246 complaints. DWC has contacted the liaison of the MPNs and resolved and closed 242 of the complaints. Most of the complaints were regarding insufficient provider listings given to the injured worker.

Status of the MPN Program

The MPN program is in its sixth year and continues to develop as more MPNs are being used. The MPN plan monitoring and review processes have evolved with the regulations and as agency resources permit. During the past year, the Division has taken affirmative steps to ensure regulatory compliance. These include follow-up with hundreds of MPNs to file modifications for changes of their Liaison to the DWC, for changes of MPN Applicant Authorized Individual, and for a 10 percent change of the network of medical providers. Failure to respond to the Division's compliance efforts has and will continue to result in revocation of MPNs.

List of Self-Insured MPN Applicants with Covered Employees of 5,000 or More, June 2010

Name of Applicant	Name of MPN	Number of Covered employees
Regents of The University of California	Regents of The University of California MPN	189,925
Los Angeles Unified School District	Sedgwick CMS Extended Medical Provider Network	138,000
County of Los Angeles	CorVel HCO	94,000
California Farm Management-Self-Insured Group	WellComp Medical Provider Netowrk	81,351
Target Corporation	Target Medical Provider Network	75,300
California State Association of Counties - Excess Insurance Authority	EIA Medical Provider Network	74,882
Safeway, Inc.	Safeway Select MPN	60,000
Kelly Services, Inc	Kelly Services Medical Provider Network	58,500
San Diego/Imperial County Schools Joint Power Authority	Interplan through CompPartners	54,000
The Home Depot	The Home Depot Medical Provider Network	51,062
Target Corporation	Sedgwick CMS/Harbor Net-Target	50,000
San Diego County Schools JPACorVel	San Diego County Schools JPA MPN	42,000
K-Mart Corporation	Sedgwick CMS / Harbor Net - SHG	40,000
Macy's Inc.	Macy's Inc. Medical Provider Network	32,575
Self-Insured Schools of California	Self-Insured Schools of California/California Foundation for Medical Care Network	31,811
Pacific Bell Telephone Company	Sedgwick CMS Extended Medical Provider Network	31,500
Costco Wholesale	Costco MPN	31,000
Kaiser Foundation Hospitals, a California Corporation	Kaiser Permanente MPN	29,880
Auto Dealers Compensation of California, Inc.	Auto Dealers Compensation of California, Inc. Medical Provider Network	28,012
New Albertsons, Inc.(A SuperValu Company)	New Albertson's Inc. CA MPN	27,000
University of Southern California USC	Harbor MPN	26,634
Southern California Permanente Medical Group	Kaiser Permanente MPN	26,353
Kimco Staffing Services, Inc.	First Health CompAmerica Primary Network	26,000
Mainstay Business Solutions	WellComp Medical Provider Network	22,500
County of Orange	WellComp Medical Provider Network	22,000
County of Orange	Cambridge Orange County MPN	21,500
County of Orange	Intracorp	21,400
Pacific Gas and Electric Company	PG&E /Blue Cross Medical Provider Network	21,000
San Diego Unified School District	WellComp Medical Provider Network	20,762

Name of Applicant	Name of MPN	Number of Covered employees
Marriott International, Inc.	Marriott's Medical Provider Network	20,511
Manpower Inc.	Concentra MPN	20,320
Santa Clara County Schools Insurance Groups	PRIME Plus Medical Network	20,198
The County of Riverside	First Health Comp America Select	20,173
Walt Disney World Co (The Disneyland Resort Division)	Disneyland Resort Medical Provider Network	20,000
Sun Microsystems, Inc. (Sun)	First Health Network	20,000
City and County of San Francisco	City and County of San Francisco Medical Provider Network	20,000
California Farm Management Self-Insured Group	N/A	20,000
San Diego Unified School District	TRISTAR - CompAmerica Primary HCO	20,000
Schools Insurance Group	SIG MPN	19,600
Ventura County Schools Self-Funding Authority	WellComp Medical Provider Network	19,566
Manpower, Inc.	Sedgwick CMS MPN	19,000
Securitas Security Services USA, Inc.	Sedgwick CMS Extended MPN	19,000
County of Riverside	CorVel MPN/County of Riverside	19,000
Viacom International Services, Inc.	First Health Comp America HCO Select Network	18,913
Healthcare Industry Self-Insured Program	CorVel/Healthcare Industry Self-Insured Program	18,500
Countrywide Financial Corporation	Countrywide Network	18,000
Nordstrom Inc.	Nordstrom Medical Provider Network	17,000
Securitas Security Services USA, Inc.	Securitas Broadspire SNP	16,890
Hewlett Packard Company	Sedgwick CMS Extended Medical Provider Network	16,500
Victory Comp, Inc.	TRISTAR Specialty MPN	16,000
COP/CPB of the Church of Jesus Christ of the Latter-day Saints	Deseret MPN	16,000
Alameda County Schools Insurance Group	ACSIG/AccessMedical Provider Network	16,000
Cornerstone Comp, Inc.	TRISTAR Specialty MPN	16,000
Guardian Comp, Inc.	TRISTAR Specialty MPN	16,000
Quality Comp, Inc.,	TRISTAR Specialty MPN	16,000
Elite Golf Club Program, Inc.	TRISTAR Specialty MPN	16,000
American Building Maintenance (ABM)	ABM Network	15,800
Southern California Edison	SCE Select	15,514
Lowe's HIW, Inc.	Lowe's CA MPN	15,136
Federal Express Corporation	Intracorp	14,878
Schools Linked For Insurance Management (SLIM)	Prime Advantage Medical Network a	14,217
County of San Bernardino	CorVel MPN	14,000
The Walt Disney Company	The Liberty Mutual Group MPN	13,924
Alliance of Schools for Cooperative Insurance Programs	WellComp Medical Provider Network	13,764

Name of Applicant	Name of MPN	Number of Covered employees
Central Region School Insurance Group	WellComp Medical Provider Network	13,679
Riverside Schools Risk Management Authority	Prime Advantage Medical Network	13,610
Raley's	Raley's Quality Medical Provider Network	13,500
Lockheed Martin Corporation	INTRACORP/Lockheed Martin MPN	13,400
Intel Corporation	Broadspire MPN	13,223
Alameda County Schools Insurance Group	PRIME Plus Medical Provider Network	13,048
Central Region Schools Insurance Group	CRSIG MPN	12,500
North Bay Schools Insurance Authority	Tri-County MPN	12,000
Barrett Business Services, Inc.	BBSI/CorVel MPN	12,000
AT&T	Sedgwick CMS Extended Medical Provider Network	11,500
California Contractors Network-Self-Insured Group	WellComp Medical Provider Netowrk	11,260
Dole Food Company, Inc.	First Health CompAmerica Select HCO Network (or "First Health Select")	10,980
Memorial Health Services	TRISTAR CompAmerica Primary HCO	10,827
County of Kern	County of Kern Medical Provider Network	10,800
Saugus Union School District	Prime Advantage Medical Network	10,707
Tulare County Schools Insurance Group Workers Compensation JPA	Prime Advantage Medical Network	10,707
Tenet Healthcare Corporation	First Health CompAmerica Primary HCO Network (or "First Health Primary")	10,642
North Valley Schools Insurance Group	Prime Advantage Medical Network	10,246
Healthcare Industry Self-Insurance Program	Medex	10,000
99¢ Only Stores	Sedgwick CMS Extend MPN	10,000
Monterey County Schools Workers' Compensation Joint Powers Authority	Monterey County Schools MPN	10,000
Foster Farms	CorVel Custom MPN	10,000
LFP, Inc. and Affiliates	CorVel MPN	10,000
Park and Recreation District Employee Compensation	PARDEC MPN	10,000
99¢ Only Stores	WellComp Medical Provider Network	9,976
Circuit City Stores, Inc.	Sedgwick CMS Extended Medical Provider	9,775
San Francisco Unified School District	First Health CompAmerica Primary HCO	9,500
United Airlines	CorVel/UAL/Kaiser MPN	9,500
Foster Poultry Farms	Foster Farms Custom CorVel MPN	9,200
Preferred Auto Dealers Self-Insurance Program	Medex	9,000

Name of Applicant	Name of MPN	Number of Covered employees
Smart & Final, Inc.	Sedgwick CMS Extended Medical Provider Network	9,000
San Mateo County Schools Insurance Group	Prime Advantage Medical Network	8,557
California Contractors Network Self-Insured Group	California Contractors Network (CCN)	8,500
California Livestock Producers, Inc. Self-Insured Group	N/A	8,500
BCI Coca-Cola Bottling Company of Los Angeles (Coca-Cola Enterprises, Inc.)	Sedgwick CMS Medical Provider Network	8,500
Alameda County	First Health CompAmerica Primary Network	8,494
Kaiser Foundation Health Plan, Inc. A California Corporation	Kaiser Permanente MPN	8,448
Shasta-Trinity Schools Insurance Group JPA	Shasta-Trinity Schools Insurance Group JPA MPN	8,000
Save Mart Supermarkets, Inc.	The Status MPN-Save Mart	8,000
Fresno County Self-Insurance Group	TRISTAR - CompAmerica Primary HCO	7,817
North Orange County Self-funded Workers' Compensation Agency	Prime Advantage Medical Network	7,571
The County of Fresno	The County of Fresno MPN	7,500
BLP Schools' Self-Insurance Authority	WellComp Medical Provider Network	7,132
Whittier Area Schools Insurance Authority	WellComp Medical Provider Network	6,850
MERGE Risk Management JPA	WellComp Medical Provider Network	6,778
San Joaquin County Schools WC Ins. Group JPA	PRIME Plus Medical Provider Network	6,768
Valley Insurance Program	WellComp Medical Provider Network	6,763
Santa Ana Unified School District	WellComp Medical Provider Network	6,677
City of Long Beach	TRISTAR CompAmerica Primary HCO	6,674
Special District Risk Management Authority	WellComp Medical Provider Network	6,500
Providence Health System	Intracorp/Providence Medical Provider Network	6,500
Los Angeles County Office of Education	Los Angeles County Office of Education - Comp Care MPN	5,857
City of Glendale	City of Glendale/Concentra	5,641
New United Motor Manufacturers, Inc.	NUMMI MPN	5,536
Northern California Cities Self-Insurance Fund	NCCSIF MPN	5,500
Orange Unified School District	WellComp Medical Provider Network	5,449
The Salvation Army	Red Shield	5,440
Oakland Unified School District	Oakland Unified School District MPN	5,217
San Mateo County	San Mateo County MPN	5,200
San Jose Unified School District	First Health CompAmerica Primary HCO	5,141
County of Monterey	Liberty Mutual Group MPN	5,046

Health Care Organization Program

Health Care Organizations (HCOs) were created by the 1993 workers' compensation reforms. The statutes for HCOs are given in California Labor Code Sections 4600.3 through 4600.7 and Title 8 California Code of Regulations (CCR) sections 9770 through 9779.3.

HCOs are managed care organizations established to provide health care to employees injured at work. A health care service plan (HMO), disability insurer, workers' compensation insurer, or a workers' compensation third-party administrator can be certified as an HCO.

Employers who contract with an HCO can direct treatment of injured workers from 90 to 180 days depending on the contribution of the employer to the employees' non-occupational health care coverage.

An HCO must file an application and be certified according to Labor Code Section 4600.3 et seq. and Title 8 CCR sections 9770 et seq. HCOs pay a fee of $2,500 at the time of initial certification and a fee of $1,000 at the time of each three-year certification. In addition, annually, HCOs are required to pay an annual assessment of $250, $300 or $500 based on their enrollment figure as of December 31 of each year. The HCO loan from the General Fund, which covered DWC's start -up costs for the HCO program, has been paid off in full.

DWC has revised regulations to reduce the certification application fee and recertification fee and to remove redundant data collection requirements of HCOs. A public hearing was held on Title 8 CCR Sections 9771, 9778, 9779, 9779.5, and 9779.9 in July 2009. The revised regulations were effective January 1, 2010.

Currently, the HCO program has 9 certified HCOs. The names of certified HCOs and their most recent date of certification/recertification are given in the table below. Even though there are 9 certified HCOs, only 5 have enrollees. The rest are keeping their certification and use their provider network as a deemed network for MPNs.

Table 20: Currently Certified HCOs by Date of Certification/Recertification

Name of HCO	Date of Certification/Recertification
CompPartners	07/24/2008
Corvel Corporation	12/30/2008
First Health/ CompAmerica Primary	10/05/2007
First Health/ CompAmerica Select	10/05/2007
Kaiser On The Job HCO	12/03/2006
MedEx Health Care	03/16/2007
MedEx 2 Health Care	10/10/2006
Network HCO	04/16/2007
Promesa Inc. HCO	04/12/2007

HCO Enrollment

At its maximum, in mid-2004, the HCO enrollment had reached about half a million enrollees. However, with the enactment of the MPN laws, the enrollment for large HCOs, such as First Health and Corvel, declined considerably. Compared to the 2004 enrollment, First Health lost 100 percent of its enrollees while CorVel's enrollment declined by 96.6 percent to 3,384 by December 2008. As of December 2010, the total enrollment of employees under HCOs fell by 71.2 percent to 138,504 from 481,337 in 2004. The table on the next page shows the number of enrollees as of December 31 of each year from 2004 through 2010.

Table 21: HCOs by Number of Enrollees for 2004 Through 2010

Name of HCO	Year						
	Dec-04	Dec-05	Dec-06	Dec-07	Dec-08	Dec-09	Dec-10
CompPartners	60,935	61,403	53,279	13,210	1,765	1,729	0
CorVel/ Corvel Select	100,080	20,403	3,719	3,050	3,384	1,983	0
CompAmerica Primary/ Select (First Health)	218,919	2,403	0	0	0	0	0
Intracorp	6,329	3,186	2,976	2,870	0	0	0
Kaiser	30,086	67,147	66,138	69,602	77,567	72,469	74,223
Medex/ Medex 2	62,154	66,304	46,085	69,410	69,783	33,945	46,679
Net Work HCO	1,204	0	0	0	0	0	0
Promesa	na	na	na	na	21,197	16,467	17,602
Prudent Buyer (Blue Cross)	1,390	0	0	0	0	0	0
Sierra	240	0	0	0	0	0	0
TOTAL	**481,337**	**220,846**	**172,197**	**158,142**	**173,696**	**126,593**	**138,504**

Health Care Organization Program Status

Although HCO enrollment has decreased significantly, HCOs are still being certified for use of their networks as deemed networks for MPNs. In 2010, DWC reviewed and recertified five HCOs.

Regulatory Changes

In 2010, DWC revised its regulations to eliminate duplicative HCO reporting requirements. Effective January 1, 2010, information collected by WCIS will not be required to be resubmitted to DWC by HCOs. As stated earlier, the regulations were revised to reduce HCO fees. As of 2010, HCOs pay a smaller fee of $2,500 at the time of initial certification and a fee of $1,000 at the time of each three-year certification thereafter. In addition, annually, HCOs are required to pay an annual assessment of $250, $300 or $500 based on their enrollments of covered employees as of December 31 of each year. Since these changes have been implemented, no new HCO applications have been received.

Pre-Designation Under Health Care Organization versus Medical Provider Networks

An employee's right of pre-designation under an HCO has become different from the right under an MPN. The general right of pre-designation under Labor Code Section 4600 as it existed in 1993 was mirrored in Section 4600.3 for HCOs. Eligibility to pre-designate was subsequently restricted by the 2004 amendments of Section 4600. The provisions of the HCO statutes were not amended to conform, so employees who would not otherwise be eligible to pre-designate a personal physician may become eligible if their employers adopt an HCO. An HCO may lose medical control more frequently than an MPN due to this lack of conformity in the statute.

For further information …

www.dir.ca.gov/dwc and http://www.dir.ca.gov/dwc/MPN/DWC_MPN_Main.html

DIVISION OF WORKERS' COMPENSATION MEDICAL ACCESS STUDY

Medical Access Study – Conducted during 2008, Released May 2010

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

The study "Access, Quality, and Outcomes of Health Care in the California Workers' Compensation System, 2008" was commissioned by the California Department of Industrial Relations, DWC, and conducted by researchers at the University of Washington (UW) School of Public Health.

The study was based on three statewide surveys of injured workers and providers in 2008: (1) All-Injury Worker Survey, which assessed access to quality health care among the general population of injured workers; (2) the Back Disability Worker Survey, which examined the effect of access barriers on work disability among workers with back sprains/strains and at least some compensated time loss; and (3) the Provider Survey, which gathered information regarding the practice, experiences, and opinions of providers who participate in California workers' compensation system.

Findings

Findings of the study included the following:

- There have not been any significant changes from 2006 to 2008 in the level of access to quality care.

- Most injured workers were satisfied with their health care and rated their overall quality of health care good or better. Between 84 percent and 89 percent of workers reported that their main provider performed each of four occupational health best practices.

- Over half of providers indicated that their workers' compensation patient volume had decreased in the past two years, and one-third reported that they intended to decrease workers' compensation volume or stop treating workers' compensation altogether. Administrative burden, utilization review-related delays and denials, restrictiveness of treatment guidelines, and issues related to payment and reimbursement, among other factors, were found to be predictive of provider intent to decrease or stop treating workers' compensation patients.

- There were important access barriers that appeared to increase work disability and costs; almost half of injured workers reported experiencing one or more access barriers at some point during their treatment.

On a population level, the excess work disability and costs related to access barriers are substantial, on the order of millions of lost work days and hundreds of millions of dollars in direct economic costs.

A Request for Proposal (RFP) will be issued in 2012 to conduct Medical Access Studies for 2012, 2013, and 2014.

INFORMATION AND ASSISTANCE UNIT

The DWC Information and Assistance (I&A) Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning rights, benefits and obligations under California's workers' compensation laws. The I&A Unit, often the first DWC contact for injured workers, plays a major role in reducing litigation before WCAB.

Table 22: Information and Assistance Unit Workload

Number of:	2007	2008	2009	2010
Calls from public handled	404,501	323,520	362,581	312,511
Outgoing calls placed	39,117	36,806	37,905	37,905
Settlements reviewed and assisted	16,853	16,320	18,757	14,757
Face-to-face meetings with walk-ins	22,858	22,818	23,757	26,219
Injured Worker Workshop presentations	183	199	256	219
Workshops for injured workers attended	1,839	1,981	1,611	3,191
Workshops for employers held	6	2	4	5
Correspondence written	15,115	14,442	15,212	12,713

Table 23: Spanish Outreach Attendance, 2010

	Number of:	Total Number of Attendees	Average attendance per event
Regular seminars held	45	1,206	27
Outreach events (not including regular seminars)	31	3,861	124
Outreach events including workshops	76	5,067	

Table 24: DWC Educational Conferences Attendance, 2010

	Los Angeles	Oakland
Attendees	861	754
Exhibitors	54	56

After the enactment of SB 899 in April 2004, DWC held a special three-day statewide training seminar for all I&A officers, as well as other DWC staff, to provide early guidance on implementing the new reform law. Later in the year, efforts commenced to revitalize the monthly workshops in all 24 district offices and to update all I&A guides and fact sheets.

INFORMATION SERVICE CENTER

The DWC Information Service Center (ISC) is located in San Bernardino. The main function of the ISC is to screen all incoming calls for the DWC District offices with the exception of San Luis Obispo. Any combination of a district office's main number, Information and Assistance Unit, Disability Evaluation Unit, and Rehabilitation Unit lines are directed through ISC which answers questions and provides information in both English and Spanish (if the caller is speaking Spanish) on workers' compensation and EAMS issues to the general public. In addition, all of the EAMS help desk emails and the Notice of Representation (NOR) questions also come through ISC. ISC staff members monitor and resolve questions sent via e-mail to the EAMS Help Desk, process NOR updates received through the e-File

system, and answer VEST (Virtual EAMS Support Team) questions sent by both internal and external users.
In calendar year 2010, the DWC Information Services Center:

- Handled 226,959 incoming calls and placed 6,456 outgoing calls.
- Handled 8,941 Spanish calls or 4 percent of total calls.
- Transferred 28,394 calls to district offices or 12 percent of total calls.
- Handled 15,210 EAMS Help Desk e-mails.
- Mailed out 4,910 correspondences.
- Processed 26,040 NOR-related questions.

UNINSURED EMPLOYERS BENEFITS TRUST FUND

Introduction

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710 through 3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

The UEBTF is administered by the director of the Department of Industrial Relations (DIR). Claims are adjusted for the DIR director by the Special Funds Unit in DWC. UEBTF pursues reimbursement of expenditures from the responsible employers through all available avenues, including filing liens against their property. Litigation for UEBTF is conducted in the name of the director of the DIR represented by the Office of the Director Legal Unit.

Funding Liabilities and Collections

UEBTF Funding Mechanisms

UEBTF funding comes from assessments on all insured and self-insured employers annually, from fines and penalties imposed on illegally uninsured employers when they get caught, and from recoveries from illegally uninsured employers when the UEBTF has paid benefits and is able to obtain reimbursement from responsible employers. According to Labor Code Section 62.5(e), the "total amount of the assessment is allocated between the employers in proportion to the payroll paid in the most recent year for which payroll information is available."[37]

The assessment for insured employers is based on a percentage of the premium, while the percentage for self-insured employers is based on a percentage of indemnity paid during the most recent year. The total assessment collected for fiscal year 2009-10 was $26,395,976.

[37] Prior to the workers' compensation reforms of 2004, the funding for UEBTF came from the General Fund.

Apart from the assessments on employers required by Labor Code Section 62.5, UEBTF is funded by two other sources:

- Fines and penalties collected by DIR. These include both the Division of Labor Standards and Enforcement (DLSE) penalties as well as Labor Code Section 3701.7 penalties on self-insured employers.
- Recoveries from illegally uninsured employers per Labor Code Section 3717.

The chart below shows monies collected by the source of the revenue.[38]

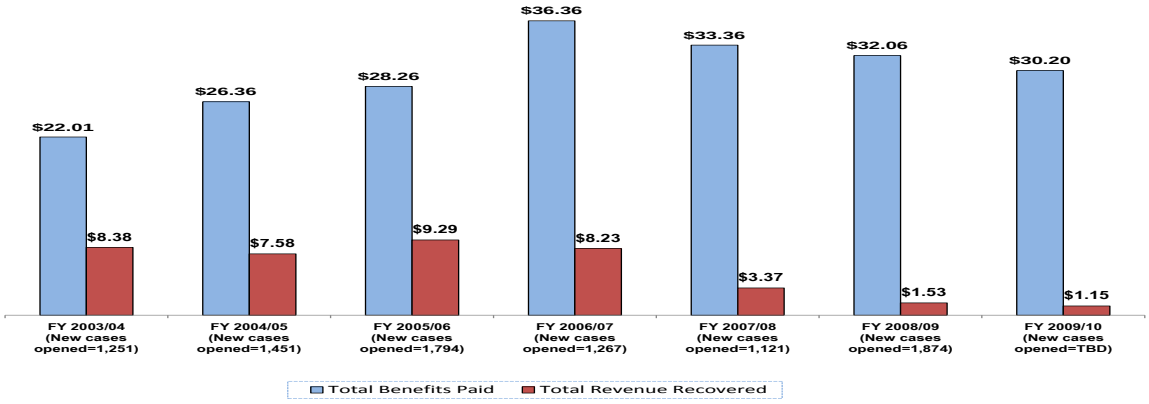
Figure 64: UEBTF Revenues, FY 2003-04 to FY 2009-10

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
Revenue Collected Pursuant to Labor Code Section 3717	$5.1	$4.8	$5.4	$3.5	$3.4	$1.5	$1.2
Fines and Penalties Collected	$3.4	$3.3	$3.9	$4.7	$5.3	$9.9	$11.2
Assessments Collected Pursuant to Labor Code Section 62.5	$32.4	$21.4	$32.3	$10.8	$27.0	$20.6	$26.4
Total Revenue	$40.9	$29.5	$41.6	$19.1	$35.7	$32.0	$38.8

Data Source: DWC

The number of new UEBTF cases and dollar amounts associated with new opened claims for the past seven fiscal years are shown below.

Figure 65: UEBTF Total Benefits Paid and Total Revenue Recovered, FY 2003-04 to FY 2009-10 (Million $)



* Includes collections, DLSE penalties, and inmates without dependents

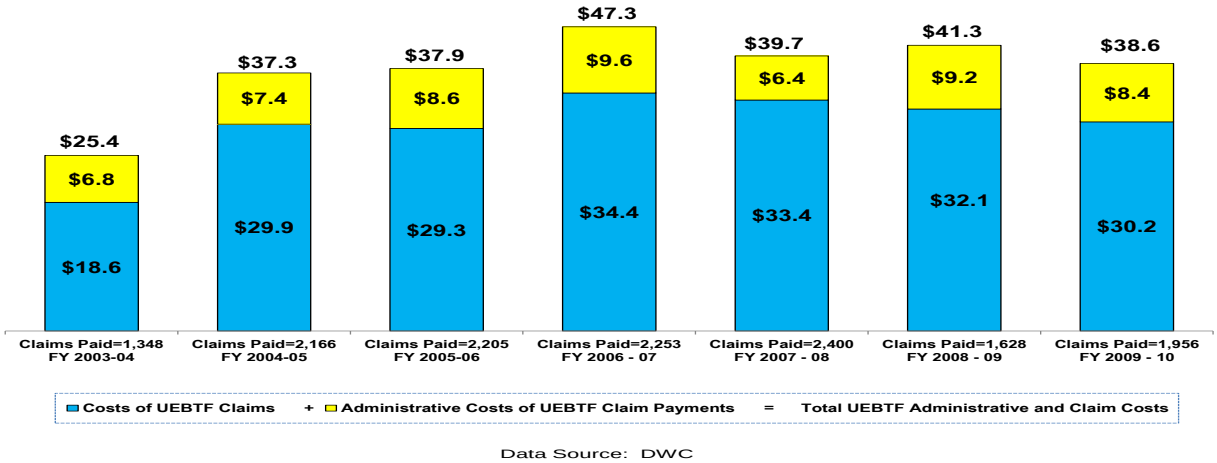
Data Source: DWC

[38] The data in the chart "UEBTF Revenues" can be found at DWC/ Special Funds Unit/UEBTF website http://www.dir.ca.gov/dwc/UEF/UEF_LC3716_1.pdf.

Costs of the Uninsured Employers Benefits Trust Fund

The number of uninsured claims paid increased 78 percent from 1,348 in fiscal year 2003-04 to 2,400 in 2007-08, decreased by 32 percent from 2007-08 to 2008-09, and increased again by 20 percent from 2008-09 to 2009-10. The cost of claims increased 85 percent from 2003-04 to 2006-07, and decreased 12 percent from 2006-07 to 2009-10. Administrative costs associated with claim payment activities have increased 41 percent from 2003-04 to 2006-07, decreased 33 percent from 2006-07 to 2007-08, increased almost 44 percent from 2007-08 to 2008-09, and decreased by about 9 percent from 2008-09 to 2009-10.

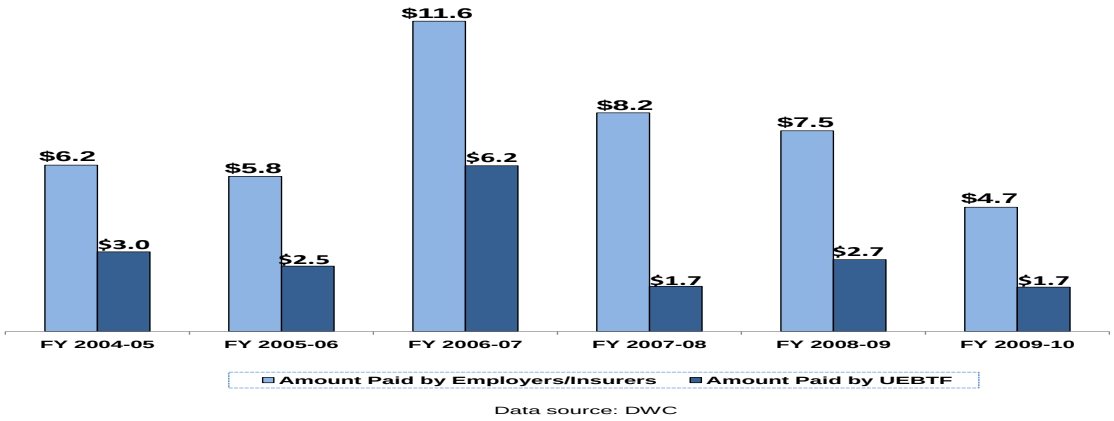
Figure 66: Number of UEBTF Claims Paid and Costs, FY 2003-04 to FY 2009-10



The projected UEBTF annual program cost for the most recent fiscal year 2010-11 is $40.1 million.[39] This cost includes the administrative costs associated with claims-payment activities, as well as the payout on claims filed by injured workers of illegally uninsured employers.

The chart below provides data on the ratio of money paid out by employers and insurers compared to that paid out by UEBTF in claims where UEBTF was joined in a WCAB case. The chart below demonstrates that in these cases, more money is paid to injured workers from employers and insurers than from UEBTF.[40]

Figure 67: UEBTF Cases Closed by OD-Legal, FY 2004-05 to FY 2009-10 (Million $)



[39] Division of Workers' Compensation, "Report of the Uninsured Employers Benefit Trust Fund in Compliance with Labor Code Section 3716.1(c) for Fiscal Year 2008-09at http://www.dir.ca.gov/dwc/UEF/UEF_LC3716_1.pdf.

[40] Data provided by Office of the Director legal staff (OD-Legal) on cases closed for fiscal years 2004-05 through 2008-09.

ADJUDICATION SIMPLIFICATION EFFORTS

Division of Workers' Compensation Information System

California's Workers' Compensation Information System (WCIS) uses electronic data interchange (EDI) to collect comprehensive information from claims administrators to help oversee the state's workers' compensation system. The information collected helps facilitate evaluation of the system and measure adequacy of benefits for injured workers and their dependents, and also provides statistical data for research. After initial development with input from affected groups, the first phase of WCIS became operational in September 1999. Electronic transmission of first reports of injury (FROI) was required beginning March 1, 2000 and electronic versions of benefit notices (subsequent reports of injury, SROI) were mandated as of July 1, 2000. Electronic reporting of medical billing data was required for medical services beginning Sept. 22, 2006.

The effective date of new WCIS regulations, part of the DWC's plan to control medical costs, has been extended to June 18, 2012. The new regulations, which were adopted in November 2010, will increase the time for filing the first report of injury (from five business days to 10), relax several data edits to allow easier transmission of claim information with fewer submission rejections, and clarify the process for medical lien reporting. In addition, the regulations updated the two WCIS implementation guides (the California *EDI Implementation Guide for First and Subsequent Reports of Injury* and the California *EDI Implementation Guide for Medical Bill Payment Records*).

Accurate electronic reporting to WCIS by claims administrators, including medical billing data reports, will allow DWC to identify key cost indicators in the system and formulate policies to keep costs under control, helping ensure that the uptick in medical costs seen since 2007 does not continue.

A major Research Unit project is to collect data for and maintain, develop and enhance WCIS. Work on WCIS is done in collaboration with DIR's Office of Information Systems (OIS) staff. Using electronic data interchange (EDI), WCIS collects comprehensive information from claims administrators to help DIR oversee and evaluate the state's workers' compensation system. WCIS also provides statistical data for research by DWC staff and external users. As of December 2011, there are about 8.7 million claims and 65 million medical bills in WCIS.

The data warehouse project. WCIS has been working on building a medical billing data warehouse, which will clean and organize the data so it will be more accessible to users. In 2012, development of the data warehouse will continue and researchers will produce reports on topics requested by DWC administration as well as on topics relevant to the workers' compensation community at large.

Research projects. Various projects include: carve-out activities report; quality of AME-QME evaluation report; research assistance to DWC's medical and legal unit staff regarding fee schedules and medical treatment utilization schedules; research assistance to the Legislature and governor's office, and projects with outside researchers at DOSH, CHSWC, RAND, BLS, CA Dept. of Public Health, WCIRB, etc. Research continues on the wage loss and return-to-work models used in the evaluation of the 2005 Permanent Disability Rating Schedule.

DWC Research Unit accomplishments include:

- DWC sent out timeliness of temporary disability payment reports to claims administrators and FROI SROI data quality reports to data senders.
- DWC sent out reports on timeliness of FROI reporting to claims administrators for the first time.
- DWC sent out data quality reports for medical billing to data senders for the first time.
- Comparisons of WCIS claim counts with those of DWC Audit Unit's annual report of inventory were sent to claims administrators.

- Development work on the medical data warehouse continued.
- Online FAQs for reporting FROI/SROI and medical billing data were updated to provide claims administrators with detailed information on how to report to WCIS.

WCIS data extracts were provided to numerous researchers in academia and government organizations.

Electronic Adjudication Management System

The Electronic Adjudication Management System (EAMS) is an electronic records system that replaces traditional paper case files for the Workers' Compensation Appeals Board (WCAB), as well as paper records for the Disability Evaluation Unit, the Subsequent Injuries Benefits Trust Fund, and the Uninsured Employers Benefits Trust Fund.

The system has the potential to greatly improve the quality and efficiency of processes, including:

- Filing applications for Adjudication of Claim and creating a new case file.
- Filing documents and entering data, unrestricted by the physical location of a paper file.
- Adding and deleting parties and representatives and updating address information.
- Accessing and routing documents and data, unrestricted by the physical location of a paper file.
- Storing and retrieving documents.
- Calendaring hearings.
- Tracking case status.
- Providing information and assistance to parties.
- Coordinating information available to the court, the rating unit, and the special funds.
- Securing the integrity of court records against alteration, damage, theft or loss.
- Preventing unauthorized access to records.

The system went live at the end of August 2008, and by 2011, the above benefits are being realized. Nevertheless, to varying degrees, some problems persist. For example:

- DWC staff scans documents into EAMS and verifies the content. This is a time-consuming process.

  This problem is mitigated by the development of external filing methods. E-form filing and JET filing by external users now bring 33 percent of the new batches of documents into EAMS. This is a significant improvement.

- Some paper optical character recognition (OCR) forms, electronic filing forms, and JET filing forms have yet to be developed. For example, the amended lien form is not yet developed. JET filing, which commenced in June 2011 and allows auto-populating of form pleadings, has only six forms developed.

- More forms are in the process of being developed.

- Some DWC district offices lack the personnel required to process the volume of paper forms being received for input into EAMS, which results in accumulations of backlogs. Shortages have worsened due to state furlough days and a hiring freeze. Some workload can be shifted to other offices.

- External filing mitigates this problem.

- The completeness and accuracy of the data input may be compromised by shortcuts taken during document input.

- Staff training is ongoing.

EAMS Needs Assessment Report

The Commission on Health and Safety and Workers' Compensation (CHSWC) EAMS Needs Assessment Report dated July 2011 made several recommendations. The following are several of the key issues identified in the report and some of the steps that have been taken by DIR to address these:

- Logons and passwords for external electronic filers need to be more widely available. JET filing which was inaugurated in 2011 is expanded availability in November 2011. It is expected that electronic filing logons will be made more available in early 2012.

- Cúram software is insufficient or has not been modified enough to meet the needs of DWC. For example, the software does not currently adequately link multiple injuries for an individual, and some tasks of judges are still too vaguely defined. DWC is adding missing templates, most significantly the Award after Stipulations. The Cúram software will be upgraded in early 2012. It is expected that after the upgrade process, some deficiencies can be corrected.

- DIR technical staff shortages have prevented many improvements to EAMS. Shortages have worsened due to state furloughs and a hiring freeze. It is hoped that a relaxation of the hiring freeze will at least partially mitigate the personnel losses and allow more improvements.

- DWC staff shortages were exacerbated by the need to create alternatives to internal DWC scanning of documents. Electronic filing and JET filing are the results. These processes will be improved and completed. They are relieving some of the burden on DWC employees of scanning documents into EAMS.

- Errors in the documents scanned, the standards for document scanning, and the scanning process exist. DWC staff is being trained to return those documents that do not meet acceptable standards for scanning to the parties who submitted them. External training for efilers is ongoing. JET File does not accept documents with errors. Scanning software will be upgraded in late 2012.

- FileNet document management software does not logically manage the documents stored. Change requests are being tested for implementation to change the initial default arrangement of the documents. The FileNet document viewing software has been upgraded. DWC staff will get additional training to sort and filter documents in FileNet.

- Change requests to improve EAMS have been put on hold to develop electronic filing and JET filing. Change requests are again being created, reviewed and prioritized and implemented.

Electronic filers expressed improved satisfaction using EAMS.

Carve-outs: Alternative Workers' Compensation Systems

A provision of the workers' compensation reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as carve-outs.

CHSWC is monitoring the carve-out program, which is administered by DWC.

CHSWC Study of Carve-Outs

CHSWC engaged in a study to identify the various methods of alternative dispute resolution (ADR) which are being employed in California carve-outs and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

Since carve-out programs have operated only since the mid-1990s, the data collected are preliminary. The study team found indications that: the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work (RTW) have not occurred; and that the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have not occurred.

For further information …

> *How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers*, CHSWC (2006).
> http://www.dir.ca.gov/CHSWC/carve-out1.pdf

Impact of Senate Bill 228

Senate Bill (SB) 228 adds Labor Code Section 3201.7, establishing the creation of a new carve-out program for any unionized industry that meets the requirements. This is in addition to the existing carve-out program in the construction industry (already covered in current law by Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the Administrative Director (AD). The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is recognized or certified as the exclusive bargaining representative that establishes any of the following:
  - An ADR system governing disputes between employees and employers or their insurers which supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
  - The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
  - The use of an agreed, limited list of Qualified Medical Evaluators (QMEs) and Agreed Medical Evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
  - A joint labor-management safety committee.

  - A light-duty, modified job or return-to-work program.
  - A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more is $50,000, and the minimum group premium is $500,000.
- Any agreement must include right of counsel throughout the ADR process.

Impact of Senate Bill 899

Construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

Recognizing that many cities and counties, as well as private industries, are interested in knowing more about carve-outs and about health and safety training and education within a carve-out, CHSWC hosted a conference devoted to carve-outs/alternative dispute resolution on August 2, 2007, in Emeryville, California. The conference was for all stakeholders in the workers' compensation system including: those in existing carve-outs; those considering establishing a carve-out; unions and employers; risk managers; government agencies; third-party administrators; insurers; policymakers; attorneys; and health care providers.

The conference provided an opportunity for the health and safety and workers' compensation communities and the public to share ideas for establishing carve-outs which have the potential to: improve safety programs and reduce injury and illness claims; achieve cost savings for employers; provide effective medical delivery and improved quality of medical care; improve collaboration between unions and employers; and increase the satisfaction of all parties.

Alternative Dispute Resolution/Carve-Out Data Reporting[41]

The carve-out activities reflected in 2004-2009 carve-outs are presented separately from activities of the 2010 calendar year report. The legislative requirements for DWC's carve-out reports differ for every other year, making two consecutive sets of reports incomparable.

2004-2009 Carve-Out Report

The 2004-2009 data reported as of December 31, 2009, are based on relatively mature claims and collected according to Labor Code Section 3201.9 that requires DWC to biennially expand its reporting under Labor Code Sections 3201.5 and 3201.7 by providing updated loss experience data for all employers and groups of employers participating in a program established under those sections.

With SB 899, Labor Code Section 3201.9 expanded the scope of data collection and reporting to require a report that gives a historical and comparative perspective on all program activity from 2003 forward, using information from both DWC and DOI.

[41]The information in this report is derived from DWC's Report "Alternative Dispute Resolution/Carve-Out Program" Labor Code sections 3201.5, 3201.7 and 3201.9:" Report on Activities 2004-2009." and DWC's Report "Alternative Dispute Resolution/Carve-Out Program Labor Code sections 3201.5 and 3201.7 Report on Activities for the Calendar Year 2010."

2010 Carve-Out Report

The 2010 carve-out report is done according to DWC reporting requirements under Labor Code Sections 3201.5 and 3201.7 and is a one-year snapshot of the carve-out program activities using data reported as of December 31, 2010.

Prior to the passage of SB 899 (Chapter 34, Statutes of 2004), the scope of DWC's reporting to the Legislature on ADR/carve-out system activity was limited to activity from the prior year, as required by Labor Code Sections 3201.5 and 3201.7.

California Code of Regulations, title 8, section 10203 requires that, as of March 31 of each year, all employers participating in a Section 3201.5 or 3201.7 ADR/carve-out program report annual claims and payroll data to DWC. The data provided three months after the end of an accident year are less mature compared to data collected according to Labor Code Section 3201.9. The 2010 report does not cover the whole scope of data elements covered by 2004-2009 report.

Carve-out Program from 2004 to 2009

Carve-Out Participation

As shown in the following table, participation in the carve-out program has grown overall from 1997 to 2009, with significant increases in the number of employees, work hours, and amount of payroll, excluding a 31 percent decrease in the number of participating employers from 2008 to 2009.

Table 25: Participation in Carve-Out Program

Carve Out Participation	1997	1998	1999	2000*	2001*	2002	2003*	2004*	2005*	2006	2007	2008	2009
Employers	550	683	442	260	143	512	316	462	739	981	1,087	1,274	876
Work Hours (in millions)	10.4	18.5	24.8	16.9	7.9	29.4	22.9	25.4	24.5	49.4	56.1	76.5	99.2
Employees (full-time equivalent)	5,186	9,250	12,395	8,448	3,949	14,691	11,449	12,700	12,254	24,680	28,028	38,269	49,618
Payroll (in million $)	243	415	585	443	202	634	624	1,200	966	1,348	1,777	2,300	3,394

* Please note that data are incomplete Source: DWC

Aggregate Data Analysis of Carve-out Programs

Due to a lack of available historical data and a discrepancy between the reporting requirements of Labor Code Section 3201.9 and the data collection requirements of CCR section 10203, the earliest data available are from 2004 forward. All data presented on carve-outs are total figures for both construction and non-construction programs.

Person hours and payroll covered by agreements filed

Carve-out programs reported that for the 2008 calendar year, they covered 76.5 million work hours and $2.3 billion in payroll.

For the 2009 calendar year, carve-out programs reported that they covered 99.2 million work hours and $3.4 billion in payroll.

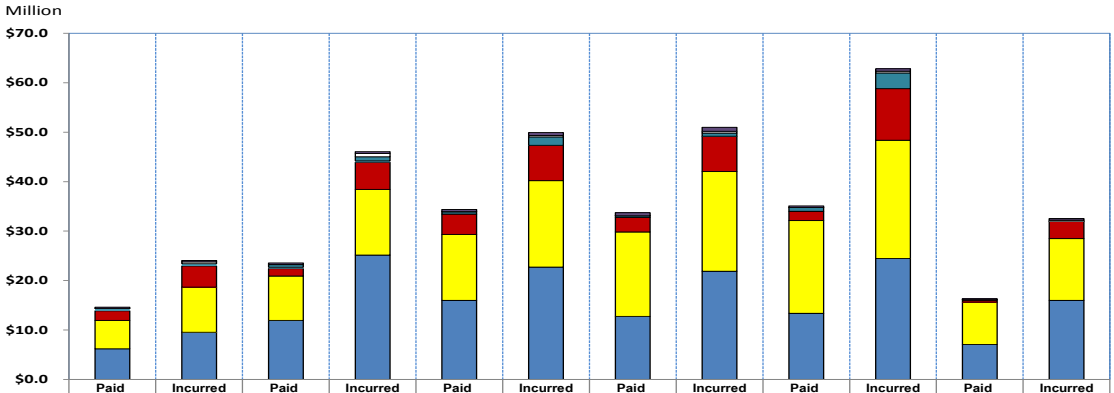
Number of claims filed

During 2009, there were a total of 3,282 claims filed, of which 1,554 (47 percent) claims were medical-only claims, and 1,728 (53 percent) were indemnity claims.

Paid, incurred and average cost per claim

The chart below shows projected paid and incurred costs for all claims combined by types of benefits. The total paid costs for claims filed in 2009 decreased almost 54 percent compared to 2008, while the total incurred costs decreased 48 percent from 2008.

Figure 68: Carve-Out Programs: Paid and Incurred Costs by Type of Benefits, 2004-2009 (as of December 31, 2009, Million $)



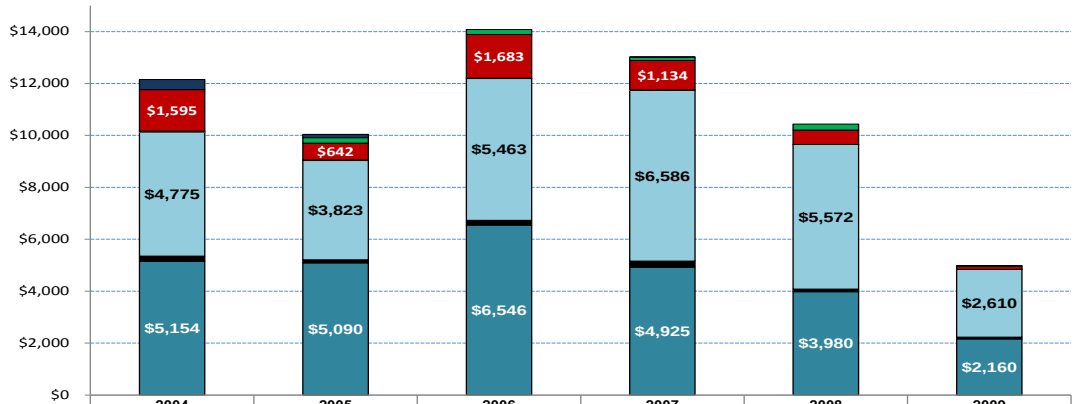
	2004 Paid	2004 Incurred	2005 Paid	2005 Incurred	2006 Paid	2006 Incurred	2007 Paid	2007 Incurred	2008 Paid	2008 Incurred	2009 Paid	2009 Incurred
Medical-Legal Cost	$0.2	$0.3	$0.3	$0.4	$0.4	$0.6	$0.6	$0.8	$0.3	$0.5	$0.2	$0.3
Voc Rehab	$0.0	$0.4	$0.1	$0.6	$0.0	$0.3	$0.0	$0.3	$0.0	$0.3	$0.0	$0.2
Death Benefit	$0.0	$0.0	$0.5	$0.8	$0.5	$1.7	$0.3	$0.6	$0.8	$3.2	$0.0	$0.0
Life Pension	$0.5	$0.5	$0.3	$0.3	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Permanent Disability	$1.9	$4.3	$1.5	$5.5	$4.1	$7.1	$2.9	$7.1	$1.9	$10.4	$0.4	$3.5
Temporary Disability	$5.7	$9.1	$9.0	$13.3	$13.3	$17.5	$17.1	$20.2	$18.7	$23.9	$8.6	$12.5
Medical Cost	$6.2	$9.6	$11.9	$25.2	$16.0	$22.7	$12.8	$21.9	$13.4	$24.5	$7.1	$16.0
All Claims	$14.6	$24.0	$23.6	$46.1	$34.4	$49.9	$33.7	$51.0	$35.1	$62.8	$16.3	$32.5

Data Source: DWC

According to the chart above, the actual costs for claims filed in 2009 totaled $16,339,173, while the incurred costs totaled $32,545,150. The largest share of costs is attributable to payment of medical and temporary disability benefits. These benefits accounted for 43 percent and 52 percent of total actual costs and 49 percent and 38 percent of total incurred costs, respectively.

The following two charts show the average paid and incurred costs per claim by cost components across all claims from 2004 to 2009. The average paid cost for all components per claim decreased overall by 59 percent between 2004 and 2009, while the average incurred cost for all components per claim decreased overall by 50 percent from 2004 to 2009.

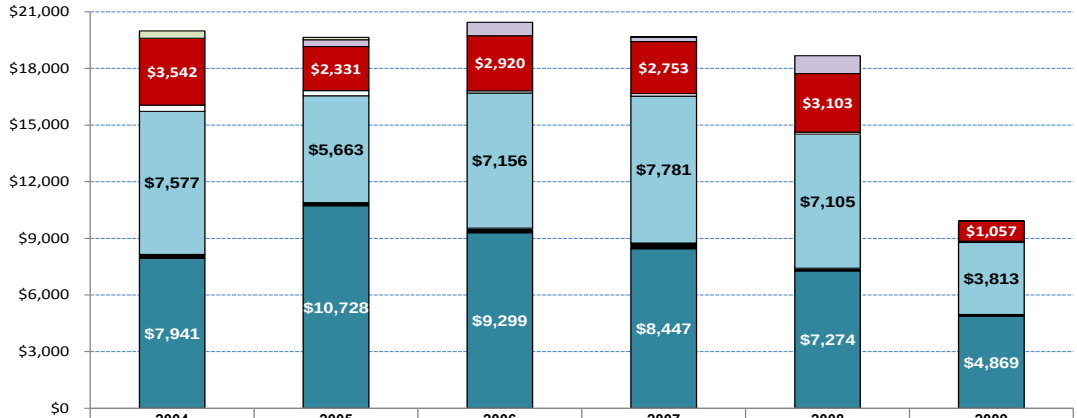
Figure 69: Average Paid Cost per Claim by Cost Components, 2004-2009 (as of December 31, 2009)



	2004	2005	2006	2007	2008	2009
Life Pension	$394	$126	$0	$3	$0	$5
Death Benefit	$0	$216	$187	$125	$231	$5
Permanent Disability	$1,595	$642	$1,683	$1,134	$553	$125
Vocational Rehabilitation	$41	$23	$17	$7	$2	$1
Temporary Disability	$4,775	$3,823	$5,463	$6,586	$5,572	$2,610
Medical-legal	$196	$122	$181	$235	$98	$71
Medical	$5,154	$5,090	$6,546	$4,925	$3,980	$2,160
All Claim Components	$12,154	$10,044	$14,077	$13,016	$10,435	$4,978

Data Source: DWC

Figure 70: Average Incurred Cost per Claim by Cost Components, 2004-2009 (as of December 31, 2009)



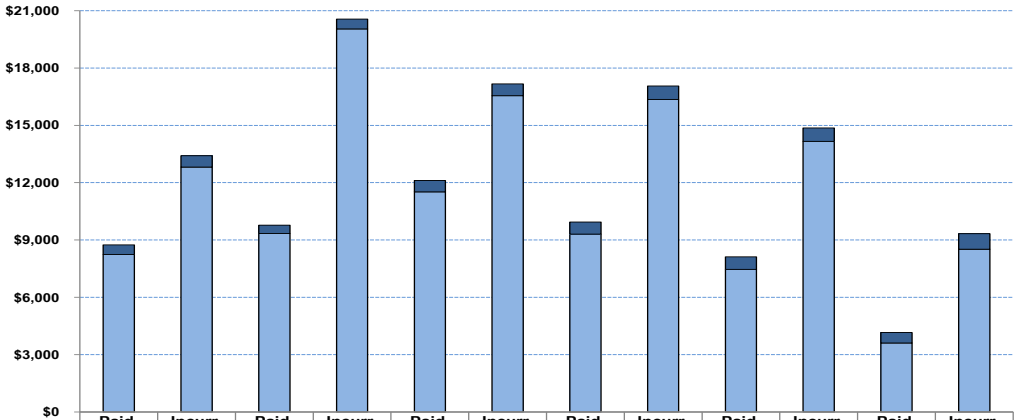
	2004	2005	2006	2007	2008	2009
Life Pension	$394	$126	$0	$4	$0	$5
Death Benefit	$0	$357	$707	$247	$946	$5
Permanent Disability	$3,542	$2,331	$2,920	$2,753	$3,103	$1,057
Vocational Rehabilitation	$325	$273	$114	$133	$102	$65
Temporary Disability	$7,577	$5,663	$7,156	$7,781	$7,105	$3,813
Medical-legal	$211	$167	$246	$310	$146	$101
Medical	$7,941	$10,728	$9,299	$8,447	$7,274	$4,869
All Claim Components *	$19,990	$19,645	$20,441	$19,674	$18,676	$9,916

* With regard to average incurred costs for all claim components, only carve-outs reporting data on every cost component are included in computing the average.

Data Source: DWC

The following chart shows the distribution of the medical service component of paid and incurred costs by the type of claims filed from 2004 to 2009.

Figure 71: Average Paid and Incurred Medical Services Cost by Claim Type 2004 – 2009 (as of 12/31/2009)



	2004 Paid	2004 Incurr	2005 Paid	2005 Incurr	2006 Paid	2006 Incurr	2007 Paid	2007 Incurr	2008 Paid	2008 Incurr	2009 Paid	2009 Incurr
Total Medical-Only Claims	$500	$593	$439	$519	$597	$613	$637	$703	$655	$709	$544	$811
Total Claims with Indemnity	$8,244	$12,819	$9,336	$20,045	$11,516	$16,555	$9,304	$16,354	$7,466	$14,158	$3,614	$8,519

Cost Per Claim

Data Source: DWC

Number of disputed claims

Three tables below show the numbers and distribution of carve-out claims disputed and resolved by stage of dispute resolution process for years 2004 through 2009. Among the subset of carve-outs reporting acceptable data, the percentage of resolved claims that were disputed varied from 5.9 percent in 2004 to 2.6 percent in 2009. Most claims filed from 2004 to 2009 were resolved before mediation, which is the first stage of dispute resolution. During this period, these programs reported that between 1 and 12 disputed claims were heard each year by the Workers' Compensation Appeals Board (WCAB); two were heard at the Court of Appeals.

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Table 26: Total Carve-Out Claims in Programs Reporting, 2004-2009

	2004	2005	2006	2007	2008	2009
Number of Programs Reporting	13	16	20	20	23	23
Number of Claims Filed	1,203	2,345	2,443	2,591	3,364	3,282
Number of Claims Resolved	542	983	2,064	2,047	2,778	2,943
Percentage of Claims Filed and Resolved in the same Calendar Year	45.1%	41.9%	84.5%	79.0%	82.6%	89.7%
Number of Claims Resolved without Dispute (Before Mediation)	510	941	1,960	1,949	2,640	2,867
Percentage of Claims Resolved without Dispute (Before Mediation)	94.1%	95.7%	95.0%	95.2%	95.0%	97.4%
Number of Claims Resolved with Dispute	32	42	104	98	138	76
Percentage of Claims Resolved with Dispute	5.9%	4.3%	5.0%	4.8%	5.0%	2.6%

Data Source: DWC – data reported as of 12/31/2009

Table 27: Number of Disputed Claims by Type of Resolution, 2004-2009

	2004	2005	2006	2007	2008	2009
At Mediation	20	29	71	71	118	59
At Arbitration	7	6	26	15	19	12
At WCAB	5	5	7	12	1	5
At Court of Appeals	0	2	0	0	0	0
Total Disputed Claims	32	42	104	98	138	76

Data Source: DWC – data reported as of 12/31/2009

Table 28: Distribution of Disputed Claims by Type of Resolution, 2004-2009

	2004	2005	2006	2007	2008	2009
At Mediation	62.5%	69.0%	68.3%	72.4%	85.5%	77.6%
At Arbitration	21.9%	14.3%	25.0%	15.3%	13.8%	15.8%
At WCAB	15.6%	11.9%	6.7%	12.2%	0.7%	6.6%
At Court of Appeals	0.0%	4.8%	0.0%	0.0%	0.0%	0.0%

Data Source: DWC – data reported as of 12/31/2009

Safety history

Both the number of injuries reported on OSHA Form 300 and the share of such reported incidents in all claims filed were increasing from 2004 to 2009. In 2009, carve-out programs filed 2,694 incidents with the U.S. Department of Labor using OSHA Form Number 300. OSHA requires employers to file an injury and/or illness with Form Number 300 if a work-related injury results in death, loss of consciousness, days away from work, restricted work activity, and/or medical care beyond first aid. There was a 70 percent increase in number of injuries reported on OSHA Form Number 300 from 2008 to 2009.

Table 29: Number of Injuries Filed Using OSHA Form 300, 2004-2009

	2004	2005	2006	2007	2008	2009
Number of Injuries Filed on OSHA Form 300	0	3	825	879	1,587	2,694
Total Number of Claims	1,203	2,345	2,443	2,591	3,364	3,282
Percent of OSHA Forms	0%	0.1%	34%	34%	47%	82%

Data Source: DWC- data reported as of 12/31/2009

The number of workers participating in vocational rehabilitation programs

The ADR/carve-out system for 2009 reported 10 workers participating in a vocational rehabilitation program. From 2004 to 2009, the number of employees taking part in a vocational rehabilitation program was never more than 10.

Table 30: Number of Workers in a Vocational Rehabilitation Program, 2004-2009

	2004	2005	2006	2007	2008	2009
Number of Programs Reporting	13	16	20	20	23	23
Number of Workers	5	6	10	5	6	10

Data Source: DWC- data reported as of 12/31/2009

The number of workers participating in light-duty or modified return-to-work programs

From 2004 to 2009, the number of workers participating in a light-duty program has grown from 2 to 881 participants. In 2009, there was a 281 percent increase from 2008 and 503 percent increase from 2007 in the number of workers participating in light-duty or modified work programs. For 2009, 3.7 claims were filed for every one worker participating in light-duty or modified work, down from ratios of 14.6 to 1 in 2008 and 17.8 to 1 in 2007.

Table 31: Number of Workers Participating in Light-Duty or Modified Return-to-Work Programs, 2004-2009

	2004	2005	2006	2007	2008	2009
Total Claims Filed	1,203	2,345	2,443	2,591	3,364	3,282
Number of Workers	2	61	265	146	231	881
Ratio of Claims Filed to Light-Duty or Modified Work Participants	601.5	38.4	9.2	17.8	14.6	3.7

Data Source: DWC- data reported as of 12/31/2009

Worker satisfaction

Labor Code Section 3201.7 also requires non-construction ADR/carve-out programs to include information on worker satisfaction. However in 2007, due to the confidentiality concerns raised by having only one active non-construction program, the worker satisfaction component of Labor Code Section 3201.9 was not conducted for this report.

In 2008, two Section 3201.7 programs did not report the results of a worker satisfaction survey for 2008. One Section 3201.7 program reported that 78.3 percent of injured workers surveyed were satisfied with how their workers' compensation claim was handled by their ADR/Carve-out program.

For 2009, of the four reporting 3201.7 programs, only one submitted results. This carve-out program that reported results for 2009 found that 34 percent of injured workers surveyed were satisfied or very satisfied with their ADR/carve-out program.

Carve-out Program in 2010

Carve-Out Participation

In 2010, 25 ADR programs were operating in California.

Overall, 2010 reported activities for ADR programs included:

- 24 reporting ADR programs and one non-reporting program
  - 20 construction programs, Labor Code Section 3201.5
  - 4 non-construction programs, Labor Code Section 3201.7

- 1,177 employers
  - $1.98 billion in payroll
  - 32,350 full-time equivalent (FTE)[42] employees
  - 64,700,000 work hours

- 2,723 claims
  - 2,409 resolved claims (including 195 denied claims)
  - 314 unresolved claims
  - 1,602 medical-only claims
  - 1,121 indemnity claims

Aggregate Data Analysis of Carve-out Programs

Paid, incurred and average cost per claim

The table below shows projected paid and incurred costs for all claims combined by types of benefits. In 2010, ADR programs paid $13,122,562 in claim costs. ADR programs paid $5,265,577 in medical-services, $7,141,163 in temporary disability, $364,783 in permanent disability, $156,177 in vocational rehabilitation, and $194,862 in medical-legal expenses. ADR programs paid $0 for life pension and death benefits. Medical services accounted for 40 percent of all paid costs, and temporary disability accounted for 54 percent. The remaining cost categories accounted for six percent of total paid costs.

For all programs, the average paid cost per claim filed in 2010 was $4,819. The average paid cost for medical services was $1,934 per claim. For disability, paid costs were $2,623 for temporary disability and $134 for permanent disability. An average of $57 per claim was paid for vocational rehabilitation and $72 for medical-legal expenses.

Table 32: Carve-Out Programs: Paid and Incurred Costs by Type of Benefits, 2010

	Total Paid Costs	Total Incurred Costs
Medical Services	$5,265,577	$16,858,633
Temporary Disability	$7,141,163	$10,117,917
Permanent Disability	$364,783	$1,672,135
Life Pensions	$0	$0
Death Benefits	$0	$0
Vocational Rehab	$156,177	$330,177
Medical-Legal	$194,862	$370,265
Total Cost	$13,122,562	$29,349,127

Data Source: DWC

The following table shows the average paid and incurred costs per claim by cost components across all claims in 2010.The average incurred cost per claim in 2010 was $10,778. The average incurred cost for medical services was $6,191. For disability, incurred costs were $3,716 for temporary disability and $614 for permanent disability. ADR programs incurred $121 per claim in vocational rehabilitation costs and $136 per claim in medical-legal expenses.

[42] One full-time employee is equivalent to 2,000 person hours worked.

Table 33: Average Paid and Incurred Cost per Claim by Cost Component, 2010

	Average Paid per Claim	Average Incurred per Claim
Medical Services	$1,934	$6,191
Temporary Disability	$2,623	$3,716
Permanent Disability	$134	$614
Life Pensions	$0	$0
Death Benefits	$0	$0
Vocational Rehab	$57	$121
Medical-Legal	$72	$136
Average Total Cost	$4,819	$10,778

Data Source: DWC– data reported as of 12/31/2010

Number of disputed claims

Three tables below show the numbers and distribution of total carve-out claims disputed and resolved by stage of dispute resolution process for 2010. Among the subset of carve-outs reporting acceptable data in 2010, 88.5 percent of claims filed were resolved before the end of the calendar year. Of the 2,409 claims resolved, 2,348 (97.5 percent) were resolved without dispute and 61 (2.5 percent) were disputed. Only four disputed claims were heard by the Workers' Compensation Appeals Board (WCAB) in 2010; none were heard at the Court of Appeals.

Table 34: Total Carve-Out Claims in Programs Reporting, 2010

Number of Programs Reporting	24
Number of Claims Filed 2010	2,723
Number of Claims Resolved 2010	2,409
Percentage of Claims Filed in 2010 Resolved in 2010	88.5%
Number of Claims Resolved without Dispute	2,348
Percentage of Claims Resolved without Dispute	97.5%
Number of Claims Resolved with Dispute	61
Percentage of Claims Resolved with Dispute	2.5%

Data Source: DWC – data reported as of 12/31/2010

Table 35: Table: Number of Disputed Claims by Type of Resolution, 2010

At Mediation	54
At Arbitration	3
At WCAB	4
At Court of Appeals	0
Total Disputed Claims	61

Data Source: DWC – data reported as of 12/31/2010

Table 36: Distribution of Disputed Claims by Type of Resolution, 2010

At Mediation	88.5%
At Arbitration	4.9%
At WCAB	6.6%
At Court of Appeals	0.0%

Data Source: DWC – data reported as of 12/31/2010

Safety history

In 2010, carve-out programs filed 2,243 incidents with the U.S. Department of Labor using OSHA Form Number 300. OSHA requires employers to file an injury and/or illness with Form Number 300 if a work-related injury results in death, loss of consciousness, days away from work, restricted work activity, and/or medical care beyond first aid.

Table 37: Number of Injuries Filed Using OSHA Form 300, 2010

Number of Injuries Filed on OSHA Form 300	2,243
Total Number of Claims	2,723
Percent of OSHA Forms	82%

Data Source: DWC – data reported as of 12/31/2010

The number of workers participating in vocational rehabilitation programs

The ADR/carve-out system for 2010 reported 15 workers participating in a vocational rehabilitation program.

Table 38: Number of Workers in a Vocational Rehabilitation Program, 2010

Number of Programs Reporting	24
Number of Workers	15

Data Source: DWC – data reported as of 12/31/2010

The number of workers participating in light-duty or modified return-to-work programs

In 2010, 3.73 claims were filed for every one worker participating in light-duty or modified work.

Table 39: Number of Workers Participating in Light-Duty or Modified Return-to-Work Programs, 2010

Total Claims Filed	2,723
Number of Workers	730
Ratio of Claims Filed to Light-Duty or Modified Work Participants	3.73

Data Source: DWC – data reported as of 12/31/2010

Worker satisfaction

For 2010, of the four reporting 3201.7 programs, only two programs submitted results. One 3201.7 program failed to report the results of a worker satisfaction survey due to staffing shortages. A second program failed to report results because they had not yet developed and implemented a worker satisfaction survey. One ADR program that reported results for 2010 found that 43 percent of its respondents would rate their ADR program as good or excellent, while 20 percent rated it fair and 37 percent rated it poor. The other ADR program reporting results found that 49 percent of its respondents were satisfied or very satisfied with the services provided by their ADR program, 16 percent were dissatisfied or very dissatisfied, and 35 percent were neutral about the services their ADR program provided.

A listing of employers and unions in carve-out agreements follows.

Status of Carve-out Agreements

The following charts show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by DWC.

Construction Industry Carve-out Participants as of September 1, 2011
Labor Code Section 3201.5

(1) = 1 employer, 1 union; (2) = 1 union, multi-employer; (3) = project labor agreement

No.	Union	Company	Exp. Date
1. (3)	CA Building & Construction Trades Council	Metropolitan Water District So. CA - Diamond Valley Lake	11/7/2006
2. (2)	International Brotherhood of Electrical Workers (IBEW)	National Electrical Contractors Association (NECA)	8/14/2013
3. (2)	So. CA District of Carpenters & 19 local unions	6 multi-employer groups - 1000 contractors	8/14/2013
4. (2)	So. CA Pipe Trades Council 16	Multi employer - Plumbing & Piping Industry Council	8/24/2013
5. (1)	Steamfitters Local 250	Cherne - two projects completed in 1996	Complete
6. (1)	International Union of Petroleum & Industrial Workers	TIMEC Co., Inc./TIMEC So. CA., Inc.	7/31/2012
7. (3)	Contra Costa Building & Construction Trades Council	Contra Costa Water District - Los Vaqueros	Complete
8. (2)	So. CA District Council of Laborers	Assoc. General Contractors of CA, Building Industry Assoc.; So. CA, So. CA Contractors' Assoc.; Engineering Contractors' Assoc.	7/31/2014
9. (3)	CA Building & Construction Trades Council	Metropolitan Water District So. CA Inland Feeder Parsons	Ended 12/31/02
10. (3)	Building & Construction Trades Council of Alameda County	Parsons Constructors, Inc. Nat'l Ignition Facility - Lawrence Livermore	9/23/2009 Ended 7/2/06
11. (2)	District Council of Painters	LA Painting & Decorating Contractors' Association	10/28/2012
12. (1)	Plumbing & Pipefitting Local 342	Cherne Contracting - Chevron Base Oil 2000 project	Complete
13. (3)	LA Building & Construction Trades Council AFL-CIO	Cherne Contracting - ARCO	Complete
14. (2)	Operating Engineers Local 12	So. CA Contractors' Association	4/1/2014
15. (2)	Sheet Metal International Union	Sheet Metal-A/C Contractors National Association	4/1/2014
16. (3)	Building & Construction Trades Council San Diego	San Diego County Water Authority Emergency Storage Project	2/20/2012
17. (3)	LA County Building & Construction Trades Council	Cherne Contracting – Equilon Refinery – Wilmington	3/1/2007
18. (3)	Plumbers & Steamfitters	Cherne Contracting – Chevron Refinery – Richmond	7/1/2005

No.	Union	Company	Exp. Date
19. (3)	Plumbers & Steamfitters	Cherne Contracting – Tesoro Refinery – Martinez	7/1/2005
20. (3)	LA/Orange Counties Building & Construction Trade Council	Cherne Contracting – Chevron Refinery – El Segundo	7/26/2005
21. (2)	District Council of Iron Workers-State CA & Vicinity	California Ironworker Employers Council	2/25/2012
22. (2)	Sheet Metal Workers International Association #105	Sheet Metal & A/C Labor Management Safety Oversight Committee (LMSOC)	4/17/2012
23. (2)	United Union of Roofers, Waterproofers & Allied workers, Local 36 and 220	Union Roofing Contractors Association	7/31/2014
24. (2)	United Union of Roofers, Waterproofers & Allied Workers, Locals 27, 40, 81 & 95	Associated Roofing Contractors of the Bay Area Counties	7/31/2014
25. (2)	United Association -Journeyman & Apprentices - Plumbers & Pipefitters, Local #447	No.CA Mechanical Contractors Association & Association Plumbing & Mechanical Contractors of Sacramento. Inc.	11/7/2012
26. (2)	Operatives Plasterers & Cement Masons International Association, Local 500 & 600	So. CA Contractors Association, Inc.	4/1/2014
27. (1)	International Unions Public & Industrial Workers	Irwin Industries, Inc.	3/23/2013
28. (2)	PIPE Trades District Council.# 36	Mechanical Contractors Council of Central CA	4/14/2013
29. (2)	No. CA Carpenters Regional Council	Basic Crafts Workers' Compensation Benefits Trust	8/30/2013
30. (2)	No. CA District Council of Laborers	Basic Crafts Workers' Compensation Benefits Trust	8/30/2013
31. (2)	Operating Engineers Local 3	Basic Crafts Workers' Compensation Benefits Trust	8/30/2013
32. (1)	Industrial, Professional & Technical Workers	Irish Construction	12/20/2013
33. (3)	Building Trades Council of Los Angeles-Orange County	L.A. Comm. College District Construction Program	5/6/2014
34. (3)	Santa Clara & San Benito Counties Bldg. &Construction Trades	Santa Clara Valley Med'l Cntr-Seismic Safety Project, OCIP	2/2/2013

Data Source: DWC

Non-Construction Industry Carve-Out Participants as of July 29, 2011
(Labor Code Section 3201.7)

No.	File #/Union	Company	Permission to Negotiate (Date/Expires)	Application for Recognition of Agreement	Agreement Recognition Letter Date
1	N 06 Operating Engineers-Local 3 (Non-Construction)	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/9/05	2/15/2005	2/28/2005
2	N 07 Laborers - Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/9/05	2/15/2005	2/28/2005
3	N 08 Carpenters - Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/9/05	2/15/2005	2/28/2005
4	N 13 Long Beach Peace Officers' Association & Long Beach Firefighters Association Local 372	City of Long Beach	12/11/06-12/11/07	11/2/2007	11/13/207
5	N 14 SEIU Local 1877	Various Maintenance Companies	4/13/07- 4/13/08	2/12/2008	2/28/2008
6	N 15 SEIU Local 721	City of Los Angeles	6/18/07- 6/18/08	4/15/2008	5/8/2008
7	N 20 Kern County Firefighters Union	County of Kern	06/03/10- 06/03/11		
8	N 21 Kern Law Enforcement Association	County of Kern	06/03/10- 06/03/11		
9	N 22 United Food & Commercial Wkrs Loc 8.	Save Mart Supermarkets dba Yosemite Wholesale	08/11/10- 08/11/11		
10	N 23 Teamsters Local 150	Save Mart Supermarkets dba Roseville Distribution Center	09/13/10- 09/13/11		
11	N 27 Automotive Machinists Lodge 1173	Save Mart Supermarkets dba Vacaville Distribution Center	11/30/10- 11/30/11		
12	N 28 SEIU United Service Workers West	No. CA Maintenance Contractors Association	01/12/11- 01/12/12	3/3/2011	3/8/2011
13	N 29 LA County Firefighters Local 1014	LA County Fire Department	03/23/11- 03/23/12		
14	N 30 SEIU Local 87	SF Maintenance Contractors Association	03/28/11- 03/28/12	5/31/2011	6/7/2011
15	N 31 SEIU United Service Workers West.	No. CA Safeway Contractors	04/15/11- 04/15/12	5/24/2011	6/3/2011

No.	File #/Union	Company	Permission to Negotiate (Date/Expires)	Application for Recognition of Agreement	Agreement Recognition Letter Date
16	N 32 SEIU United Service Workers West.	ABM – non-food retail-LA County	06/10/11- 06/10/12	6/13/2011	6/15/2011
17	N 33 SEIU United Service Workers West.	ABM – non-food retail-San Diego & Imperial Counties	06/10/11- 06/10/12	6/13/2011	6/15/2011
18	N 34 SEIU United Service Workers West.	ABM – retail food-all CA Counties	06/10/11- 06/10/12	6/13/2011	6/15/2011
19	N 35 Huntington Beach Police Officers' Assoc.	City of Huntington Beach	07/01/11- 07/01/12		
20	N 38 Huntington Beach Fire Management Assoc.	City of Huntington Beach	07/05/11- 07/05/12		
21	N 37 Huntington Beach Police Management Assoc.	City of Huntington Beach	07/12/11- 07/12/12		
22	N 36 Huntington Beach Firefighter's Assoc.	City of Huntington Beach	07/27/11- 07/27/12		

Data Source: DWC

For further information …

The latest information on carve-outs may be obtained at:
http://www.dir.ca.gov./dwc/carveout.html.

How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers. CHSWC (2006).
http://www.dir.ca.gov/CHSWC/carve-out1.pdf.

Carve-outs: A Guidebook for Unions and Employers in Workers' Compensation. CHSWC (2004).
http://www.dir.ca.gov/chswc/CARVEOUTSGuidebook2004.pdf

Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry (1999). http://www.dir.ca.gov/CHSWC/CarveOutReport/Carveoutcover.html

DIVISION OF LABOR STANDARDS ENFORCEMENT BUREAU OF FIELD ENFORCEMENT

The Bureau of Field Enforcement (BOFE) is responsible for investigation and enforcement of statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, and Industrial Welfare Commission orders, as well as group claims involving minimum wage and overtime claims. BOFE also handles criminal investigations involving these group claims.

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The following chart describes the citations from 2009-10 enforcement actions.

Table 40: DLSE 2009-10 Results by Citation Category

Citation Category	Number of Citations	Penalties Assessed	Penalties Collected
Workers' Compensation	**1,766**	**$8,681,942**	**$2,565,560**
Itemized Statement	621	$4,432,050	$2,059,229
Non-Registration	406	$1,850,750	$728,538
Unlicensed Construction Contractor	40	$350,900	$99,434
Minimum Wage	71	$109,100	$66,882
Overtime	95	$249,350	$128,224
Child Labor	141	$135,000	$166,288
Garment	83	$92,200	$45,850
Other	0	0	$61,584
Sub-Total	**3,223**	**$15,901,292**	**$5,921,589**
Public Works	311	$4,168,009	$839,317
LESS Citations Dismissed/Modified		($5,111,965)	
TOTAL	**3,534**	**$14,957,336**	**$6,760,906**

Data Source: DLSE

For further information …

http://www.dir.ca.gov/dlse/DLSEReports.htm.

ANTI-FRAUD ACTIVITIES

Background

During the past decade, there has been a dedicated and rapidly growing campaign in California against workers' compensation fraud. This report on the nature and results of that campaign is based primarily on information obtained from the California Department of Insurance (CDI) Fraud Division, as well as applicable Insurance Code and Labor Code sections and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

The former Insurance Commissioner Steve Poizner convened an Advisory Task Force on Insurance Fraud in May 2007 to address major issues relating to insurance fraud. The former Executive Officer of CHSWC chaired the Workers' Compensation Expert Working Group of the Task Force. The Task Force completed a comprehensive review of the anti-fraud insurance programs and identified 18 recommendations to consider in reducing insurance fraud in California.

The recommendations are consolidated into the following five categories identified by the Task Force:

- Organization and Efficiency of the CDI Fraud Division Enforcement Branch.
- Industry Role in Fighting Fraud.
- Public Role in Fighting Fraud.
- Fraud Statutes and Regulations.
- Technologies.

The Fraud Division is currently implementing the following recommendations:

- Placing personnel in existing fusion centers within the State so law enforcement can share information more efficiently and quickly identify emerging trends and crime patterns.
- Developing and providing better training for the Special Investigation Units (SIU) on the recognition, documentation, and reporting of suspected insurance fraud claims.
- Recognizing insurance companies that go beyond compliance for their greater commitment to fighting fraud.
- Increasing the outreach efforts of CDI about the consequences of fraud and how the public can recognize it and report it.

Suspected Fraudulent Claims

Suspected Fraudulent Claims (SFCs) are reports of suspected fraudulent activities received by CDI from various sources, including insurance carriers, informants, witnesses, law enforcement agencies, fraud investigators, and the public. The number of SFCs represents only a small portion that has been reported by the insurers and does not necessarily reflect the whole picture of fraud since many fraudulent activities have not been identified or investigated.

According to CDI Fraud Division data, the quality of SFCs continues to improve each fiscal year. Several reasons for this trend include:[43]

- The extensive efforts to provide training to the insurance claim adjusters and SIU personnel by the Fraud Division and District Attorneys.
- Changing submission of SFCs by filling out the FD-1 Form electronically through the Internet.
- The Department promulgated new regulations to help insurance carriers step up their anti-fraud efforts and become more effective in identifying, investigating and reporting workers' compensation fraud. A work plan to increase the number of audits performed by the Fraud Division SIU Compliance Unit has been established and continues with an aggressive outreach plan to educate the public on anti-fraud efforts and how to identify and report fraud. This has ensured a more consistent approach to the oversight and monitoring of the SIU functions with the primary insurers as well as the subsidiary companies.
- CDI is strengthening its working relationship with the Workers' Compensation Insurance Rating Bureau (WCIRB) to support the Department's anti-fraud efforts.

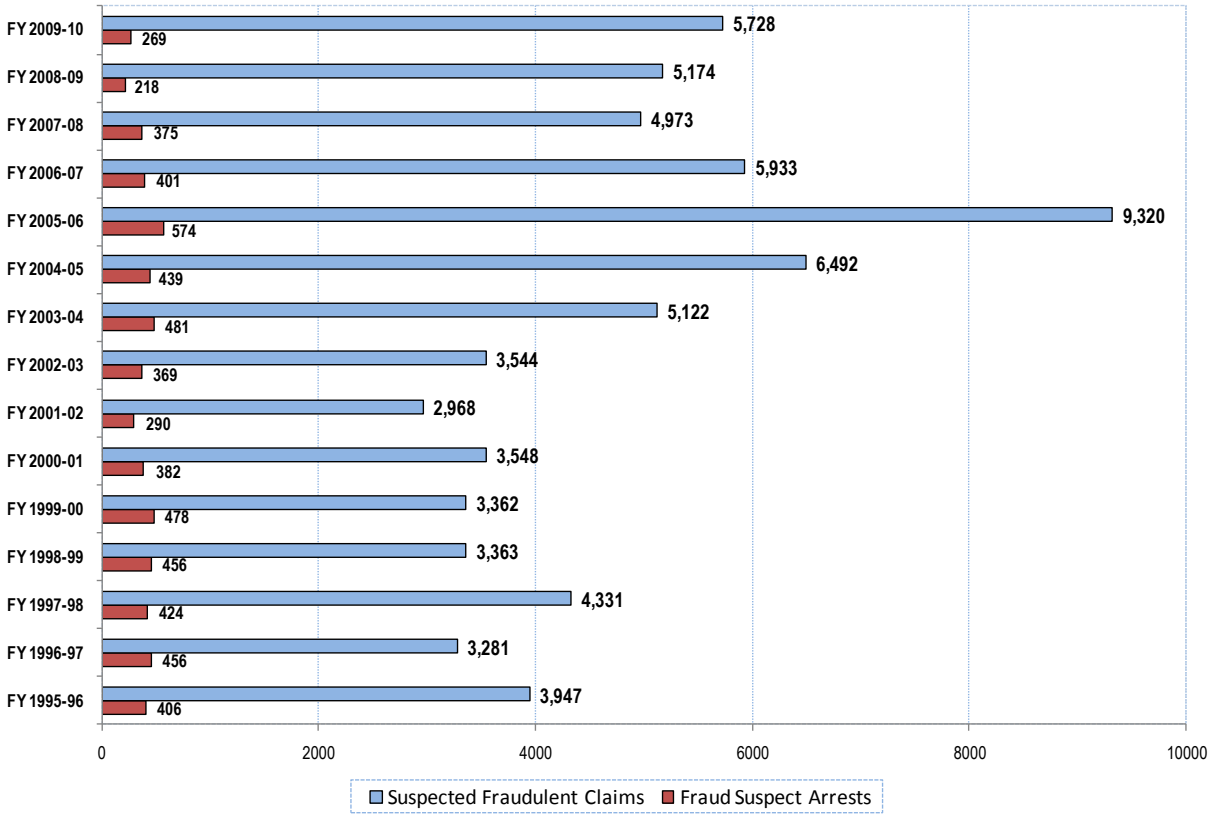
[43] 2010 Annual Report of the Insurance Commissioner, August 1, 2011.

For fiscal year 2009-10, the total number of SFCs reported is 5,728.

Workers' Compensation Fraud Suspect Arrests

After a fraud referral, an investigation must take place before any warrants are issued or arrests are made. The time for investigation ranges from a few months to a few years depending on the complexity of the caseload. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year. (See the following chart.)

Figure 72: Suspected Workers' Compensation Fraudulent Claims and Suspect Arrests

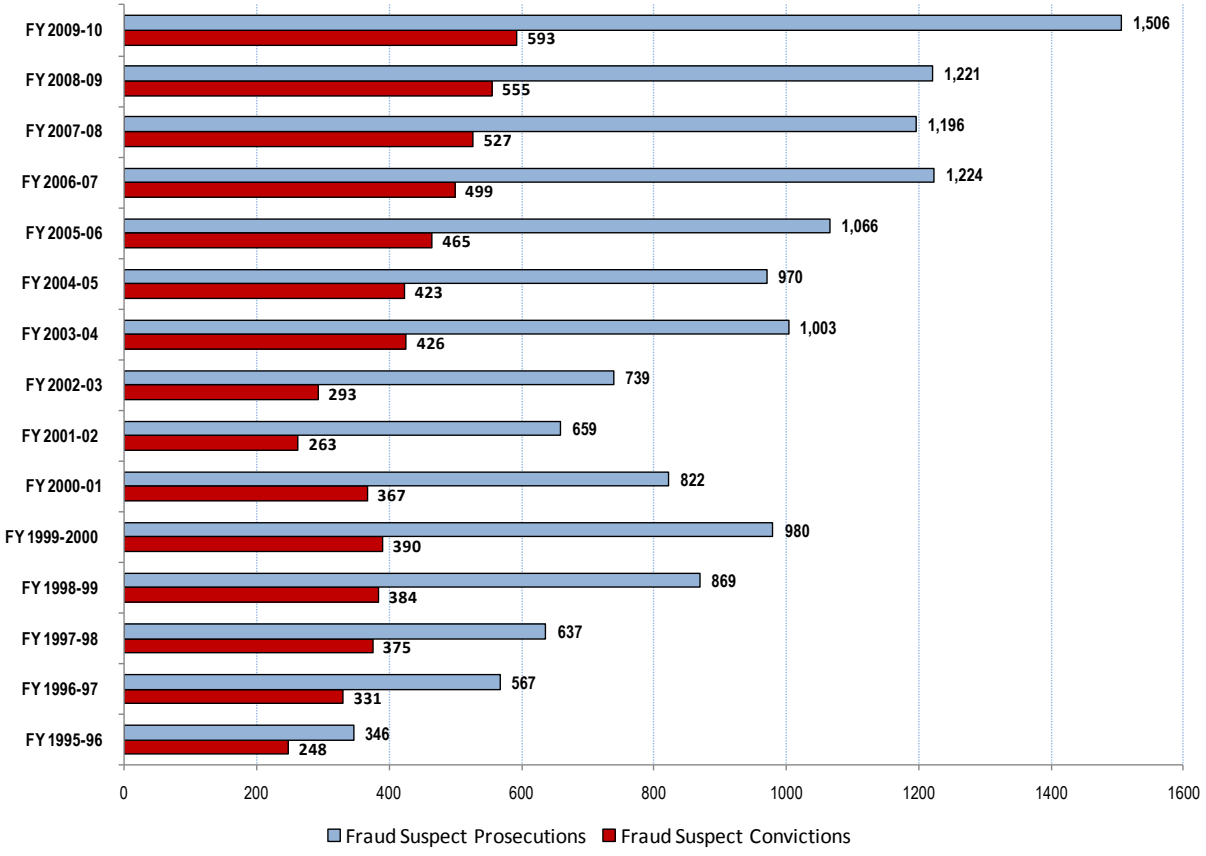


Data Source: CDI - Fraud Division and CWCI

Workers' Compensation Fraud Suspect Convictions

Based on information from the Fraud Division and CWCI Bulletin[s], the number of workers' compensation fraud suspects convicted annually while many cases are still pending in court is reported in the chart below.

Figure 73: Workers' Compensation Fraud Suspect Prosecutions and Convictions



Data Source: CDI - Fraud Division and CWCI

Workers' Compensation Fraud Investigations

Types of Workers' Compensation Fraud Investigations

The charts "Caseload by Type of Fraud Investigations" and "Type of Fraud Investigations by Percentage of Total" on the next page indicate the number and types of investigations opened and carried from fiscal years 2002-03 to 2009-10 reported by district attorneys. Applicant fraud appears to be the area generating the most cases followed by premium fraud and medical provider fraud.

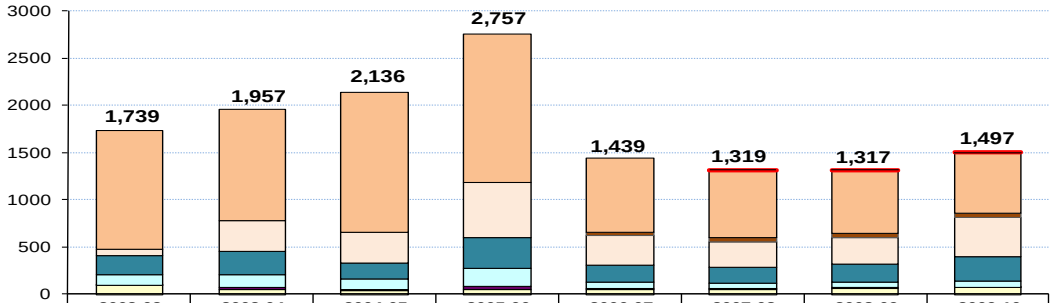
Some of the categories for fraud-related investigations were changed in the fiscal years 2005-2006, 2006-2007, and 2007-2008 as reflected in the following charts. In 2008, two new categories, Legal Provider and Pharmacy, were introduced as separate categories.

Trends in Workers' Compensation Fraud Investigations

The chart below shows that there was a 58.5 percent increase in workers' compensation fraud investigations from FY 2002-03 to FY 2005-06 followed by 52 percent decrease from FY 2005-06 to FY

2008-09. From FY 2008-09 to FY 2009-10, the total number of workers' compensation fraud investigations increased by almost 14 percent.

Figure 74: Caseload by Type of Fraud Investigations, Fiscal Years 2002/03 – 2009/10



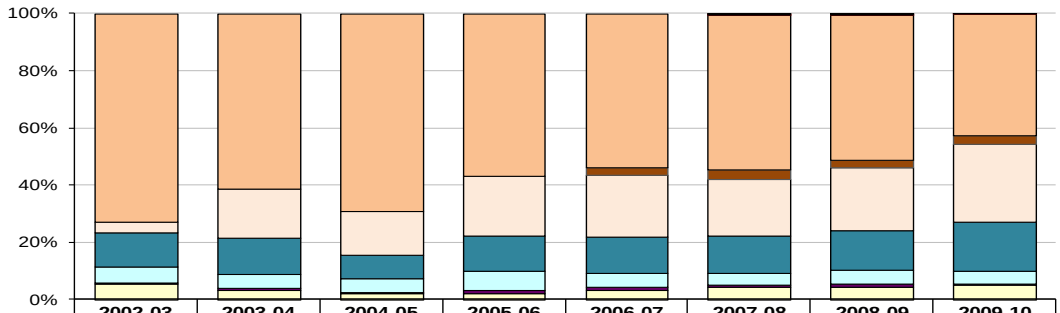
	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Legal Provider	N/A	N/A	N/A	N/A	N/A	8	6	1
Pharmacy	N/A	N/A	N/A	N/A	N/A	1	1	1
Applicant	1,263	1,177	1,478	1,573	778	714	668	638
Defrauding Employee	N/A	N/A	N/A	N/A	36	42	37	46
Uninsured Employer	61	327	325	580	312	265	288	408
Premium*	207	242	172	331	186	172	185	258
Medical Provider**	109	141	112	193	69	50	63	67
Insider	6	14	6	25	12	12	12	6
Other	93	56	43	55	46	55	57	72
Total	1,739	1,957	2,136	2,757	1,439	1,319	1,317	1,497

* From 2007-2008 on, Includes Misclassification, Underreported Wages, and X-Mod Evasion
** From FY 2005-06, includes Capping and Fraud Rings that had been separate categories before, and for 2006-07, includes Legal Provider and Treatment frauds

Data Source: California Department of Insurance, Fraud Division

As seen in the chart below, the focus of the investigations has been changing. Applicant fraud investigations have dropped from about 73 percent of the total in 2002-03 to about 43 percent of the total number of investigations in FY 2009-10. At the same time, there has been an increase in the percentage of investigations of uninsured employers and premium fraud. The percentage of investigations of medical provider fraud decreased from 5.6 percent to 4.5 percent between 2002-03 and 2009-10.

Figure 75: Type of Fraud Investigations by Percentage of Total, Fiscal Years 2002/03 – 2009/10



	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Legal Provider	N/A	N/A	N/A	N/A	N/A	0.61%	0.5%	0.1%
Pharmacy	N/A	N/A	N/A	N/A	N/A	0.08%	0.1%	0.1%
Applicant	72.6%	60.1%	69.2%	57.1%	54.1%	54.1%	50.7%	42.6%
Defrauding Employee	0.0%	0.0%	0.0%	0.0%	2.5%	3.2%	2.8%	3.1%
Uninsured Employer	3.5%	16.7%	15.2%	21.0%	21.7%	20.1%	21.9%	27.3%
Premium*	11.9%	12.4%	8.0%	12.0%	12.9%	13.0%	14.0%	17.2%
Medical Provider**	5.6%	5.0%	4.9%	7.0%	4.8%	3.8%	4.8%	4.5%
Insider	0.3%	0.7%	0.3%	0.9%	0.8%	0.9%	0.9%	0.4%
Other	5.3%	2.9%	2.0%	2.0%	3.2%	4.2%	4.3%	4.8%

* From FY 2006-2007 on, Includes Misclassification, Underreported Wages, and X-Mod evasion
** From FY 2005-06, includes Capping and Fraud Rings that had been separate categories before, and for 2006-07, includes Legal Provider and Treatment frauds

Data Source: California Department of Insurance, Fraud Division

In addition, the *2010 Annual Report of the Insurance Commissioner* notes that the great majority of suspected fraudulent claims in calendar year 2010 came from Los Angeles County (2,270 or 39 percent of total cases) followed by Orange County (445 or 8 percent) and then by San Bernardino County (400 or 7 percent).

Underground Economy

While most California businesses comply with health, safety and workers' compensation regulations, there are businesses that do not and are operating in the "underground economy." Such businesses may not have all their employees on the official company payroll or may not report wages paid to employees that reflect their real job duties. Businesses in the underground economy are therefore competing unfairly with those that comply with the laws. According to the Employment Development Department (EDD), the California underground economy is estimated at $60 billion to $140 billion annually.[44]

Potential Areas for Improvement in Workers' Compensation Anti-Fraud Efforts

CHSWC has engaged in many studies that focus on improving workers' compensation anti-fraud efforts. For further information on these studies, please see the "Special Report: Assisting Injured Workers and Improvements in Identifying Illegally Uninsured Employers" and the "Projects and Studies" sections of this report.

[44] http://www.bettzedek.org/wp-content/uploads/voicesfromtheunderground.pdf

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Occupational Injury and Illness Prevention Efforts

Workplace health and safety is of primary importance and the shared goal of all Californians. Ongoing cooperative efforts among workers, employers, employer and labor organizations, government agencies, health and safety professionals, independent researchers, and the public have resulted in significant reductions in workplace injuries, illnesses and deaths.

This section will discuss the numbers and incidence rates of occupational injuries and illnesses, injuries and illnesses by occupation and other factors, and the efforts to prevent occupational injuries and illnesses. Also included is an overview of the requirements and methods to record and report occupational injuries and illnesses in the United States (U.S.) and California.

Where data are available, comparisons among private industry, state government and local government are also included.

Occupational Injuries, Illnesses and Fatalities

The numbers of occupational injuries, illnesses and fatalities in the private sector (private industry) and the public sector (state and local government) for the past several years are displayed and discussed in this subsection. Fatality data for 2010 are preliminary as of September 2011.

Please note that “lost-work-time” occupational injury and illness cases involve days away from work, job transfer, or days of restricted work activity, and that days-away-from-work cases involve days away from work, whether or not there is also job transfer or restricted work activity.

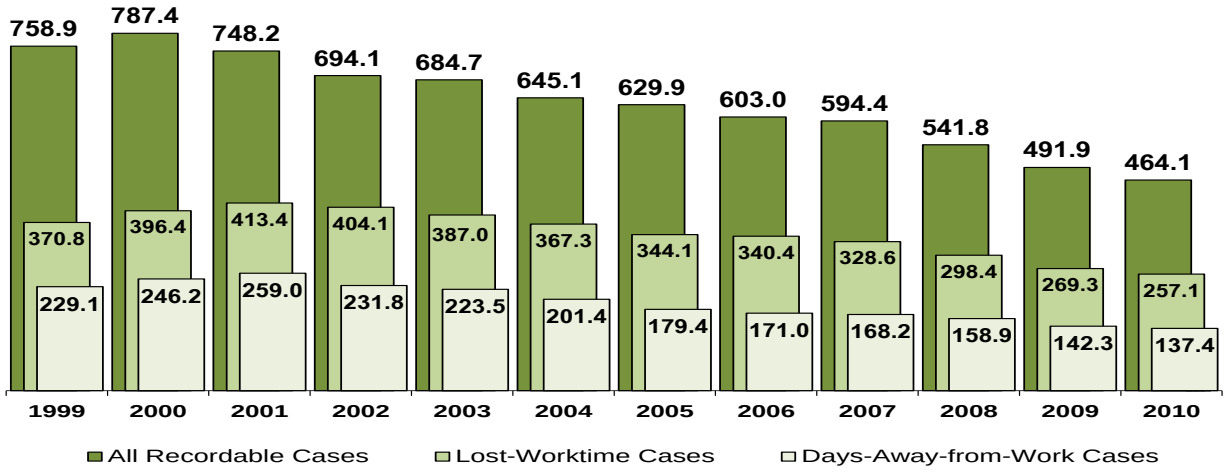
The National Academy of Social Insurance (NASI) estimated that there were 124.9 million workers covered by workers’ compensation in the U.S. in 2009, including 14.4 million in California.

Public and Private Sectors Compared

Non-Fatal Occupational Injuries and Illnesses

The following chart shows occupational injuries and illnesses in California's private industry, state government and local government. Occupational injuries and illnesses in California have decreased noticeably in the past decade. As shown in the following chart, the number of recordable occupational injury and illness cases, number of lost-work-time cases, and number of days-away-from-work cases have all declined from 2000 to 2010.

Figure 76: California Non-Fatal Occupational Injuries and Illnesses: Private Industry, State and Local Governments (Thousands)

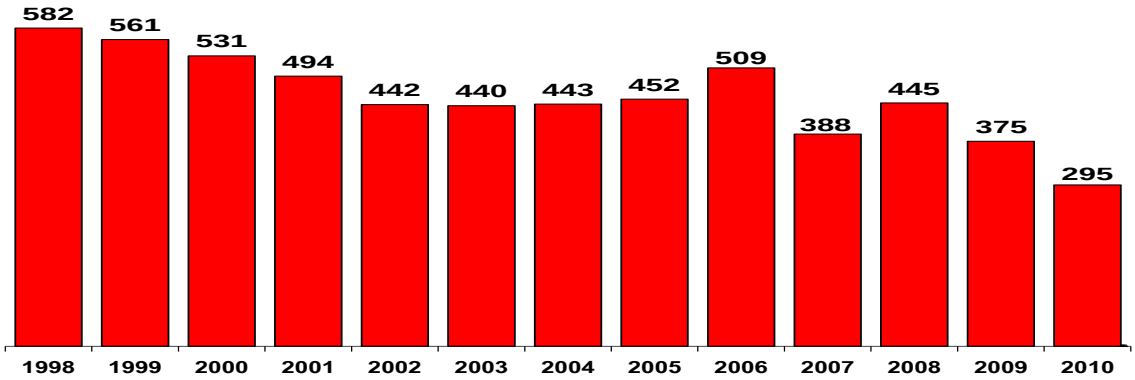


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California have also decreased significantly as depicted in the chart below. Fatal occupational injuries and illnesses in California declined by 24.4 percent from 1998 to 2003 and increased by 15.7 percent from 2003 to 2006. Fatal injuries decreased 23.8 percent from 2006 to 2007, increased 14.7 percent from 2007 to 2008, and then decreased by 33.7 percent from 2008 to 2010.

Figure 77: California Fatal Occupational Injuries and Illnesses - Private Industry, State and Local Governments



* Total, excluding Federal Government

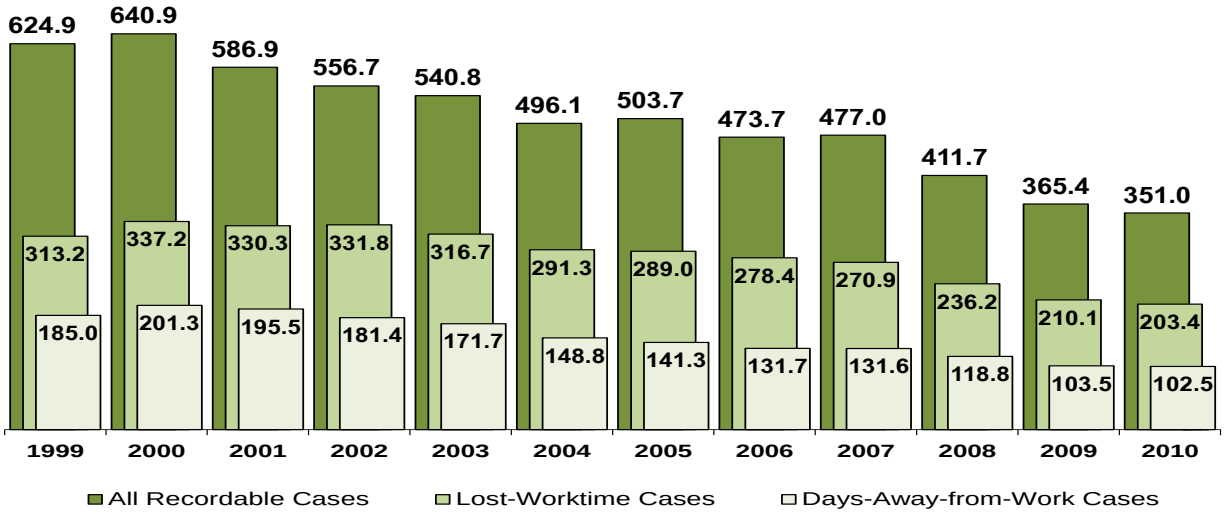
Data Source: DIR - DLSR and BLS

Private Sector

Non-Fatal Occupational Injuries and Illnesses

Occupational injuries and illnesses in California's private industry have also decreased noticeably in the past ten years. The total number of recordable injury and illness cases dropped by 45 percent, the number of lost-work-time cases declined by 40 percent, and the number of days-away-from-work cases decreased by 49 percent, all from 2000 to 2010.

Figure 78: California Non-Fatal Occupational Injuries and Illnesses: Private Industry (Thousands)

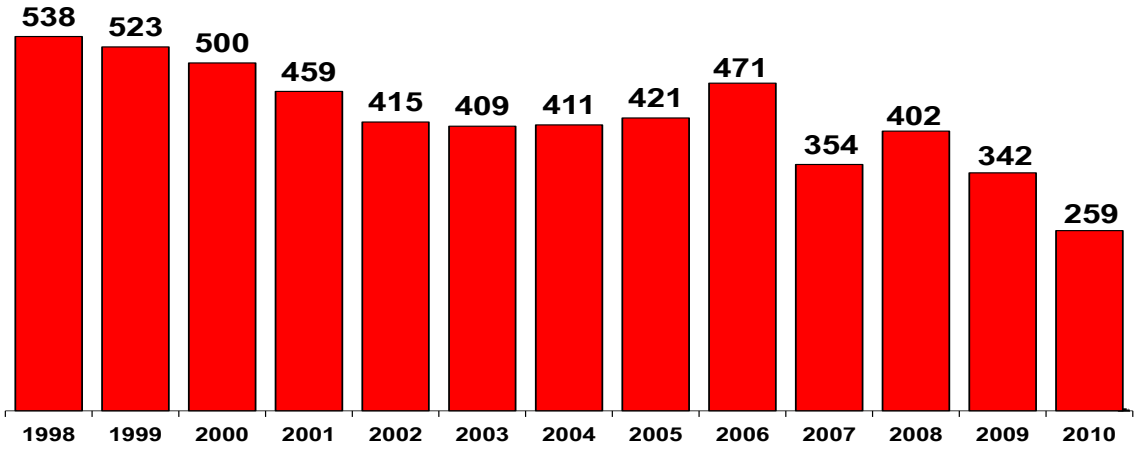


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

From 1998 to 2003, fatal injuries in private industry decreased by 24 percent and increased by 15.2 percent from 2003 to 2006. The number of fatal injuries in private industry decreased 24.8 percent from 2006 to 2007, increased 13.6 percent from 2007 to 2008, and then decreased by 36.6 percent from 2008 to 2010.

Figure 79: California Fatal Occupational Injuries and Illnesses - Private Industry



Source: DIR -DLSR and BLS

Public Sector – State Government

Non-Fatal Occupational Injuries and Illnesses

In contrast to private industry, the numbers of non-fatal occupational injuries and illnesses in state government have changed less appreciably in the past nine years, as shown on the following chart. It should be noted that many state and local government occupations are high-risk, such as law enforcement, fire fighting, rescue, and other public safety operations. The total number of cases declined by almost 35 percent from 31,400 to 20,500 between 2003 and 2007, and then averaged 20,800 from 2007 to 2010.

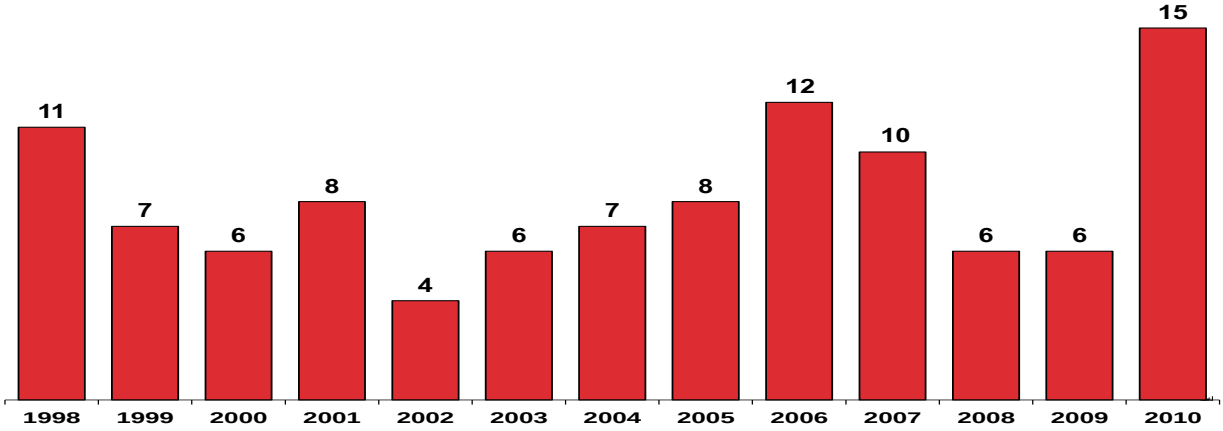
Figure 80: California Non-Fatal Occupational Injuries and Illnesses: State Government (Thousands)

Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California state government have decreased since the mid-1990s. The number of annual fatalities decreased from 11 in 1998 to 6 in 2000; then, the average number of fatalities of 6.5 from 2000 to 2005 increased to an average of 10 from 2005 to 2007, as shown on the following chart. There was a decrease in fatal occupational injuries and illnesses from 12 to 6 from 2006 to 2009, followed by increase from 6 fatalities in 2009 to 15 fatalities in 2010.

Figure 81: California Fatal Occupational Injuries and Illnesses - State Government



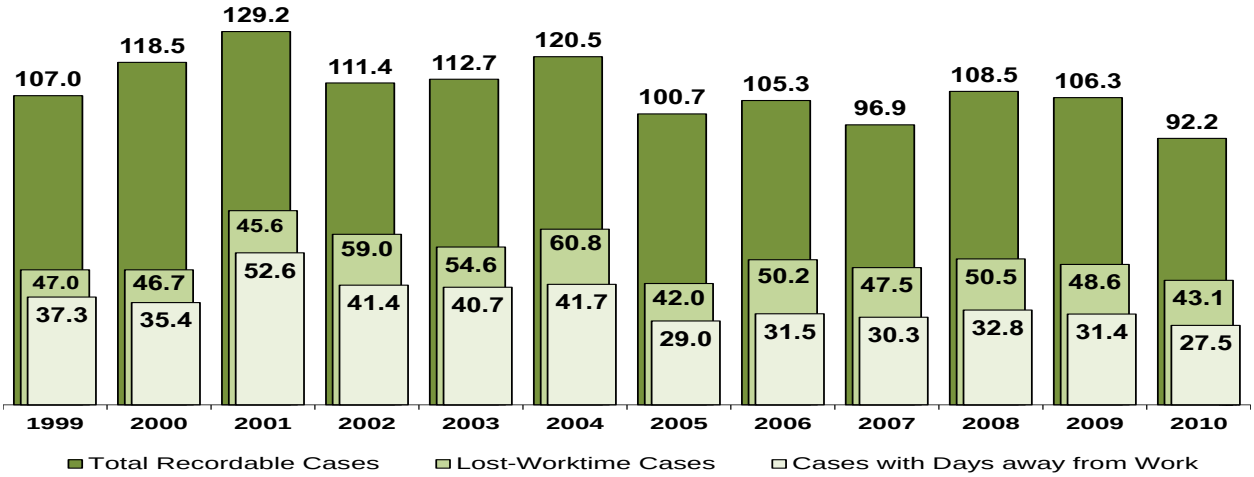
Source: DIR - DLSR and BLS

Public Sector - Local Government

Non-Fatal Occupational Injuries and Illnesses

The total number of non-fatal occupational injuries and illnesses in local government fluctuated over the past several years. The number of injuries and illnesses in this sector decreased from 2004 to 2005 by 16 percent, averaged 101,000 from 2005 to 2007, increased by 12 percent from 2007 to 2008, and decreased again by 15 percent to 92,200 cases from 2008 to 2010.

Figure 82: California Non-Fatal Occupational Injuries and Illnesses: Local Government (Thousands)

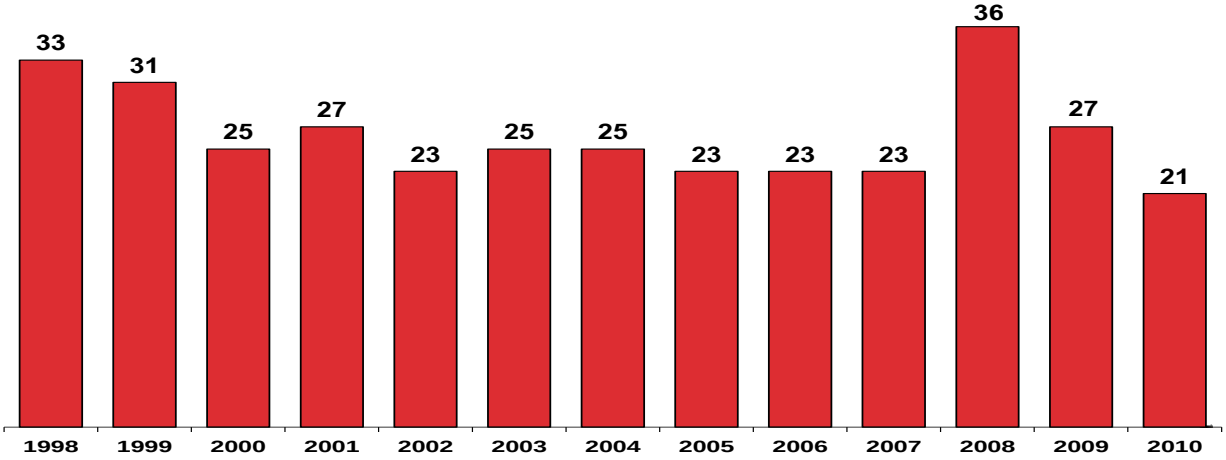


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

The number of fatal occupational injuries and illnesses in California's local governments averaged 32 in 1998 and 1999, while from 2000 to 2007, the annual average was 24.25. There was a 56.5 percent increase in the number of fatal occupational injuries and illnesses in California's local governments from 2007 to 2008, and then a 39 percent decrease from 2008 to 2010.

Figure 83: California Fatal Occupational Injuries and Illnesses - Local Government



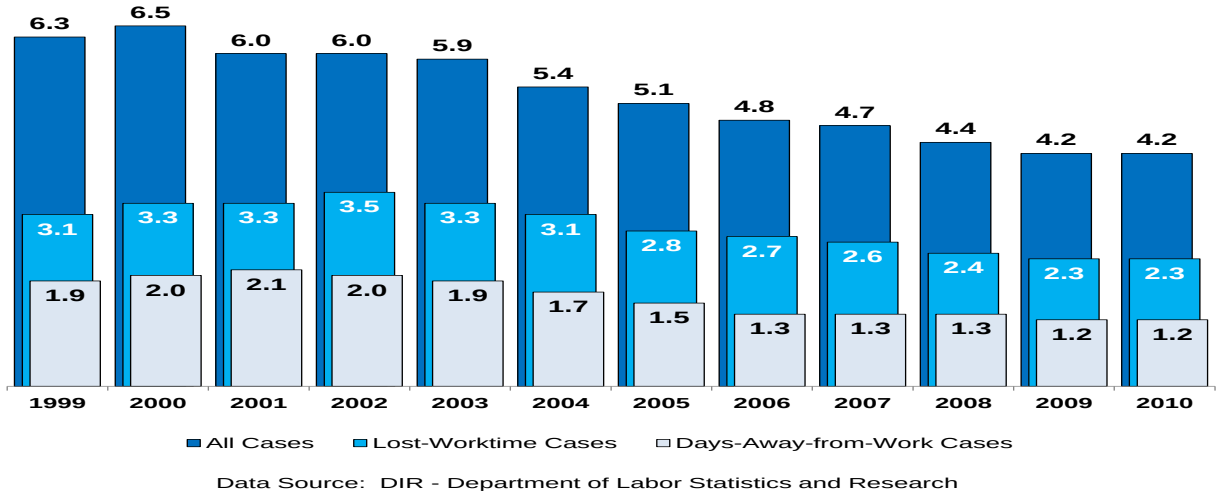
Source: DIR - DLSR and BLS

Occupational Injury and Illness Incidence Rates

Public and Private Sectors Compared

From 2000 to 2010, incidence rates for all cases in California declined. Between 2000 and 2002, the incidence rates for both lost-work-time and days-away-from-work cases remained relatively the same, but then have declined since 2002. Incidence rates for all cases, lost-work-time cases, and days-away-from-work cases did not change from 2009 to 2010.

Figure 84: California Occupational Injury and Illness Incidence Rates: Private, State and Local (Cases per 100 Full-Time Employees)

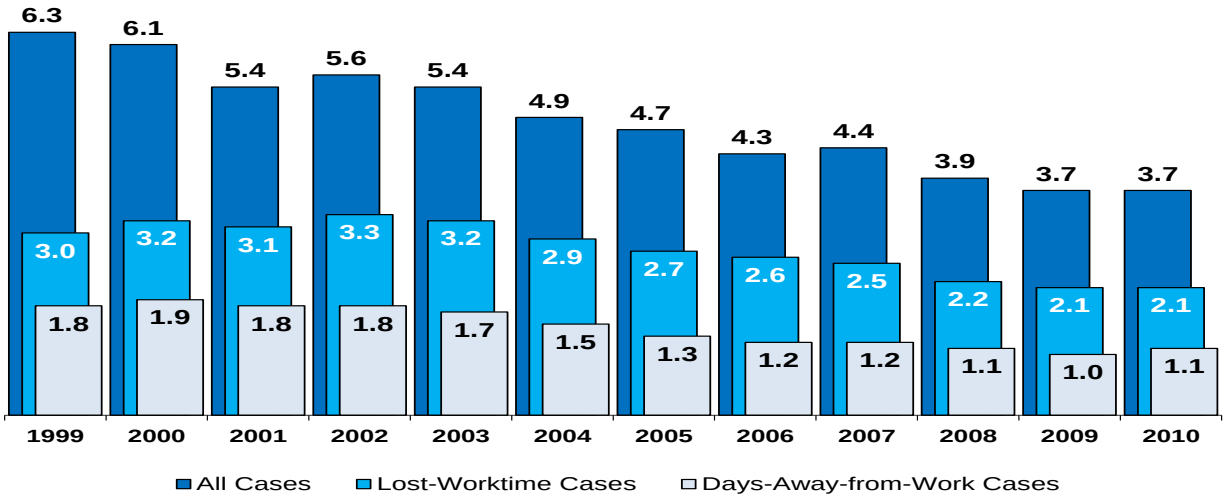


Data Source: DIR - Department of Labor Statistics and Research

Private Sector

From 2000 to 2010, the occupational injury and illness incidence rate for all cases in California's private industry declined from 6.1 to 3.7, a decrease of 39 percent, while the incidence rate for lost-time cases dropped from 3.2 to 2.1, a decrease of 47 percent.

Figure 85: California Occupational Injury and Illness Incidence Rates: Private Industry (Cases per 100 Full-Time Employees)

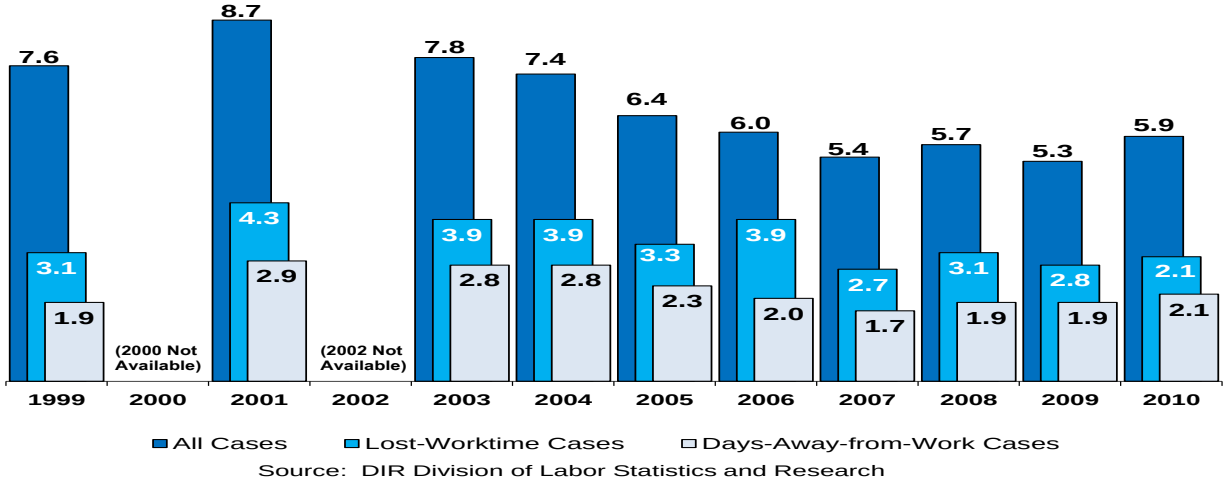


Source: DIR Division of Labor Statistics and Research

Public Sector - State Government

California state government occupational injury and illness incidence rates declined by 32 percent from 8.7 cases in 2001 to 5.9 cases per 100 full-time employees in 2010.

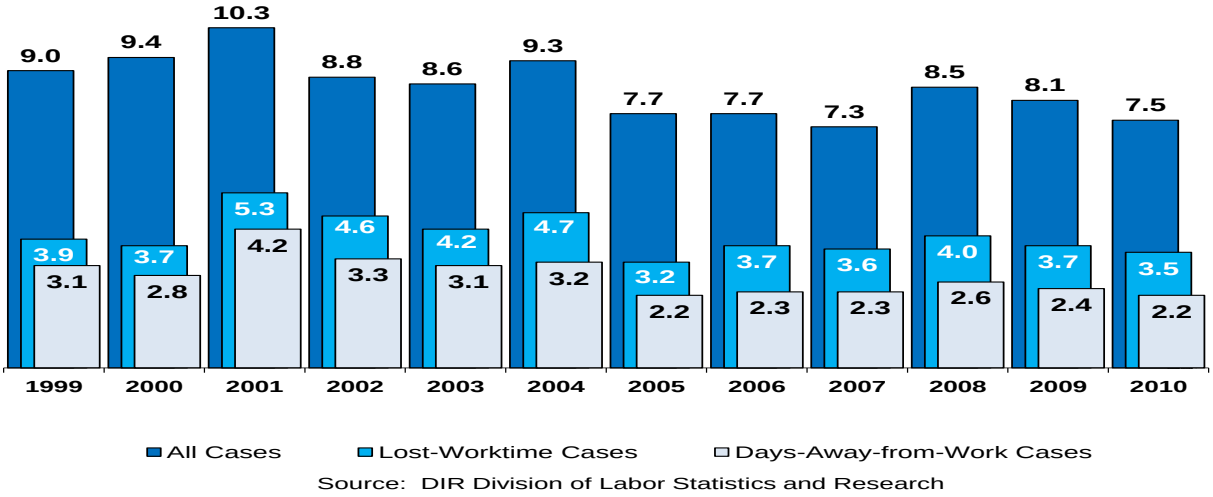
Figure 86: California Occupational Injury and Illness Incidence Rates: State Government (Cases per 100 Full-Time Employees)



Public Sector – Local Government

Local government occupational injury and illness incidence rates increased from 1999 through 2001, decreased through 2003, and then increased again in 2004. From 2004 to 2005, injury and illness rates decreased by 17 percent, then remained fairly stable between 2005 and 2007, increased again by 16 percent from 2007 to 2008, and then decreased by almost 12 percent from 2008 to 2010 from 8.5 to 7.5 per 100 full-time employees.

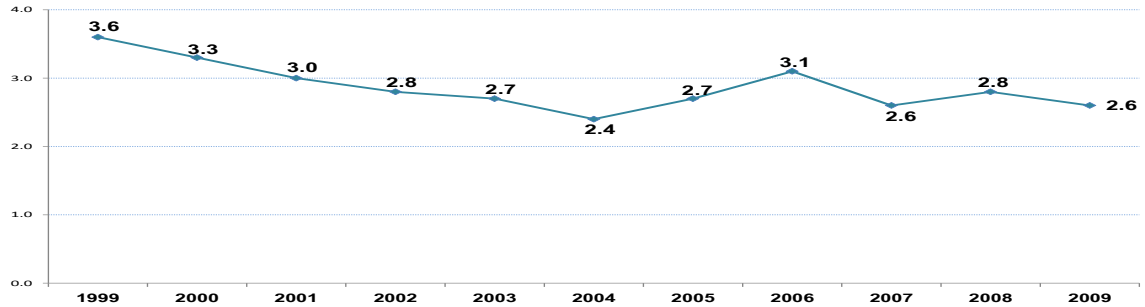
Figure 87: California Occupational Injury and Illness Incidence Rates: Local Government (Cases per 100 Full-Time Employees)



California Fatality Incidence Rates

Fatality per employment rates may be used to compare the risk of incurring injury among worker groups with varying employment levels. From 1999 to 2004, there was a decrease of 33.3 percent in fatality rates in California. From 2004 to 2006, the fatality rate increased by 29 percent, decreased by 16 percent from 2006 to 2007, and then averaged at about 2.7 from 2007 through 2009.[45]

Figure 88: California Fatal Occupational Injuries* – Incidence Rate (per 100,000 employed)**



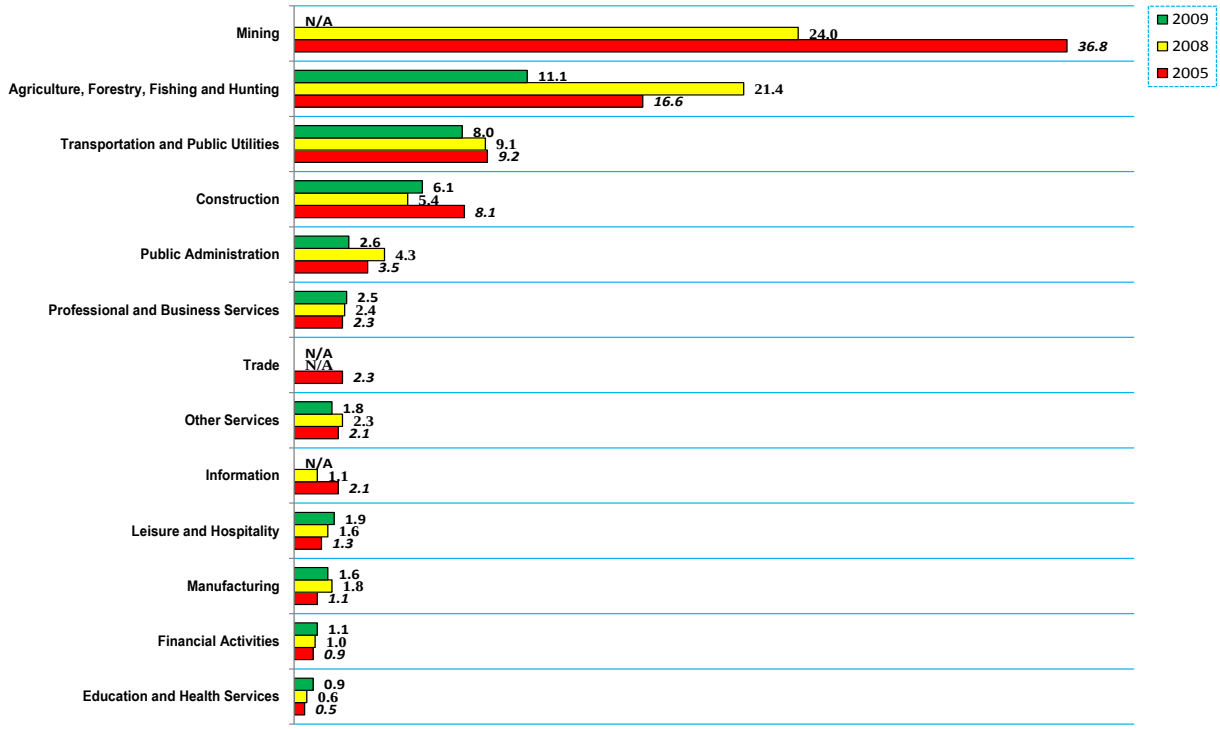
* California Fatal Occupational Injuries exclude military personnel and workers under age 16 and include all self-employed, family business, and wage and salary workers.

** Incidence Rates for Fatal Occupational Injuries computed using estimates of civilian workers (age 16 and older) from the Current Population Survey (CPS) and are expressed as the number of fatalities per 100,000 employed.

Data Source: U.S. Department of Labor, BLS, in cooperation with State and Federal agencies, Census of Fatal Occupational Injuries.

The chart below shows the fatality incidence rates by major industries in 2005, 2008 and 2009.

Figure 89: California Fatality Rates by Industries (per 100,000 employed), 2005, 2008, 2009



* From 2003, classified by NAICS. Because of substantial differences between NAICS and SIC used for prior years, comparisons between prior years and 2003 and on should not be made. (Data for 2006 and 2007 unavailable)

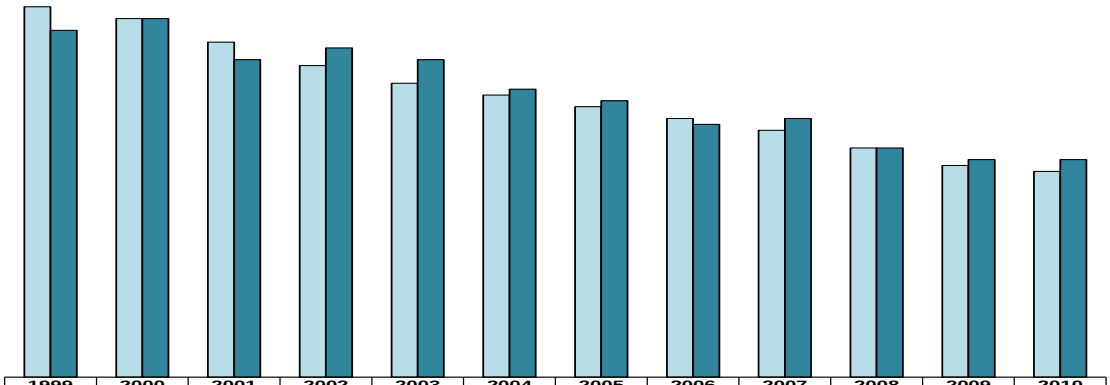
Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies

[45] 2009 is the latest year for which fatality incidence rates are available in 2011.

United States and California Incidence Rates: A Comparison

Both the U.S. and California have experienced a decrease in occupational injury and illness incidence rates from 1999 through 2010. During that time, the U.S. incidence rate dropped by more than 44 percent, while the California rate declined by 37 percent. Since 2002, the incidence rate in California has been mostly above the national average.

Figure 90: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry – Total Recordable Cases. USA and California

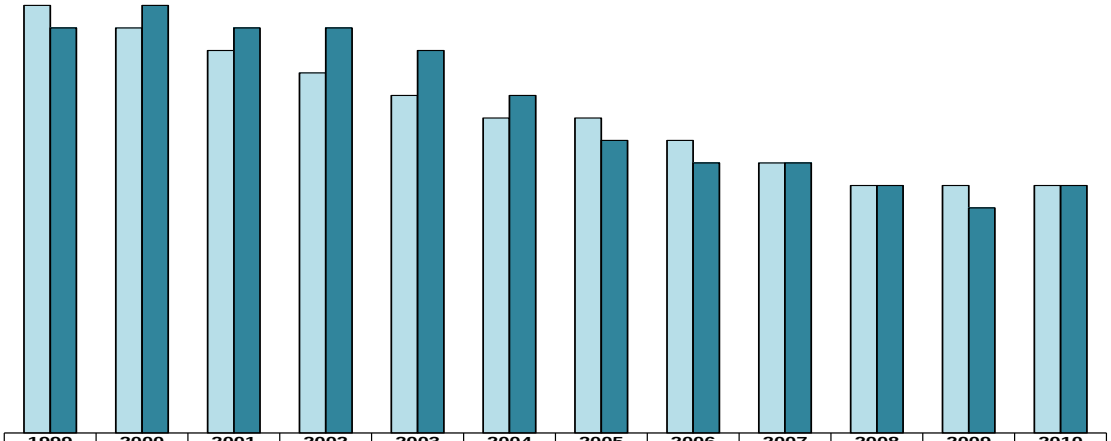


	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
USA	6.3	6.1	5.7	5.3	5.0	4.8	4.6	4.4	4.2	3.9	3.6	3.5
California	5.9	6.1	5.4	5.6	5.4	4.9	4.7	4.3	4.4	3.9	3.7	3.7

Source: US Department of Labor, Bureau of Labor Statistics

The incidence rate of occupational injury and illness days-away-from-work cases has also declined in the U.S. and California from 1999 through 2010. During that time, the U.S. incidence rate for cases with days away from work dropped by 42 percent, while the California rate declined by 39 percent.

Figure 91: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry Cases with Days Away from Work. USA and California



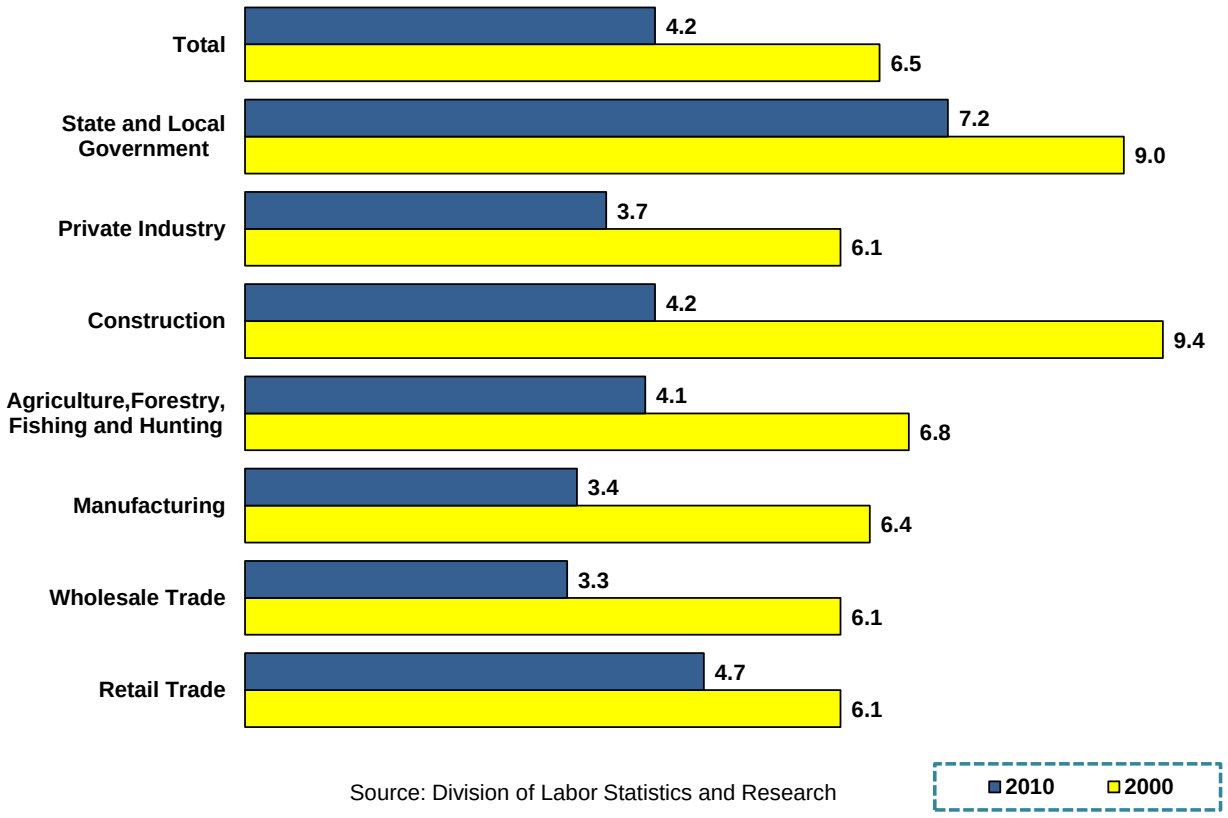
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
USA	1.9	1.8	1.7	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	1.1
California	1.8	1.9	1.8	1.8	1.7	1.5	1.3	1.2	1.2	1.1	1.0	1.1

Source: US Department of Labor, Bureau of Labor Statistics

Characteristics of California Occupational Injuries and Illnesses

This section compares incidence rates by industry in 2000 with those in 2010. The overall California occupational injury and illness incidence rates have declined, and the incidence rates in major industries have also declined. The following chart compares incidence rates for total recordable cases in 2000 and 2010 by type of major industry including state and local government.

Figure 92: Injury Rates by Industry, 2010 vs. 2000



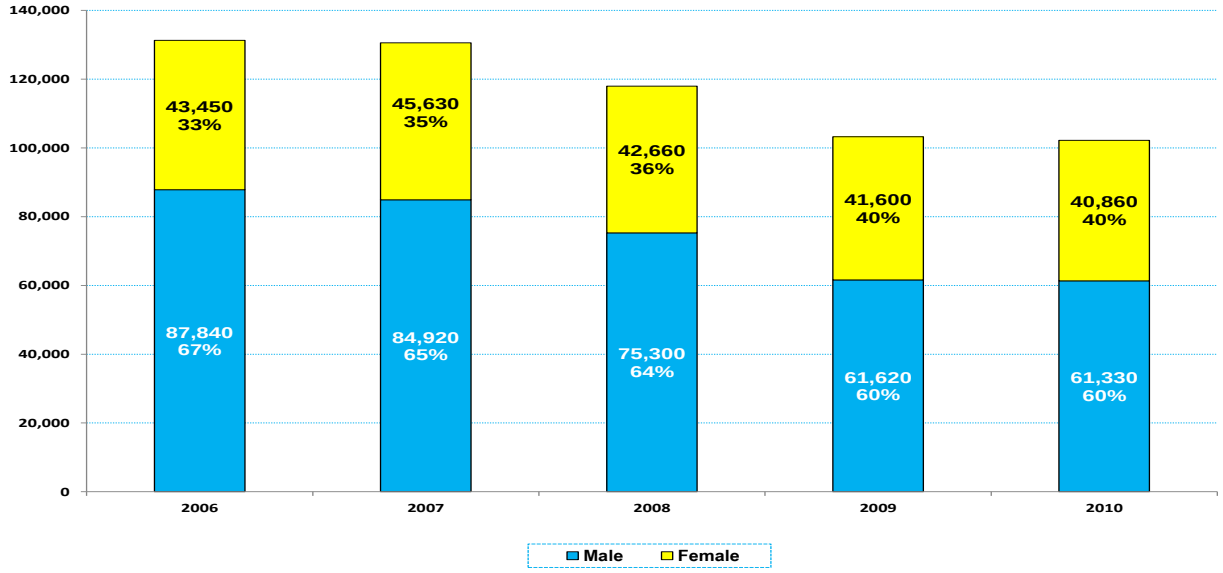
Source: Division of Labor Statistics and Research

The smallest decline during this period in incidence rates was in the state and local government, and the largest decrease was in construction.

Characteristics of California Non-Fatal Occupational Injuries and Illnesses

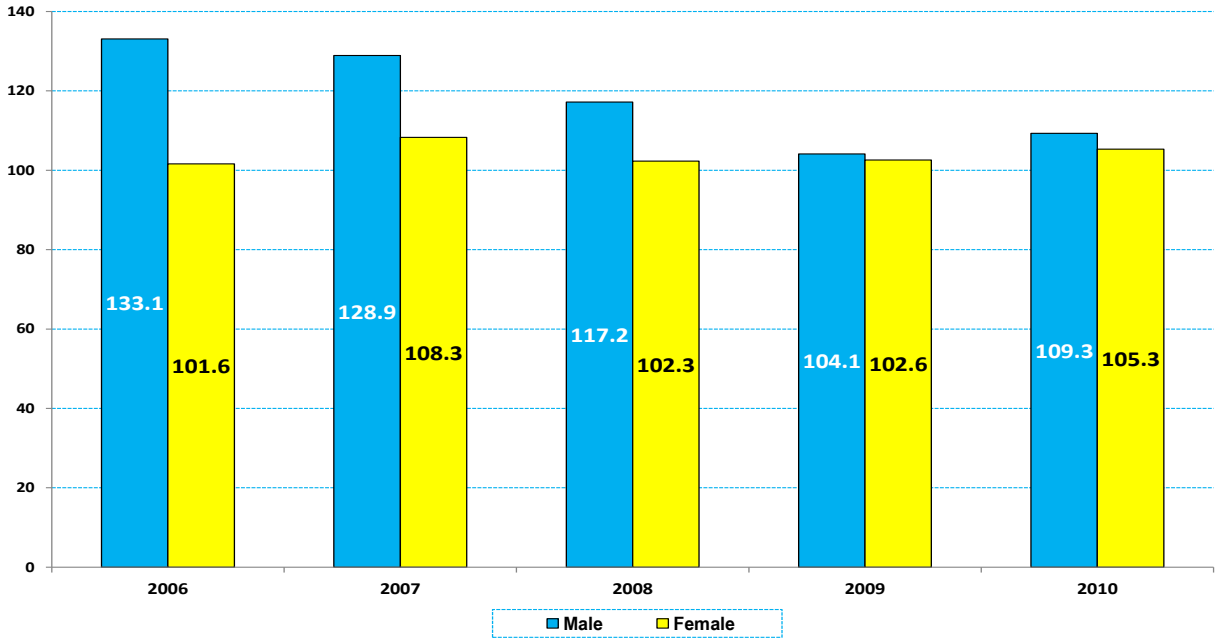
The following charts illustrate various demographic characteristics of non-fatal occupational injuries and illnesses in California's private industry.

Figure 93: Number of Non-Fatal Occupational Injuries and Illnesses in California by Gender, Private Industry, 2006-2010



Data Source: DLSR

Figure 94: California Non-Fatal Occupational Injuries and Illnesses Incidence Rates by Gender, Private Industry, 2006-2010 (Cases per 10,000 full-time employees)



* With days away from work with or without job transfer or restriction.

Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies.

Figure 95: Number of Non-Fatal Occupational Injuries and Illnesses in California by Age, Private Industry, 2010

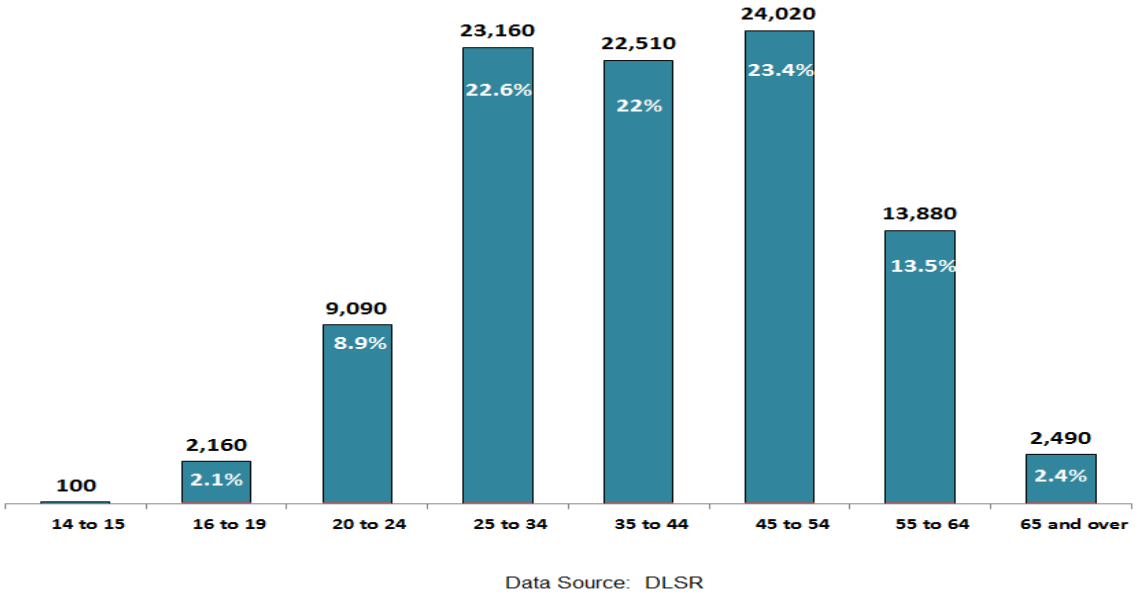


Figure 96: California Occupational Injury and Illness Incidence Rates, by Age Private Industry, 2010 (per 10,000 Full-Time Workers)

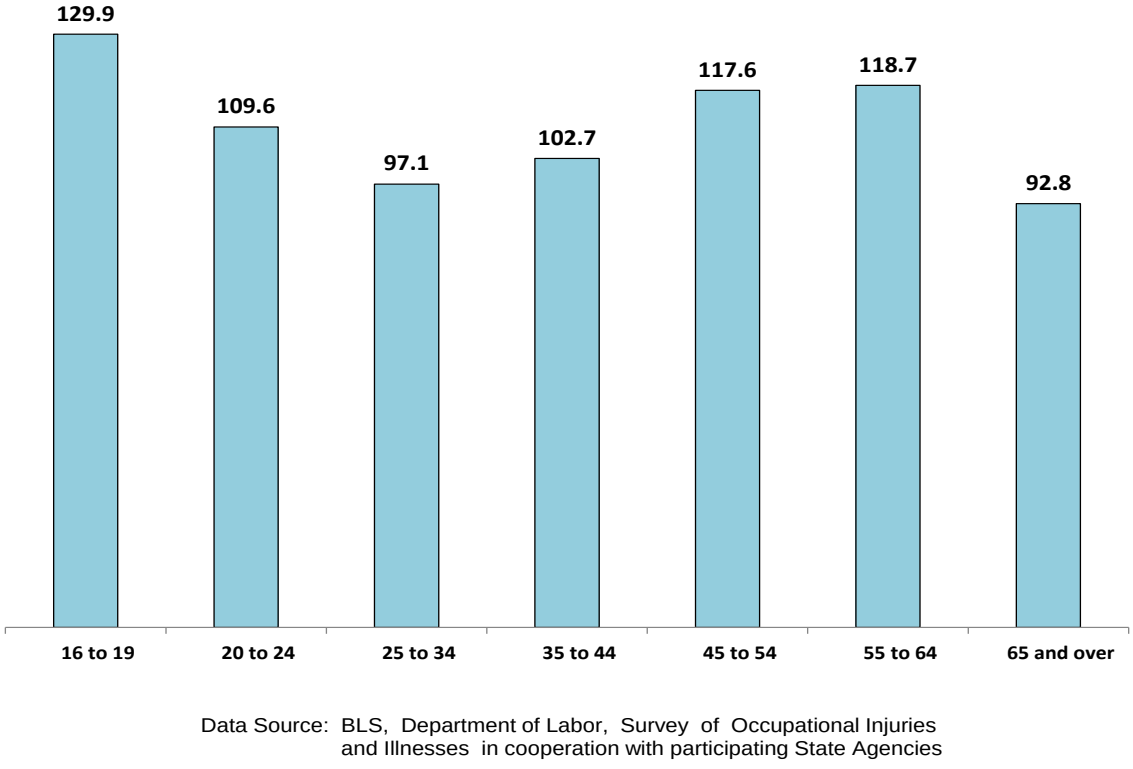
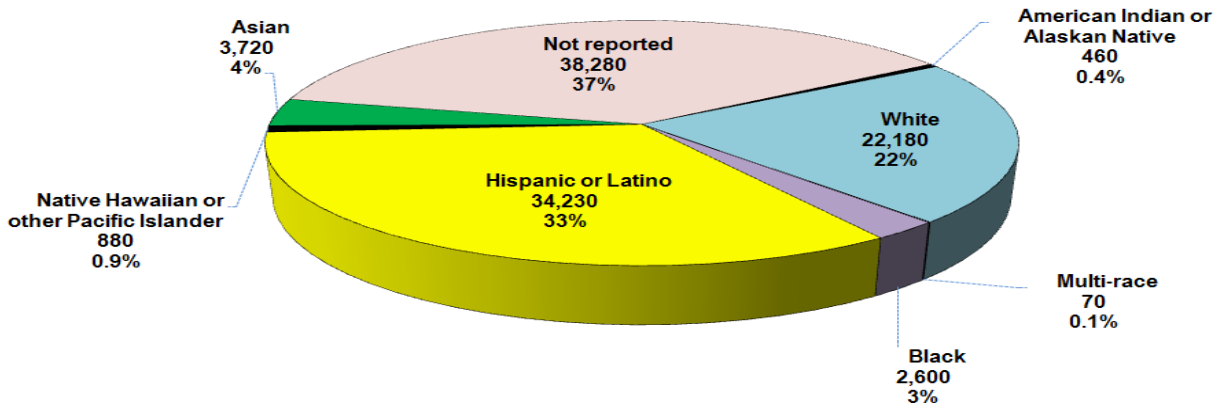
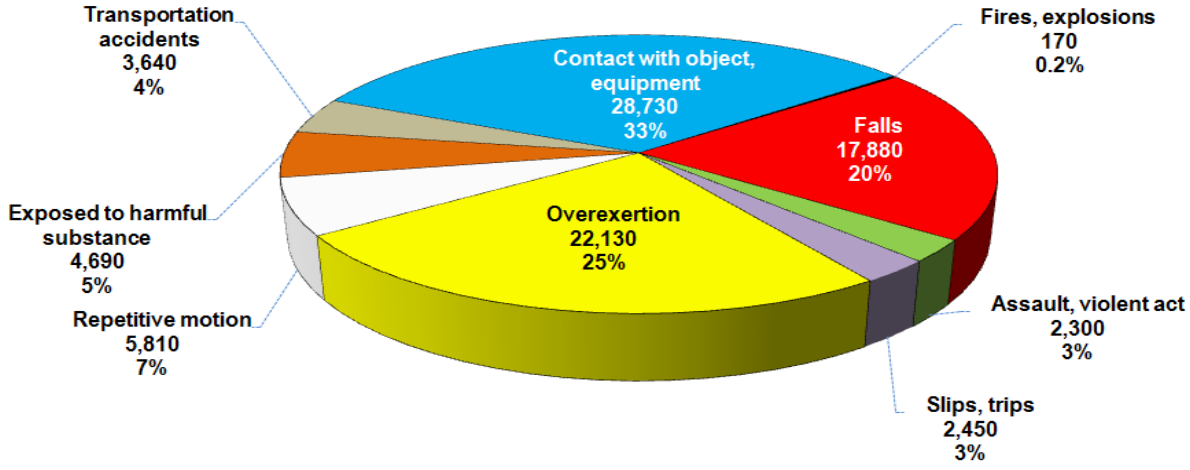


Figure 97: California Non-Fatal Occupational Injuries and Illnesses by Race or Ethnic Origin (Private)-2010



Data Source: DLSR

Figure 98: California Non-Fatal Occupational Injuries and Illnesses by Event and Exposure (Private)-2010



Data Source: DLSR

The following chart shows that the trunk and upper extremities were the major body parts with the greatest incidence rates in 2008, 2009 and 2010.

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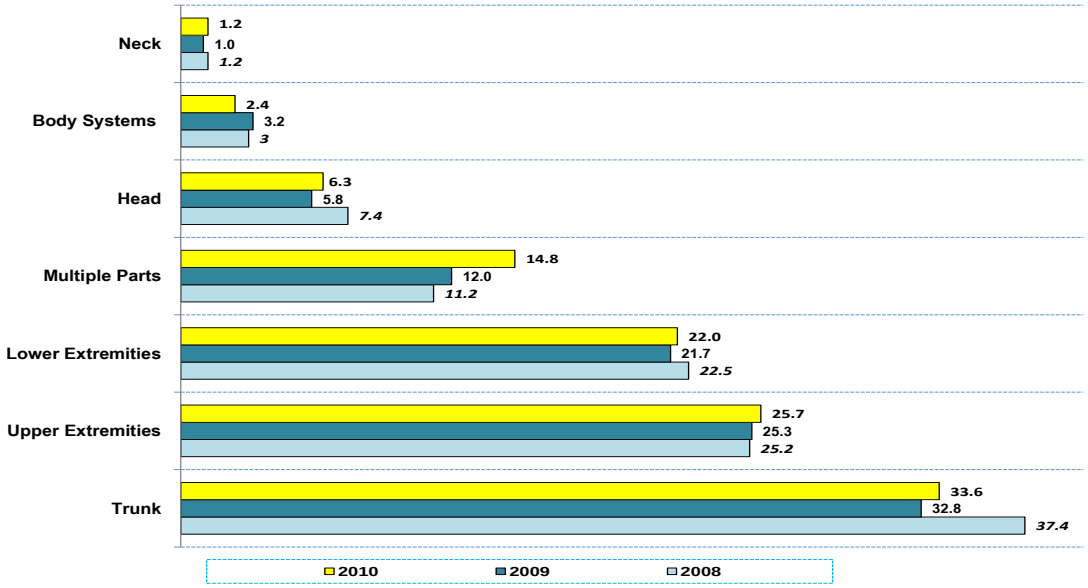
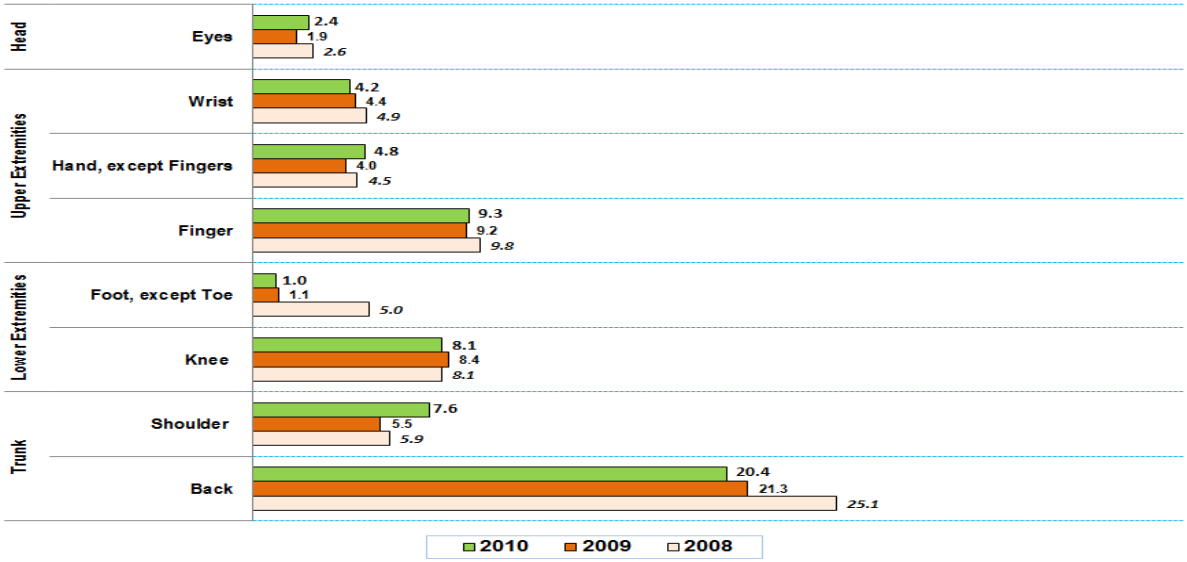
Figure 99: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Major Body Parts, Private Industry, 2008, 2009, 2010 (per 10,000 Full-Time Workers)



Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses (SOII) in cooperation with participating State agencies.

The following chart shows that the back was the body part with the highest incidence rate in 2008, 2009 and 2010.

Figure 100: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Major Body Part Units Private Industry, 2008, 2009, 2010 (per 10,000 Full-Time Workers)



Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses (SOII) in cooperation with participating State agencies.

The following three charts compare the median days away from work for private industry occupations, state government occupations, and local government occupations. Legal occupations for both private

industry and local government, and personal care and service occupations for state government had the greatest median days away from work in 2010.

Figure 101:Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work (Private) – 2010

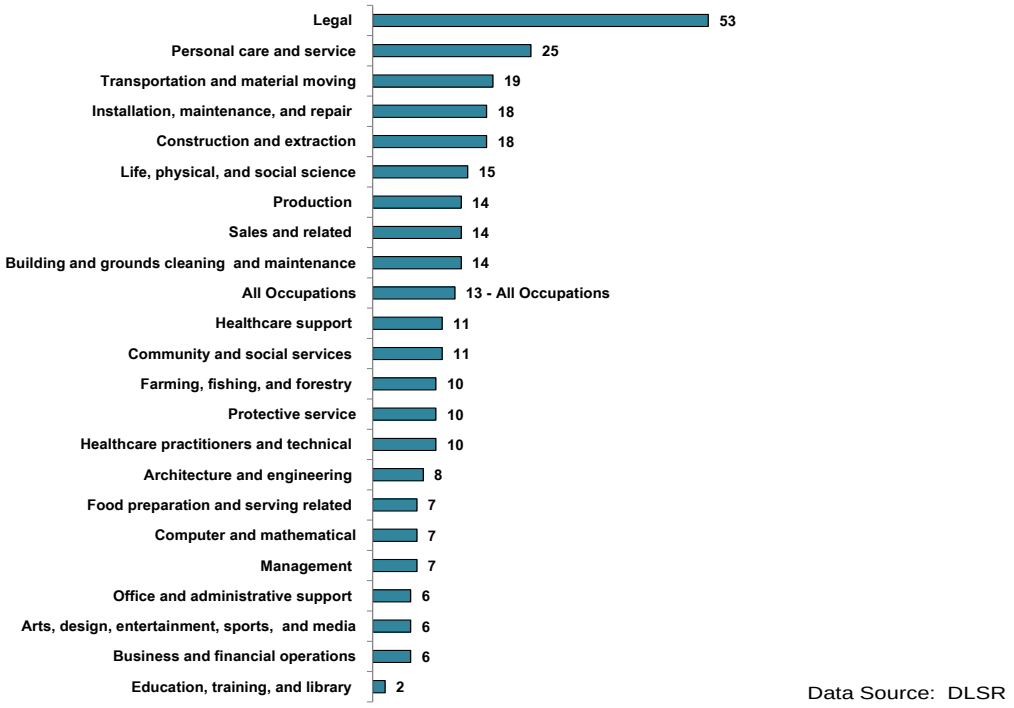


Figure 102: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work (State) – 2010

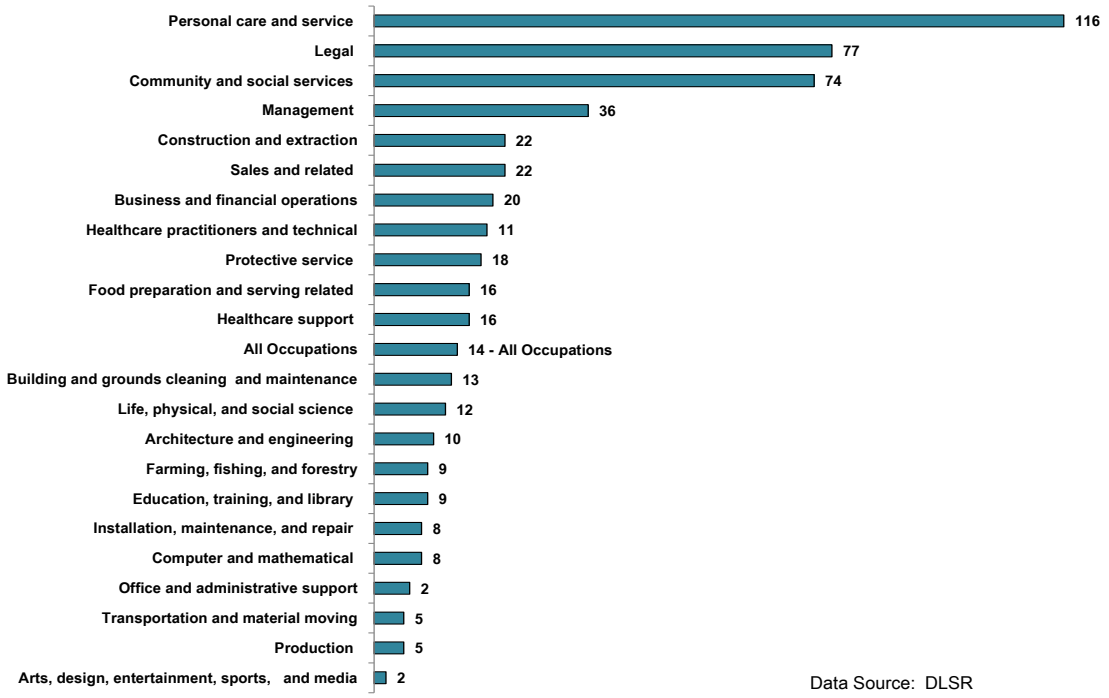
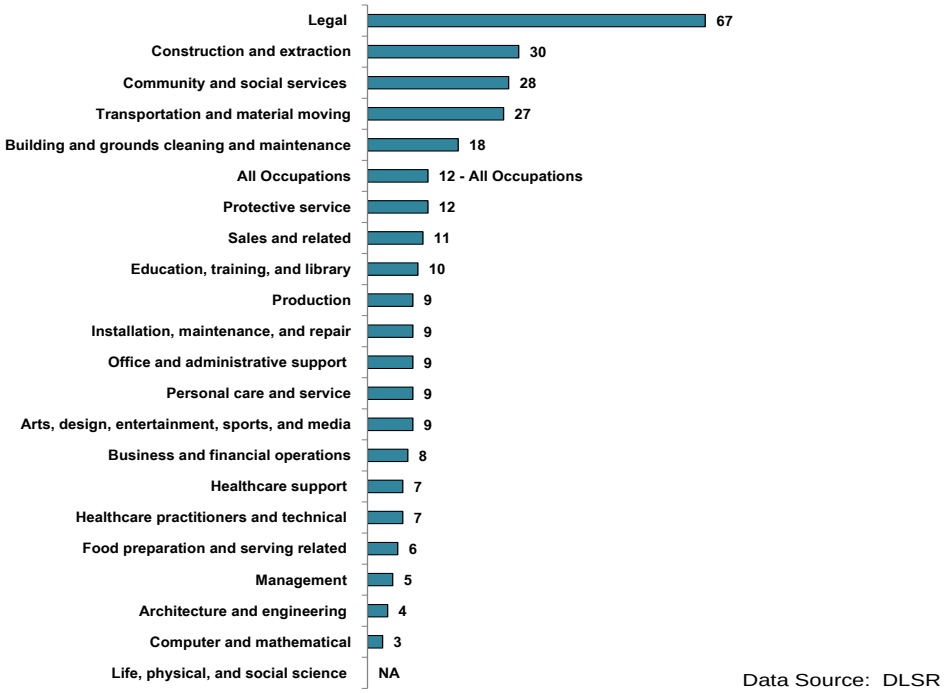


Figure 103: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work (Local Government) – 2010



The following two charts compare the injury and illness incidence rates, including back injury, for various occupations. The transportation and material moving occupations had the highest incidence rate in 2010, followed by the building and grounds cleaning and maintenance occupations.

Figure 104: Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers) Non-Fatal Occupational Injuries and Illnesses with Days Away from Work, 2010

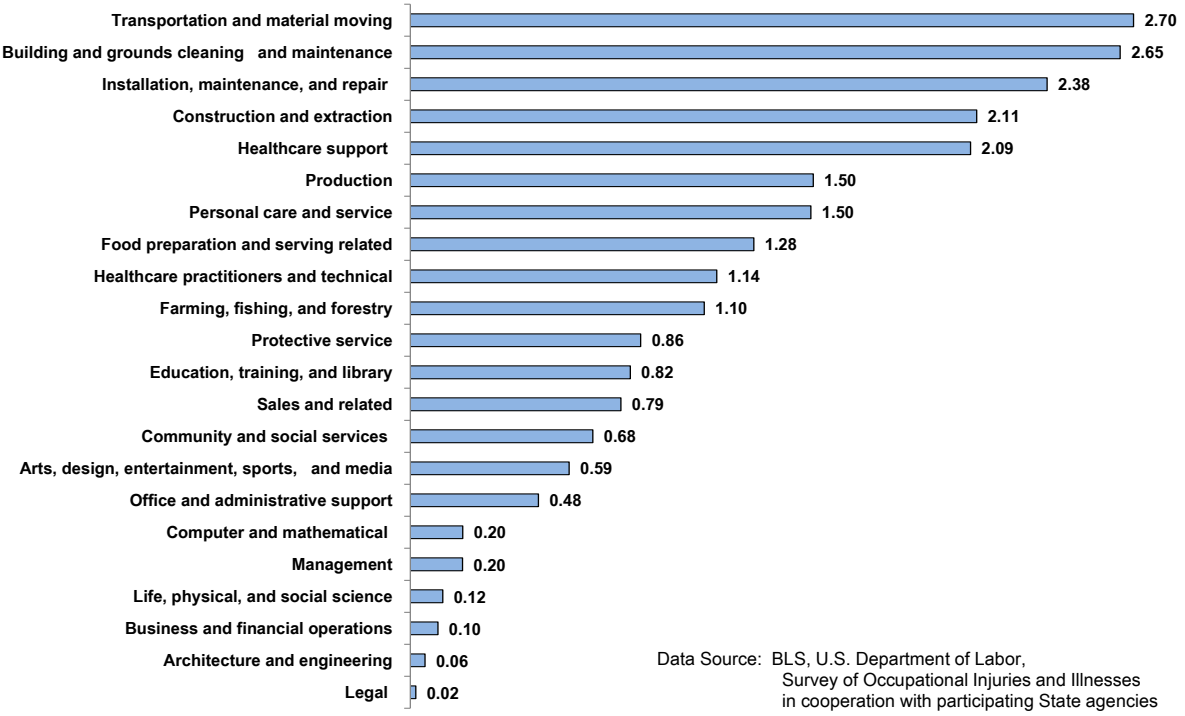
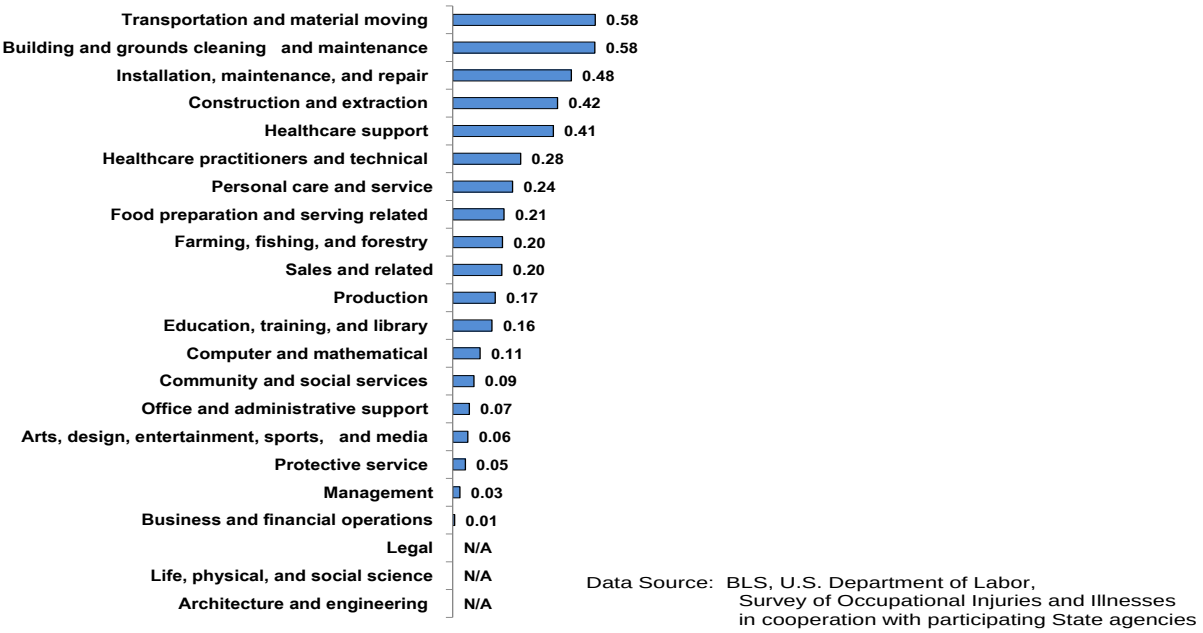
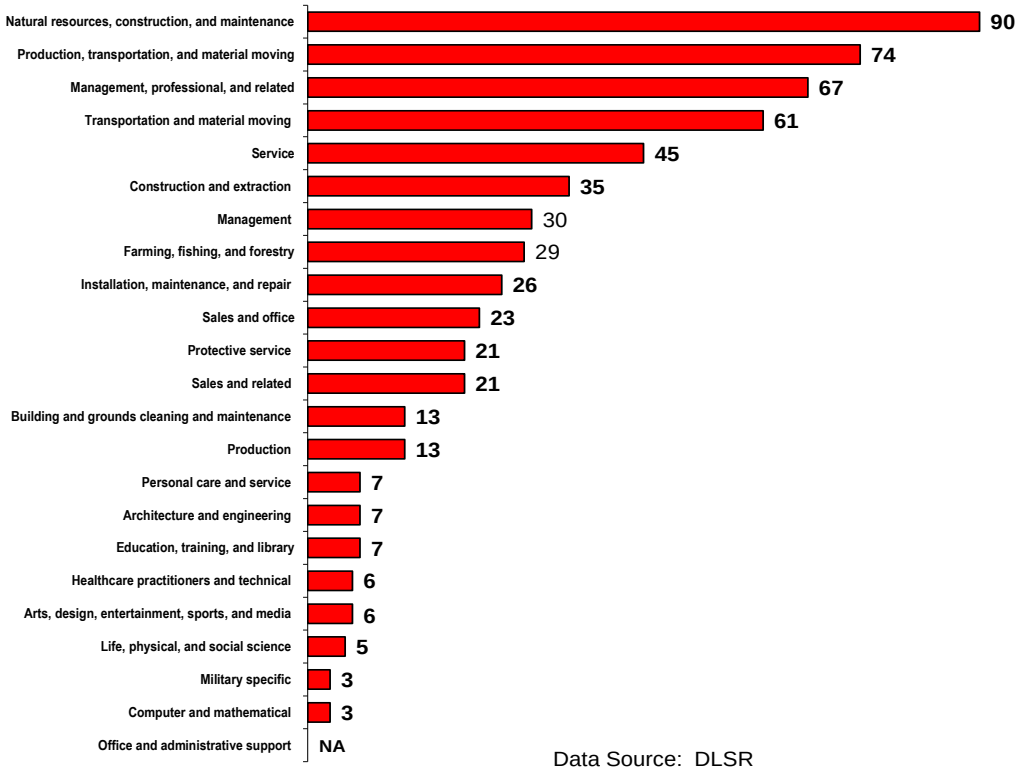


Figure 105: Back Injury Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers) Non-Fatal Occupational Injuries and Illnesses with Days Away From Work, 2010



The following chart compares the number of fatalities for various occupations. The natural resources, construction, and maintenance occupation had the greatest number of fatalities in 2010, followed by the production, transportation, and material moving and management, professional, and related occupations.

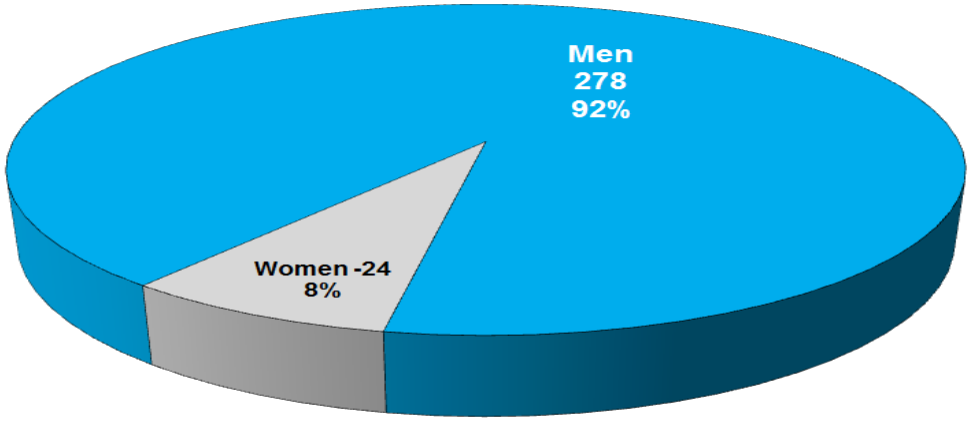
Figure 106: Fatal Occupational Injuries by Selected Occupations – All Ownerships, 2010



Characteristics of California Fatal Occupational Injuries and Illnesses

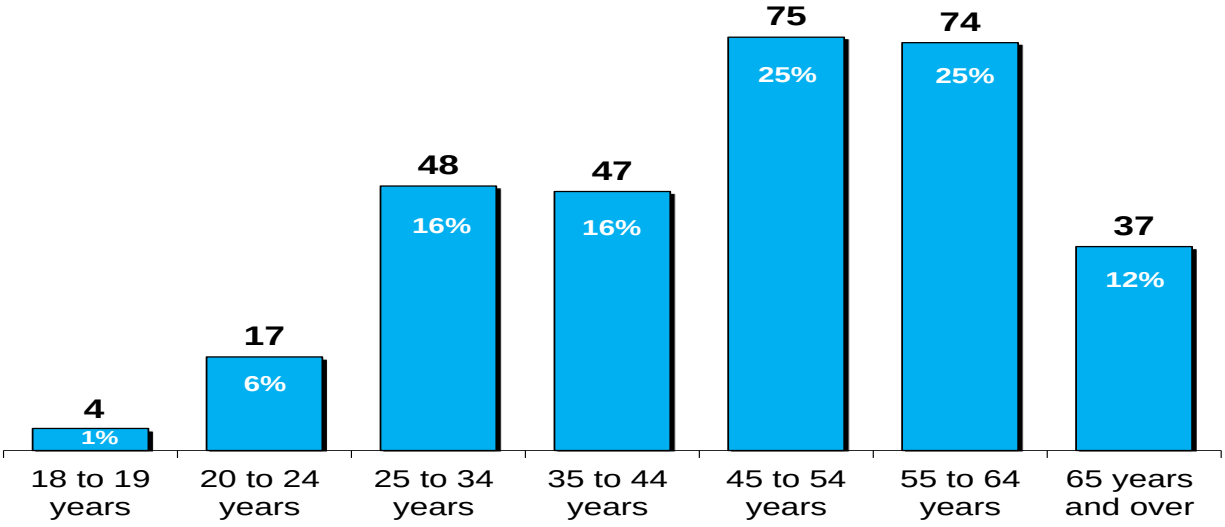
The following charts illustrate various characteristics of fatal occupational injuries and illnesses in California's private industry and federal, state and local governments.

Figure 107: California Fatal Occupational Injuries and Illnesses By Gender – 2010



Data Source: BLS

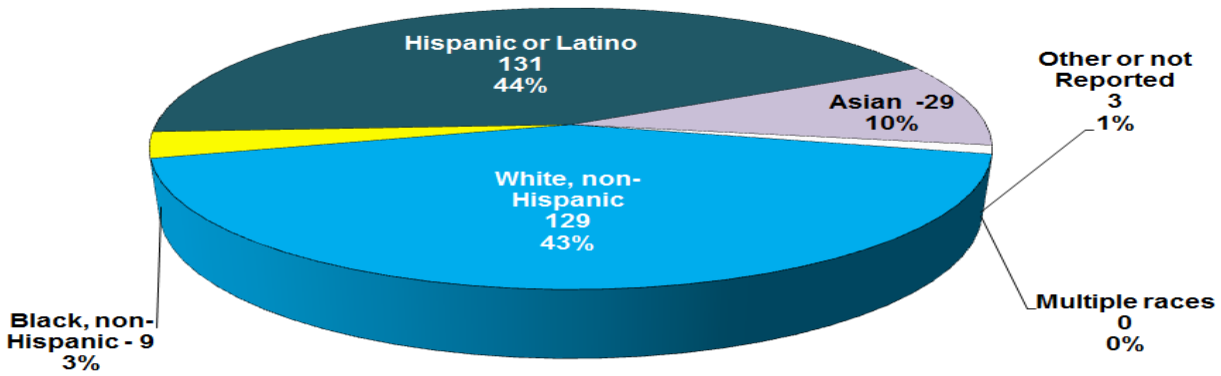
Figure 108: California Fatal Occupational Injuries and Illnesses By Age of Worker – 2010



* Preliminary data

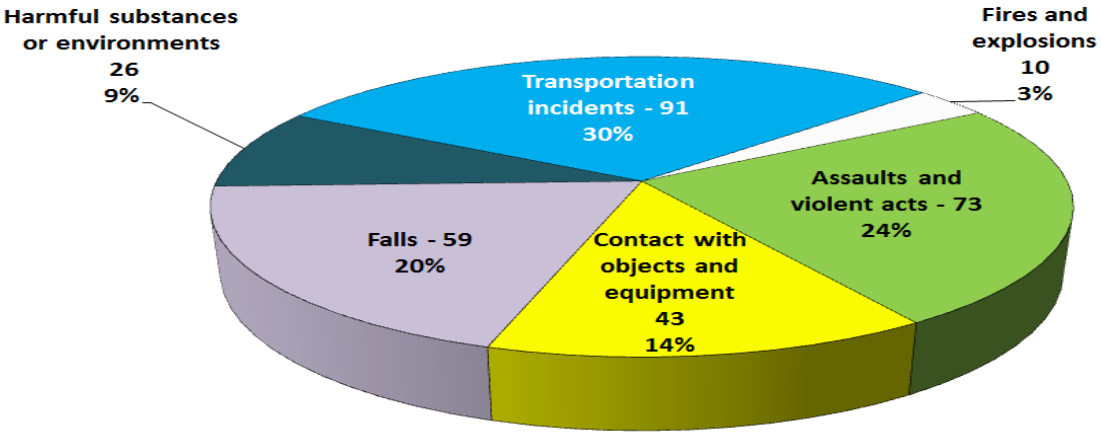
Source: BLS

Figure 109: California Fatal Occupational Injuries and Illnesses by Race and Ethnic Origin - 2010



Data Source: BLS

Figure 110: California Fatal Occupational Injuries and Illnesses by Event and Exposure - 2010



Data Source: BLS

Profile of Occupational Injury and Illness Statistics: California and the Nation

Data for the following analyses, except where noted, were derived from the Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR) and the U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS).

Incidence Rates

- California's most recent work injury and illness statistics for 2010 indicate a non-fatal injury and illness rate of 3.7 cases per 100 full-time employees in the private sector in 2010. This is a 39 percent decline from the 2000 level of 6.1 and no change from the previous year's figures.
- The trend in California mirrors a national trend. DOL figures for private employers show that from 2000 to 2010, the work injury and illness rate across the U.S. fell from 6.1 to 3.5 cases per 100 employees in the private sector. The reduction in the number of incidences of job injuries is likely due to various factors including a greater emphasis on job safety and the shift from manufacturing toward service jobs.
- In contrast to the private sector rates, California's public sector decline has not been nearly as dramatic, and the incidence rates are twice as high as in the private sector. California's state and local government rate for 2010 is 7.2 cases per 100 full-time employees. This is 20 percent decline from the 2000 level of 9 and almost a 26 percent increase over the state and local government national rate of 5.7. In addition, both the state and local government sectors have seen some increases in incidence rates over the past five years.
- The national fatality rate decreased by 18.6 percent between 2000 and 2009 from 4.3 to 3.5 cases per 100,000 employed, while California's fatality rate decreased from 3.3 to 2.6 cases per 100,000 employed during the same period. This is a 21 percent decline from the 2000 level and a 7 percent decrease from the previous year.
- From the Western region states, Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington, Arizona's and California's 2010 private industry rates of 3.3 and 3.7 respectively for non-fatal occupational injuries and illnesses were the lowest.[46] The state that had the third-lowest incidence rate was Hawaii (3.8).

Duration

- Days-away-from-work cases, including those that result in days away from work with or without a job transfer or restriction, dropped from 1.9 to 1.1 cases per 100 full-time employees from 2000 to 2010 in the private sector. This also mirrors the national trend with the number of days-away-from-work cases falling from 1.8 to 1.1 cases in the national private sector during the same period. Some of this overall decline, according to BLS, may be attributed to economic factors, including a decrease in employment and total hours worked, particularly in construction and manufacturing.
- Both California's and national overall days-away-from-work rate of 1.2 cases in 2010 did not change from the previous year's figures.

Industry Data

- In 2010, injury and illness incidence rates varied greatly between private industries ranging from 0.8 injuries/illnesses per 100 full-time workers in the finance and insurance industry to 5.2 in both transportation and warehousing and healthcare and social assistance industries. California's private industry rates for total cases were higher than the national rates in every major industry division, except for agriculture, forestry, fishing and hunting (4.1 and 4.8), manufacturing (3.4 and 4.4), wholesale trade (3.3 and 3.4), arts, entertainment, and recreation (4.6 and 4.8), and other services, except public administration (1.6 and 2.7).

[46] The comparisons of industry rates have not been adjusted for industry mix within each state.

- The private industry total case rate for non-fatal injuries of 3.7 per 100 full-time worker injuries did not change between 2009 and 2010, and the rate for the public sector (state and local government) decreased by 4 percent from 7.5 in 2009 to 7.2 in 2010.
- According to DLSR, the largest decrease in injury and illness by major industry category was in professional, scientific, and technical service, from 1.7 to 1.2 per 100 full-time worker injuries in 2009 and 2010 respectively, followed by a decrease in real estate and rental and leasing from 3.8 to 2.9 per 100 full-time worker injuries in 2009 and 2010, and by a decrease in agriculture, forestry, fishing and hunting, from 5.1 to 4.1 per 100 full-time worker injuries in 2009 and 2010.[47]
- According to DLSR, the largest increase in injury and illness by industry sectors was in accommodation and food services, from 3.6 to 4.3 per 100 full-time worker injuries in 2009 and 2010 respectively, followed by transportation and warehousing with an increase from 5.4 to 6.4 per 100 full-time worker injuries in 2009 and 2010, and health care and social assistance, from 5.3 to 5.9 in 2009 and 2010.[48]
- Over the past decade (2000-2010), the number of fatal injuries declined 44.4 percent, from 531 to 295.[49] From 2009 to 2010, the number of fatal injuries decreased by 26 percent. The highest number of fatal injuries was in trade, transportation and utilities (111), followed by construction (56) and professional and business services (45).
- In private industry, the top ten occupations with the most non-fatal injuries and illnesses in 2010 are: laborers and freight, stock, and material movers, hand; truck drivers, light or delivery services; retail sales persons; nursing aides, orderlies, and attendants; maids and housekeeping cleaners; farm workers and laborers, crop, nursery, and greenhouse; registered nurses; truck drivers, heavy and tractor-trailer; first-line supervisors/managers of retail sales workers; janitors and cleaners, except maids and housekeeping cleaners.
- In California state government, the top ten occupations with the most non-fatal injuries and illnesses in 2010 are: correctional officers and jailers; psychiatric technicians; registered nurses; police and sheriff's patrol officers; janitors and cleaners, except maids and housekeeping cleaners; fire fighters; forest and conservation technicians; first-line supervisors/managers of correctional officers; first-line supervisors/managers of office and administrative support worker; licensed practical and licensed vocational nurses.
- In local government, the top ten occupations with the most non-fatal injuries and illnesses in 2010 are: police and sheriff's patrol officers; janitors and cleaners, except maids and house-keeping cleaners; teacher assistants; fire fighters; elementary school teachers, except special education; bus drivers, transit and intercity; landscaping and grounds keeping workers; bus drivers, school; first-line supervisors/managers of police and detectives.
- Natural resources, construction, and maintenance (90), production, transportation, and material moving (74), and management, professional, and related (67) occupations accounted for 77 percent of the fatal injuries in 2010. Transportation and material moving (61), service (45), construction and extraction (35), management (30), farming, fishing, and forestry (29), installation, maintenance, and repair (26), sales and office (23) were the other occupations with the most number of fatal injuries in 2010. Natural resources, construction, and maintenance incidents were the number one cause of fatal injuries accounting for 30 percent of fatal injuries in 2010.
- Transportation incidents accounted for 30 percent of fatal injuries in 2010 and are a major cause of fatalities among: production, transportation, and material moving occupations (32); transportation and material moving occupations (32); natural resources, construction, and maintenance occupations (20) and management, professional, and related occupations (20).

[47] DLSR, Table 1: Incidence rates of non-fatal occupational injuries and illnesses by selected industries and case types, 2009, 2010.
[48] Ibid.
[49] The number of fatalities excludes the number of fatalities for the Federal government.

Establishment Size and Type

- The lowest rate for the total recordable non-fatal cases in 2010 was experienced by the smallest employers. Employers with 1 to 10 employees and 11 to 49 employees had incidence rates of 1.8 and 3.5 cases, respectively, per 100 full-time employees. There was a 6 percent increase in incidence rates for employers with 1 to 10 employees from 2009 to 2010. Employers with 11 to 49 employees experienced no change in incidence rates compared to 2009.
- Establishments with 50 to 249 and 1,000 and more employees reported the highest rates of 4.8 and 5.2 cases per 100 full-time employees, respectively, in 2010. Establishments with 250 to 999 experienced a 4 percent increase in incidence rates per 100 full-time employees from 2009 to 2010.

Types of Injuries

- All types of work injuries have declined since 1999 in the private sector. The number of sprains and strains continued to decline from 1999; however, these injuries remain by far the most common type of work injury accounting for 55 percent of days-away-from-work cases in the private sector. The biggest decline (66 percent) was in carpal tunnel syndrome. Amputations experienced a 59 percent decline, and fractures experienced a 58 percent decrease between 1999 and 2010.
- In the private sector, contact with objects, equipment was the leading cause of days-away-from-work injuries, cited in about 28 percent of days-away-from-work cases. Overexertion was the second common cause of injury, accounting for about 21.6 percent of injuries.
- In California state government, the two main causes of injury were contact with object, equipment and overexertion, accounting for about 17.7 and 15.1 percent of days-away-from-work cases, respectively, in 2010.
- In local government, the main causes of injury were overexertion and contact with object, equipment, accounting for 20.2 and 16.1 percent of days-away-from-work cases, respectively, in 2010.
- The most frequently injured body part is the back, accounting for about 13.8 percent of the cases in state government and about 16.8 percent cases in local government. In the private sector, back injuries account for 19 percent of non-fatal cases.

Demographics

- Over the period from 1999 to 2010 in the California private sector, the number of days-away-from-work cases for women decreased by 32 percent. Days-away-from-work cases for men decreased by 49 percent.
- Between 1999 and 2010, in private industry, all age groups experienced a decline. The biggest decline (58 percent) occurred among 35 to 44 year-old workers. The age group 16 to 19 experienced a 56 percent decline, and the age group 20 to 24 experienced a 53 percent decrease in the numbers of days away from work.
- In 2010, out of 302 fatalities (including the Federal government), approximately 92 percent were male and 8 percent were female. All age groups, except for 18 to 19 (an increase in number of fatalities from 3 to 4) and 65 and older categories (3 percent increase), experienced a decrease in fatal injuries between 2009 and 2010. The biggest decrease in the number of fatalities (48 percent) was seen in the 20 to 24 age group (from 33 to 17 cases), followed by a 46 percent decrease in the age group 35 to 44 (from 87 to 47 cases) and a 31 percent decrease in the age group 45 to 54 (from 108 to 75 cases) and 20 percent decrease in the age group 25 to 34 (from 60 to 48) in the period of time from 2009 to 2010.
- The highest number of fatalities in 2010 by race or ethnic origin categories was experienced by “Hispanic or Latino” and “White, non-Hispanic” groups, both accounting for 43 percent of the

fatalities. From 2009 to 2010, there was a decrease in fatal injuries for all ethnic groups with the highest decrease (63 percent) in the “Black or African American” group, 27 percent decrease in the “White, non-Hispanic” group, and 19 percent decrease in the “Hispanic or Latino.”

Occupational Injury and Illness Reporting

Occupational injury and illness information is the responsibility of BLS within the U.S. and DOL and DLSR within the California DIR. Occupational injuries and illnesses are recorded and reported by California employers through several national surveys administered by DOL with the assistance of DIR.

OSHA Reporting and Recording Requirements

The U.S. Occupational Safety and Health Act (OSH Act) of 1970 requires covered employers to prepare and maintain records of occupational injuries and illnesses. It provides specific recording and reporting requirements that comprise the framework for the nationwide occupational safety and health recording system. The Occupational Safety and Health Administration (OSHA) in DOL administers the OSH Act recordkeeping system.

Although there are exemptions for some employers from keeping Cal/OSHA injury and illness records, all California employers must report injuries to DLSR. Every employer must also report any serious occupational injuries, illnesses or deaths to California OSHA within DIR.

The data assist employers, employees and compliance officers in analyzing the safety and health environment at the employer's establishment and are the source of information for the BLS *Annual Survey of Occupational Injuries and Illnesses* and the OSHA *Occupational Injury and Illness Survey*.

BLS Annual Survey of Occupational Injuries and Illnesses

To estimate the number of occupational injuries and illnesses in the U.S., BLS established a nationwide annual survey of employers’ occupational injuries and illnesses. The state-level statistics on non-fatal and fatal occupational injuries and illnesses are derived from this survey. In California, DIR’s DLSR conducts the survey for BLS.

Non-Fatal Injuries and Illnesses

The BLS *Annual Survey* develops frequency counts and incidence rates by industry and also profiles worker and case characteristics of non-fatal workplace injuries and illnesses that result in lost work time. Each year, BLS collects employer reports from about 173,800 randomly selected private industry establishments.

Fatal Injuries and Illnesses

The estimates of fatal injuries are compiled through the Census of Fatal Occupational Injuries (CFOI), which is part of the BLS occupational safety and health statistics program. CFOI uses diverse state and federal data sources to identify, verify and profile fatal work injuries.

OSHA Occupational Injury and Illness Survey

Federal OSHA administers the annual *Occupational Injury and Illness Survey*. OSHA utilizes this collection of employer-specific injury and illness data to improve its ability to identify and target agency interventions to those employers who have serious workplace problems. For this survey, OSHA collects data from 80,000 non-construction establishments and from up to 15,000 construction establishments.

Occupational Injury and Illness Prevention Efforts

Efforts to prevent occupational injury and illness in California take many forms, but all are derived from cooperative efforts between the public and private sectors. This section describes consultation and compliance programs, health and safety standards, and education and outreach designed to prevent injuries and illnesses to improve worker health and safety.

Cal/OSHA Program

The Cal/OSHA Program is responsible for enforcing California laws and regulations pertaining to workplace health and safety and for providing assistance to employers and workers about workplace safety and health issues.

The Cal/OSHA Enforcement Unit conducts inspections of California workplaces based on worker complaints, accident reports and high hazard industries. There are 22 Cal/OSHA Enforcement Unit district offices located throughout the State of California. Specialized enforcement units, such as the High Hazard Compliance Unit, augment the efforts of district offices in protecting California workers from workplace hazards in high hazard industries.

Other specialized units, such as the Crane Certifier Accreditation Unit, the Asbestos Contractors' Registration Unit, the Asbestos Consultant and Site Surveillance Technician Unit, and the Asbestos Trainers Approval Unit, are responsible for enforcing regulations pertaining to crane safety and prevention of asbestos exposure.

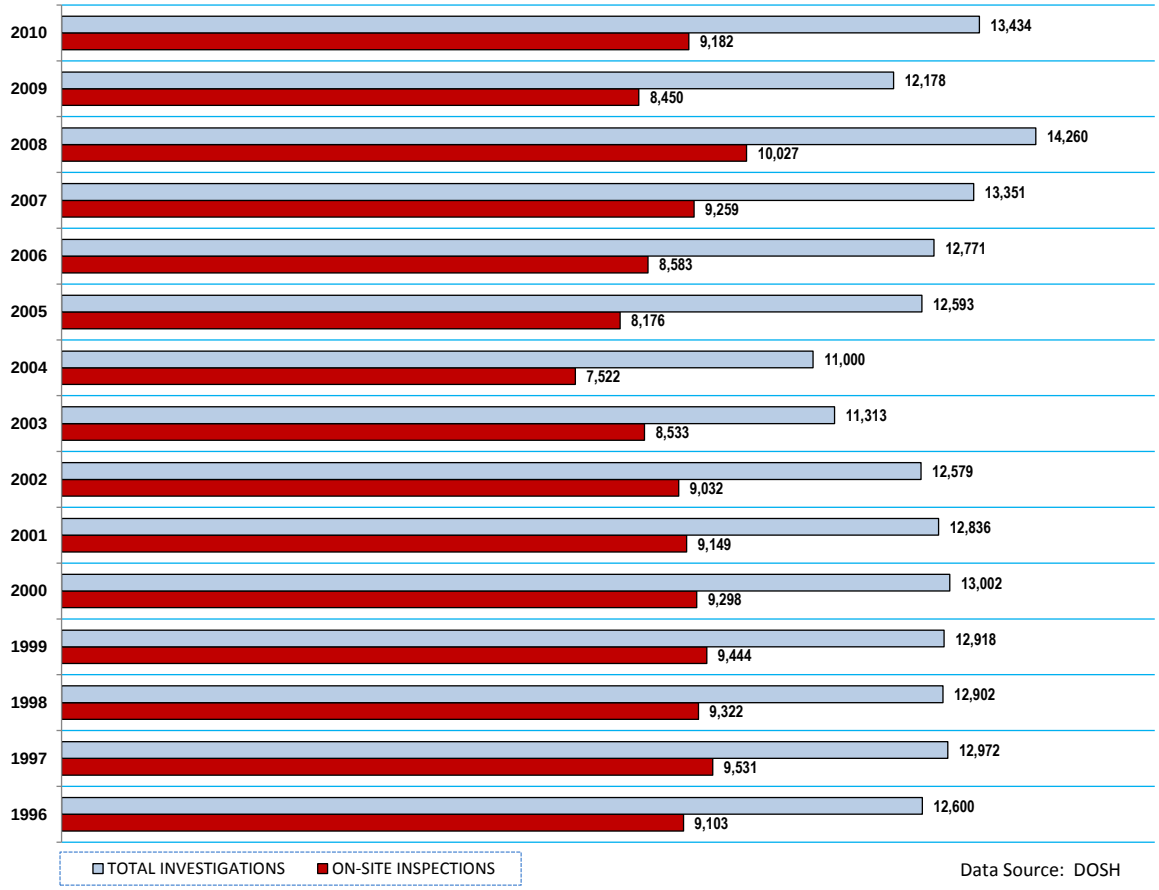
The Cal/OSHA Consultation Service provides assistance to employers and workers about workplace safety and health issues through on-site assistance, high hazard consultation, and other special emphasis programs. The Consultation Service also develops educational materials on workplace safety and health topics.

Profile of Division of Occupational Safety and Health (DOSH) On-Site Inspections and Violations Cited

The trends in types of inspections have varied in the past few years, with Accidents and Complaints being consistently predominant. However, starting in fiscal year (FY) 2006, Programmed Inspections started to reach higher levels as compared to Accidents and Complaints.

The following chart shows the total numbers of investigations and on-site inspections for the period from calendar year (CY) 1996 through 2010.[50] The total number of investigations averaged 12,830, and the number of on-site inspections averaged 9,268 from 1996 to 2002. From 2002 to 2004, there was a decrease in both the number of investigations (14 percent) and the number of on-site inspections (20 percent). From 2004 to 2008, there was a 29.6 percent increase in investigations and 33 percent increase in the number of on-site inspections. After a 17 percent decrease in investigations and almost a 19 percent decrease in the number of on-site inspections from 2008 to 2009, there was again a 10 percent increase in total number of investigations and about a 9 percent increase in on-site inspections from 2009 to 2010.

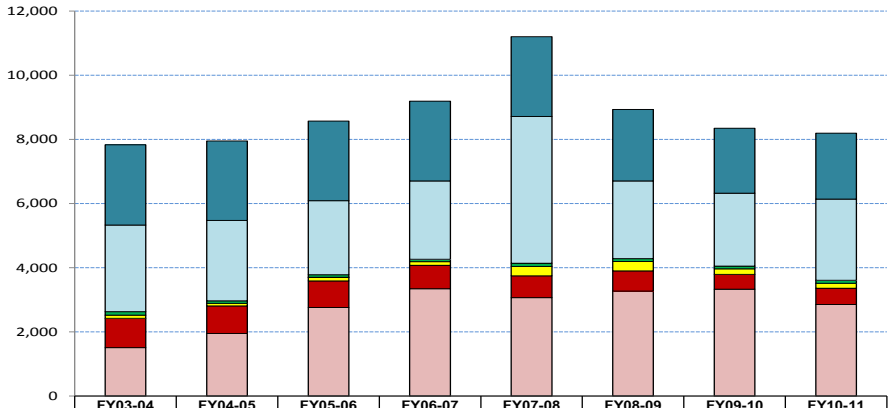
Figure 111: Numbers of DOSH Investigations and On-Site Inspections, 1996 - 2010



[50] The numbers of investigations, on-site inspections and violations for calendar years could differ from the fiscal year numbers provided later in this section.

The chart below shows that total Inspections had been increasing from 7,831 in FY 2003-04 to 9,198 in FY 2007-08, and then had decreased to 8,193 in FY 2010-2011.

Figure 112: DOSH Inspections by Type, FY 2003-04 to FY 2010-11

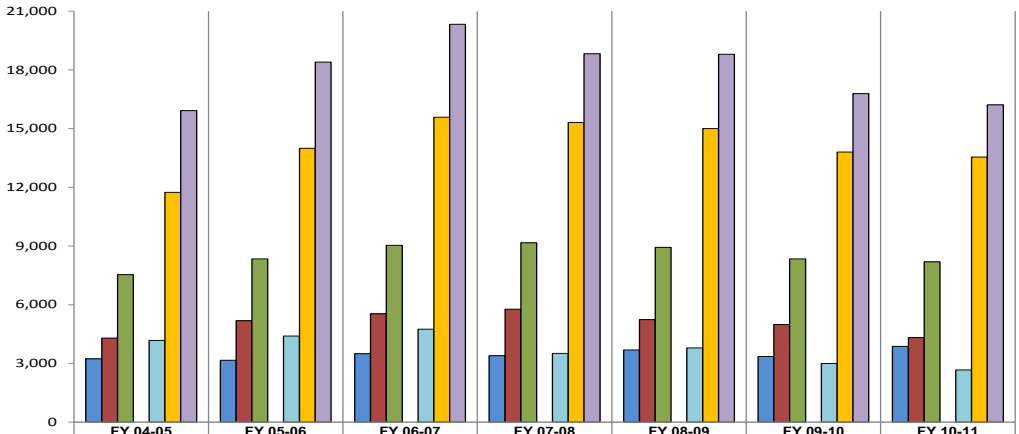


	FY03-04	FY04-05	FY05-06	FY06-07	FY07-08	FY08-09	FY09-10	FY10-11
Accident (unprogrammed)	2,500	2,479	2,484	2,486	2,483	2,228	2,025	2,054
Complaint (unprogrammed)	2,700	2,503	2,305	2,444	4,576	2,421	2,272	2,529
Referral (unprogrammed)	109	82	80	74	97	89	82	95
Monitoring (unprogrammed)	N/A	N/A	1	N/A	N/A	N/A	N/A	N/A
Follow-up (unprogrammed)	101	78	114	115	294	295	175	153
Unprogrammed Related (different employer, same worksite)	909	858	827	730	679	627	461	506
Programmed	1,512	1,952	2,761	3,344	3,069	3,272	3,332	2,856
TOTAL	7,831	7,952	8,572	9,039	9,198	8,932	8,347	8,193

Source: DIR - Division of Occupational Safety and Health

The number of violations is greater than inspections due to the fact that most inspections where violations occur yield more than one violation. Violations are further broken down into serious and other-than-serious. In FY 2010-11, 53 percent of inspections resulted in violations cited. Total violations have decreased by 20 percent from their peak in FY 2006-2007 to FY 2010-2011. The breakdown by type is shown in the chart below.

Figure 113: DOSH Inspections and Violations Cited, FY 2004-05 to FY 2010-11

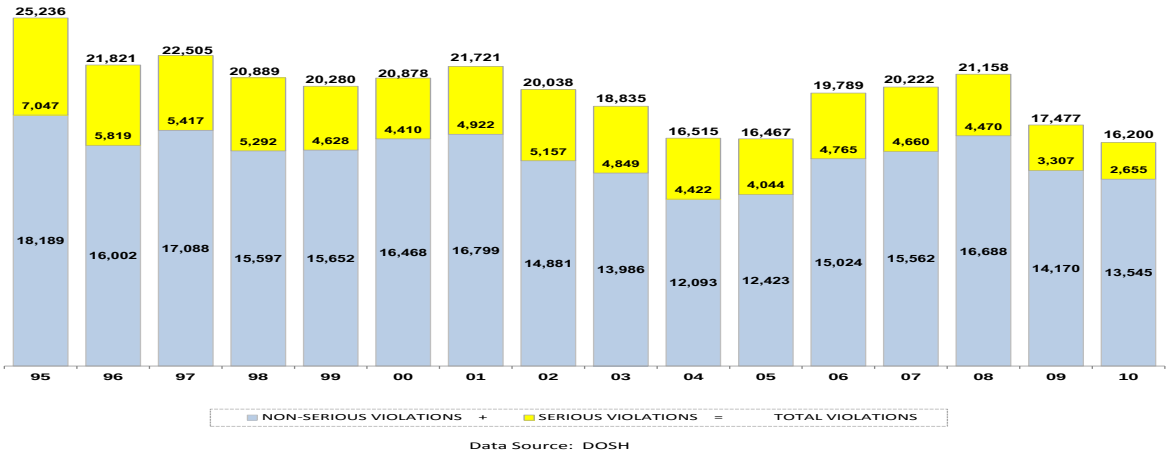


	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Inspect-s without violations cited	3,236	3,162	3,502	3,393	3,692	3,356	3,871
Inspections with violations	4,300	5,180	5,537	5,776	5,240	4,991	4,320
Total Inspections	7,536	8,342	9,039	9,169	8,932	8,347	8,191
Serious Violations	4,176	4,403	4,749	3,513	3,796	2,992	2,666
Other than Serious Violations	11,742	13,997	15,585	15,312	15,004	13,799	13,547
Total Violations	15,918	18,400	20,334	18,825	18,800	16,791	16,213

Data Source: DIR - Division of Occupational Safety and Health

The following chart shows the total numbers of violations, including the number of serious DOSH violations from CY 1995 to CY 2010. The total number of DOSH violations decreased by 13.5 percent from 1995 to 1996 and averaged 21,350 per year from 1996 to 2001. From 2001 to 2005, there was a 24 percent decrease in the total number of DOSH violations, and from 2005 to 2008, the total number of violations increased again by 28.5 percent. From 2008 to 2010, there was a 23 percent decrease in the total number of DOSH violations.

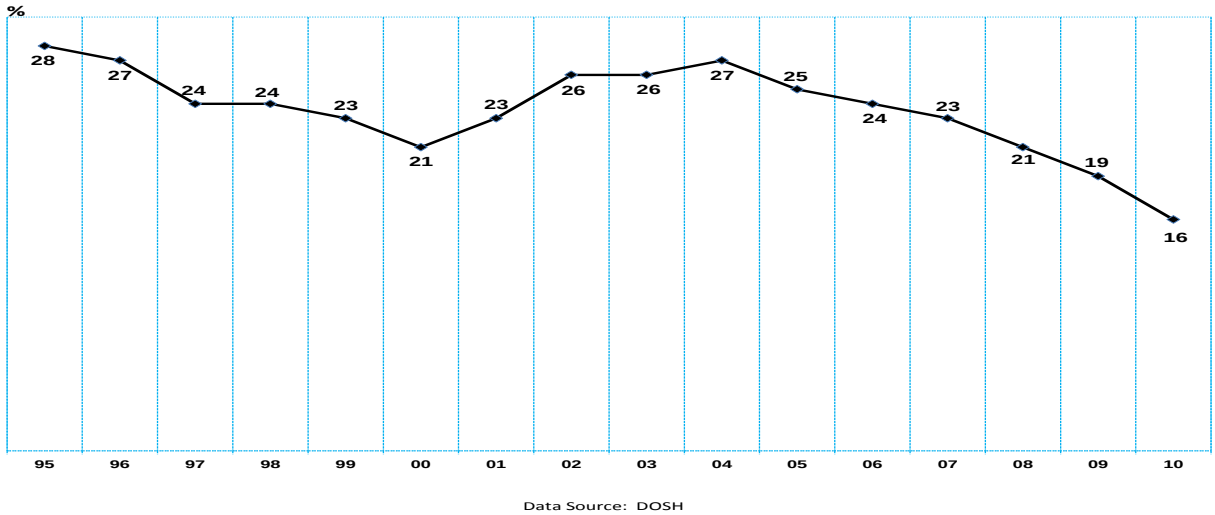
Figure 114: DOSH Violations, 1995 - 2010



As the chart above shows, the number of serious violations decreased by 37.4 percent from 1995 to 2000, increased by 17 percent from 2000 to 2002, and then again decreased by 21.6 percent from 2002 to 2005. The number of serious DOSH violations increased by 18 percent from 2005 to 2006, and then decreased by more than 44 percent from 2006 to 2010. (See pages 201-202 for OSHAB statistics on the number of appeals that filed and resolved on DOSH violations.)

The chart below shows the trend in the share of serious DOSH violations in the total number of all violations from 1995 to 2010. The share of serious DOSH violations decreased from its peak in 1995 to 21 percent in 2000. From 2000 to 2004, the share of serious violations increased to 27 percent of total DOSH violations and then decreased to its lowest level of 16 percent from 2004 to 2010.

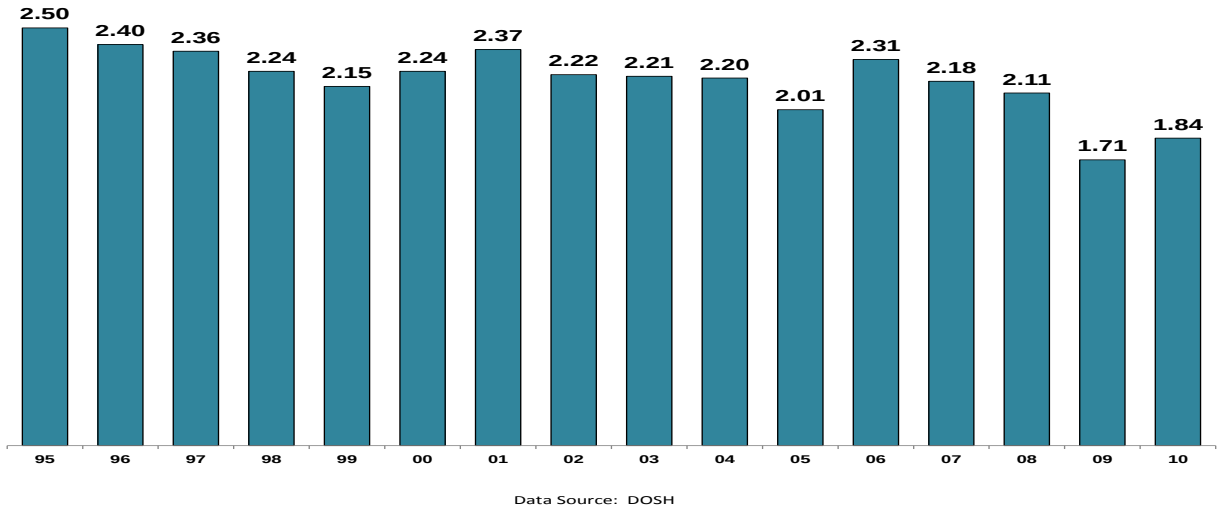
Figure 115: Percent of Serious Violations in Total DOSH Violations, 1995 - 2010



The average number of DOSH violations per inspection decreased by 14 percent from 1995 to 1999. During the next six years, from 1999 to 2004, the average number of violations per inspection averaged

2.2 and then decreased by 8.6 percent from 2004 to 2005. After an increase of 15 percent from 2005 to 2006, the average number of violations per inspection decreased by about 26 percent from 2006 to 2009, and then increased again by 7.6 percent from 2009 to 2010.

Figure 116: Average Number of DOSH Violations per Inspection, 1995 – 2010



Twenty-Five Most Frequently Cited Title 8 California Code of Regulations (CCR) Standards in 2010

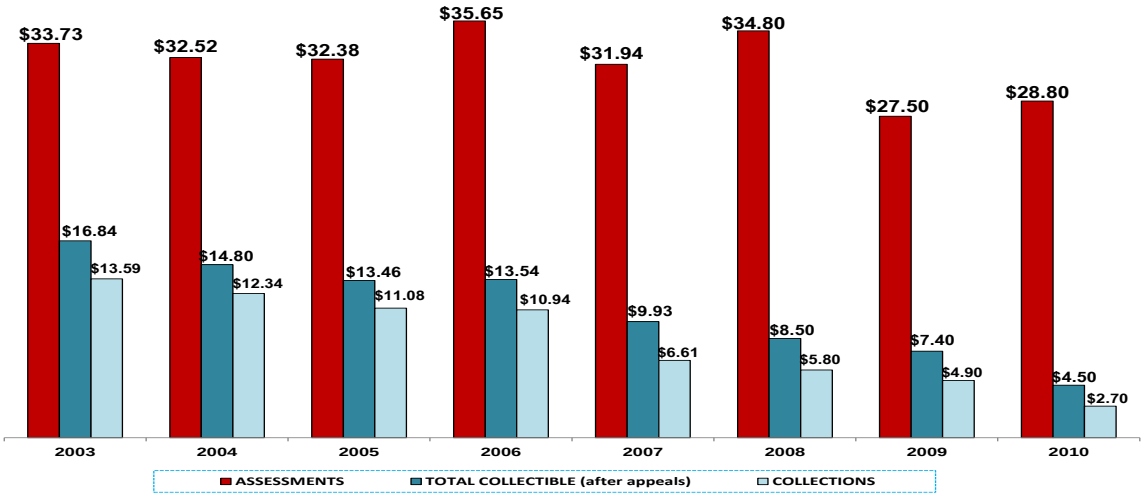
Standard	Description	Total Violations	Serious Violations	Percent Serious
3203	Injury and Illness Prevention Program	1,893	90	4.7
3395	Heat Illness Prevention	964	80	8.3
1509	Construction Injury Prevention Program	826	16	1.9
5194	Hazard Communication	647	11	1.7
3314	Clean, Repair, Service and Adjust Prime Movers, Machinery and Equipment	616	197	32.0
6151	Portable Fire Extinguishers	584	1	0.2
342	Reporting Work Fatality or Serious Injury	504	3	0.6
5144	Respiratory Protection Equipment	462	26	5.6
461	Permits to Operate Air Tanks	453	0	0.0
2340.16	Work Space About Electrical Equipment	323	2	0.6
5162	Emergency Eyewash	289	84	29.1
1512	Construction: Emergency Medical Services	256	4	1.6
3457	Field Sanitation	243	7	2.9
3668	Powered Industrial Truck Operator Training	218	8	3.7
4650	Compressed Gas and Air Cylinders:	217	42	19.3
2500.08	Flexible Electrical Cords and Cables: Uses Not Permitted	196	1	0.5
2340.12	Installation and Maintenance of Electrical Equipment	192	65	33.8
4070	Belt and Pulley Drive, Guarding	178	150	84.3
5193	Bloodborne Pathogens	170	20	11.8
3328	Safe Practices, Personal Protection: Machinery and Equipment	167	43	25.7
2340.22	Equipment Identification in Electrical Installations	167	41	24.5
3241	General Physical Conditions and Structures: Special Design Requirements, Live Loads	153	73	47.7
5189	Process Safety Management of Acutely Hazardous Substance	142	25	17.6
3650	Industrial Trucks: General Requirements	138	34	24.6
1675	Ladders	134	42	31.3

Data Source: DOSH Budget and Program Office

The chart below demonstrates the trends in penalties and collections. Total Penalties Assessed was $28.8 million in 2010. Many employers appeal those “recommended” penalties at the Cal/OSHA Appeals Board, and they may be ordered to pay in full, pay a reduced amount, or have the penalties eliminated due to procedural issues. Because of the appeals process, Penalties Collected will almost always be less than the initial recommended Penalties Assessed. Total Collections were $2.7 million in FY 2010.

Although the chart below demonstrates the trends in penalties and collections, it cannot be viewed entirely as an indicator of progress in health and safety at places of employment, due to related impacts on the data from DOSH staffing changes and resource changes from year to year, as well as activities at the Appeals Board. Nevertheless, the data do give a sense of the general magnitude and accounting of penalties and collections, as well as provide a starting point for further analysis.

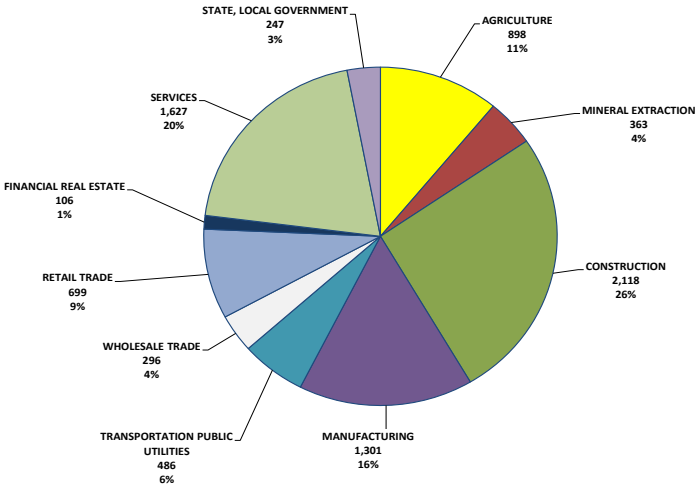
Figure 117: Total DOSH Penalties Assessed and Collected, 2003-2010
(Million $)



Data Source: DOSH

The chart below illustrates the proportion of inspections in major industrial groups. Of the 8,141 workplace health and safety inspections conducted in FY 2010-11, 2,118 (26 percent) were in construction and 6,023 (74 percent) were in non-construction.

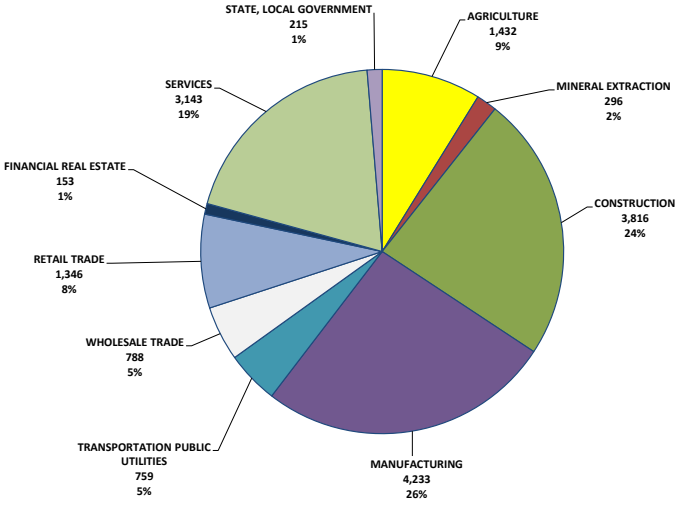
Figure 118: Distribution of Inspections by Major Industry, State FY 2010-2011
(Total Inspections=8,141)



Data Source: DOSH

Despite the fact that the greatest percentage of inspections were in construction, the greatest percentage (26 percent) of violations were found to be in manufacturing, as shown in the chart below.

Figure 119: Distribution of Violations by Major Industry, State FY 2010-2011
(Total Violations=16,181)



Data Source: DOSH

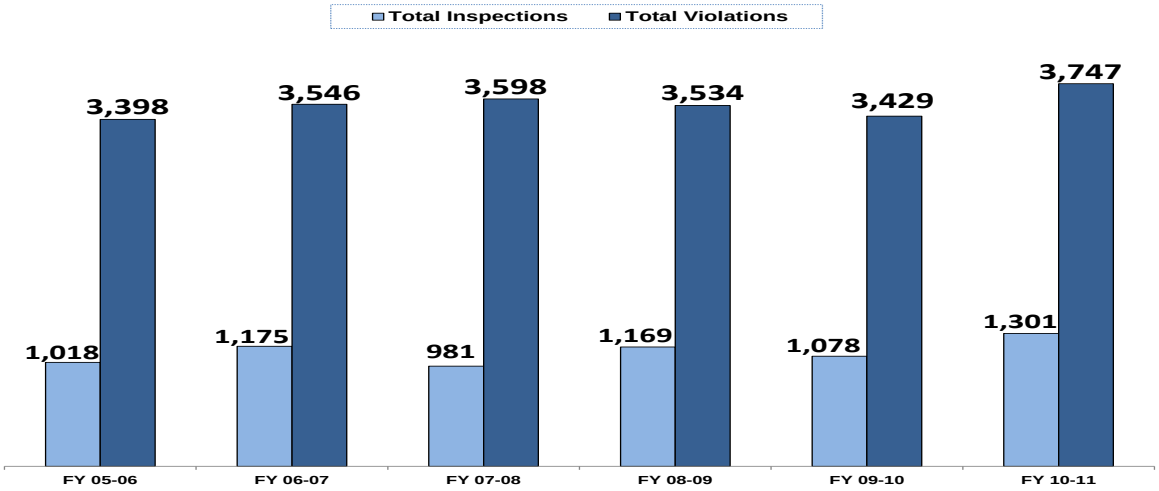
Economic and Employment Enforcement Coalition[51]

According to the DIR website, "For decades California has had some of the strongest labor and workforce safety laws in the country." To help enforce these labor laws and regulations, the "Triple E.C." Coalition, the Economic and Employment Enforcement Coalition (EEEC), was created in 2005 as a multi-agency enforcement program consisting of investigators from the Division of Labor Standards Enforcement (DLSE), DOSH, Employment Development Department (EDD), Contractors State License Board, and U.S. DOL. The primary emphasis of EEEC is to combine enforcement efforts. EEEC is a partnership of state and federal agencies, each expert in its own field, collaborating to:

- Educate business owners and employees on federal and state labor, employment and licensing laws.
- Conduct vigorous and targeted enforcement against labor law violators.
- Help level the playing field and restore the competitive advantage to law-abiding businesses and their employees.52

Total EEEC inspections fluctuated during the period from FY 2005-06 to FY 2010-11 with an overall increase of almost 28 percent during that period, from 1,018 to 1,301, respectively, and violations increased by about 6 percent from FY 2005-06 to FY 2007-2008, decreased by about 5 percent from FY 2007-08 to FY 2009-10, and then increased again by 9 percent from FY2009-10 to FY 2010-11. The penalties assessed were $1.8 million in FY 2010-11; however, only $0.4 million (22 percent) were collected in FY 2010-11 as compared to $0.8 million (50 percent) in FY 2005-06. The following two charts illustrate the comparisons.[53]

Figure 120: Total Numbers of EEEC Inspections and DOSH Violations



Data Source: DOSH

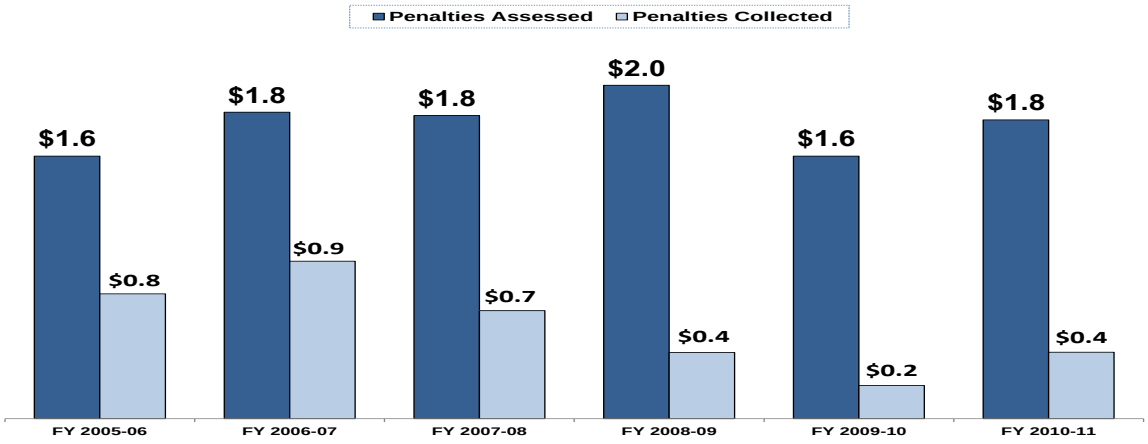
In 2012, the EEEC was reconstituted as the Labor Enforcement Task Force within DIR.

[51] For further information about the EEEC, visit any of these agency links: http://www.dir.ca.gov/EEEC/EEEC.html, or http://www.edd.ca.gov/eddeeec.htm, or http://www.labor.ca.gov/eeec.htm

[52] http://www.dir.ca.gov/EEEC/EEEC.html

[53] Data provided by DOSH. These totals reflect only DOSH citations and penalties; other types of Labor Code citations and penalties resulting from the enforcement action are independently accounted for by the respected agency or unit.

Figure 121: Total EEEC Penalties Assessed and Collected for DOSH Citations (Million $) (FY 2005-06 to FY 2010-11)



Data Source: DOSH

The four tables below describe EEEC inspections and violations by industry, along with the penalties assessed and collected. Construction had led in the number of inspections from FY 2005-06, except for FY 2009-10, when inspections in the auto body industry reached 218. Agriculture, auto body, and restaurant were the other industries with the most number of inspections since FY 2005-06. The auto body, construction, agriculture, and garment industries had the greatest number of violations in FY 2010-11. However, car wash and restaurant industries' violations decreased by 63 percent and 45 percent respectively from FY 2009-10 to FY 2010-11, while the construction and agriculture industries' violations increased by 70 percent and 40 percent respectively during the same period. Garment and construction industries are leading in penalties assessed for the FY 2010–11.

Table 41: EEEC Report: Inspections by Industry, FY 2005-06 to 2010-11

INDUSTRIES	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010- 11
Agriculture	264	252	136	253	191	312
Construction	298	445	246	286	183	266
Auto Body	NA	NA	89	179	218	201
Restaurant	203	160	141	169	216	152
Garment	194	184	234	128	95	146
Pallet	NA	NA	29	68	123	97
Tire Shops	NA	NA	NA	NA	NA	80
Auto Dismantler	NA	NA	NA	NA	NA	33
Car Wash	41	116	96	86	52	14
Race Track	3	2	0	0	0	NA
Janitorial	15	16	10	0	0	NA

Data Source: DIR - DOSH

Table 42: EEEC Report: Violations by Industry, FY 2005-06 to FY 2010-11

INDUSTRIES	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010- 11
Auto Body	NA	NA	429	1,098	1,001	859
Construction	712	1,072	662	499	399	679
Agriculture	629	515	294	388	359	504
Garment	947	815	1,084	483	317	439
Pallet	NA	NA	217	202	525	405
Restaurant	830	591	407	498	668	370
Tire Shops	NA	NA	NA	NA	NA	308
Auto Dismantler	NA	NA	NA	NA	NA	124
Car Wash	234	532	479	366	160	59
Race Track	7	1	NA	NA	NA	NA
Janitorial	36	20	26	NA	NA	NA

Data Source: DIR - DOSH

Table 43: EEEC Report: Penalties Assessed for DOSH Citations, FY 2005- 06 to FY 2010-11 (Thousand $)

INDUSTRIES	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Garment	$441	$421	$516	$302	$184	$421
Construction	$453	$669	$387	$330	$301	$369
Agriculture	$360	$388	$285	$525	$289	$322
Auto Body	NA	NA	$152	$465	$357	$244
Pallet	NA	NA	$189	$129	$326	$178
Tire Shops	NA	NA	NA	NA	NA	$106
Restaurant	$213	$179	$112	$124	$123	$96
Auto Dismantler	NA	NA	NA	NA	NA	$42
Car Wash	$107	$183	$178	$133	$46	$15
Race Track	$3	$0.25	NA	NA	NA	NA
Janitorial	$5	$6	$7	NA	NA	NA

Data Source: DIR - DOSH

Table 44: EEEC Report: Penalties Collected for DOSH Citations, FY 2005-06 to FY 2010-11 (Thousand $)

INDUSTRIES	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Construction	$259	$397	$244	$47	$35	$128
Agriculture	$257	$239	$114	$136	$45	$53
Restaurant	$108	$111	$59	$61	$43	$47
Garment	$89	$121	$103	$24	$31	$43
Tire Shops	NA	NA	NA	NA	NA	$37
Auto Body	NA	NA	$24	$61	$44	$34
Pallet	NA	NA	$21	$24	$24	$34
Auto Dismantler	NA	NA	NA	NA	NA	$16
Car Wash	$33	$77	$79	$44	$15	$4
Race Track	$3	NA	NA	NA	NA	NA
Janitorial	$3	$4	$6	NA	NA	NA

Data Source: DIR - DOSH

High Hazard Identification, Consultation and Compliance Programs

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

High Hazard Employer Program

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to those employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

In 1999, the passage of Assembly Bill (AB) 1655 gave DIR the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis.

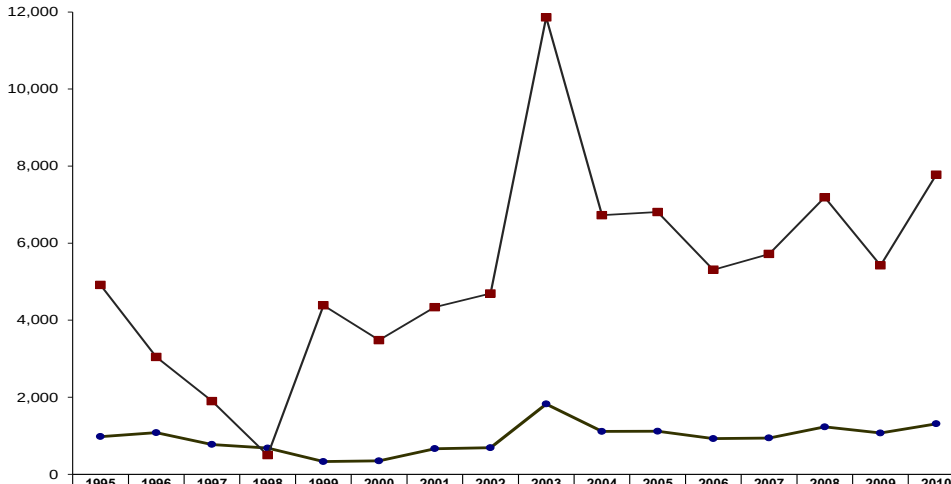
High Hazard Consultation Program

DOSH reports that in 2010, it provided on-site high hazard consultative assistance to 1,311 employers, as compared to 1,072 employers in 2009. During consultation with these employers, 7,774 Title 8 violations were observed and corrected as a result of the provision of consultative assistance.

Since 1994, 15,322 employers have been provided direct on-site consultative assistance, and 85,897 Title 8 violations have been observed and corrected. Of these violations, 35.1 percent were classified as "serious."

The following chart indicates the yearly number of consultations and violations observed and corrected during the years 1995-2010. It should be noted that for years 2002 and 2003, all Consultative Safety and Health Inspection Projects (SHIPs) were included in the High Hazard Consultation Program figures. Effective 2004, only employers with experience modification (Ex-mod) rates of 125 percent and above are included in the High Hazard Consultation Program figures.

Figure 122: High Hazard Consultation Program Production by Year



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Number of Employers with High Hazard Consultative Assistance	978	1,080	773	680	329	348	663	688	1,824	1,112	1,116	926	942	1,231	1,072	1,311
Total Number of Title 8 Violations Observed and Corrected	4,912	3,045	1,898	496	4,385	3,481	4,336	4,691	11,861	6,725	6,808	5,308	5,717	7,190	5,422	7,774

Data Source: Division of Occupational Safety and Health

The efficacy of High Hazard Consultation is measured by comparisons of employer lost-and-restricted-workday data. Beginning in 2001, Log 200 was replaced with Log 300 as the source for lost–and-restricted-workday data. The use of the Lost Work Day Case Incidence (LWDI) rate was transitioned and replaced with the Days Away, Restricted, or Transferred (DART) rate. Additionally, High Hazard Consultation uses Ex-mod rates to measure efficacy.

High Hazard Enforcement Program

DOSH reports that in 2010, 414 employers underwent a targeted high hazard enforcement inspection, down from 490 employers in 2009. During these inspections in 2010, 2,516 violations were observed and cited, whereas in 2009, 2,462 violations were observed and cited.

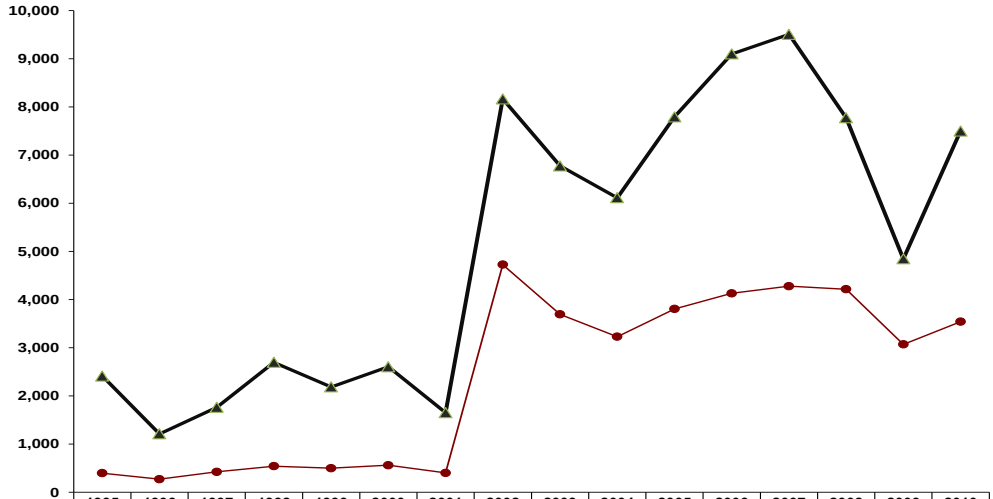
In addition, in 2010, 902 employers underwent an inspection as part of other targeted agricultural inspections/activities. During these inspections, 1,100 violations were observed and cited.

In addition, in 2010, 2,224 employers underwent an inspection as part of other targeted construction inspections/activities. During these inspections, 3,882 violations were observed and cited.

Since 1994, 39,196 employers have undergone a high hazard enforcement inspection, and 87,449 Title 8 violations have been observed and cited. Of these violations, 32.1 percent were classified as "serious."

The chart below indicates the yearly number of targeted inspections and violations observed and cited during the years 1994-2010. It should be noted that effective 2002 through 2008, the Safety and Health Inspection Projects (SHIPs) were included in the High Hazard Enforcement Program figures. Effective 2009, other targeted agricultural and construction inspections/activities are included in the High Hazard Enforcement Program figures.

Figure 123: High Hazard Enforcement Program Inspections and Violations



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total High Hazard Inspections	396	270	423	540	499	560	401	4,724	3,692	3,229	3,804	4,128	4,277	4,214	3,070	3,540
Total High Hazard Violations	2,411	1,211	1,761	2,696	2,186	2,603	1,650	8,164	6,774	6,113	7,791	9,098	9,506	7,771	4,844	7,498

Data Souce: Division of Occupational Safety and Health

The same lost-and-restricted-workday methodology is used for both the High Hazard Consultation and Enforcement programs. Efficacy is measured by comparisons of employer lost-and-restricted-workday data.

Safety Inspections

DOSH has three major public safety programs devoted to conducting inspections to protect the public from safety hazards:

- The Amusement Ride and Tramway Unit conducts public safety inspections of amusement rides, both portable and permanent, and aerial passenger tramways and ski lifts.
- The Elevator Unit conducts public safety inspections of different conveyances, including power-cable driven passenger and freight elevators, manlifts, and escalators.[54]
- The Pressure Vessel Unit conducts public safety inspections of boilers and pressure vessels to ensure their safe operation in places of employment.

Health and Safety Standards

The Occupational Safety and Health Standards Board (OSHSB), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The mission of OSHSB is to promote, adopt and maintain reasonable and enforceable standards that will ensure a safe and healthy workplace for California workers.

To meet the DIR Goal 1 on ensuring that California workplaces are lawful and safe, the Board shall pursue the following goals:

- Adopt and maintain effective occupational safety and health standards.
- Evaluate petitions to determine the need for new or revised occupational safety and health standards.
- Evaluate permanent variance applications from occupational safety and health standards to determine if equivalent safety will be provided.

OSHSB also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The OSHSB safety and health standards provide the basis for Cal/OSHA enforcement.

For further information …

http://www.dir.ca.gov/OSHSB/oshsb.html

[54] For a list of conveyances, please see http://www.dir.ca.gov/Title8/sub6.html

Occupational Health and Safety Appeals Board (OSHAB)

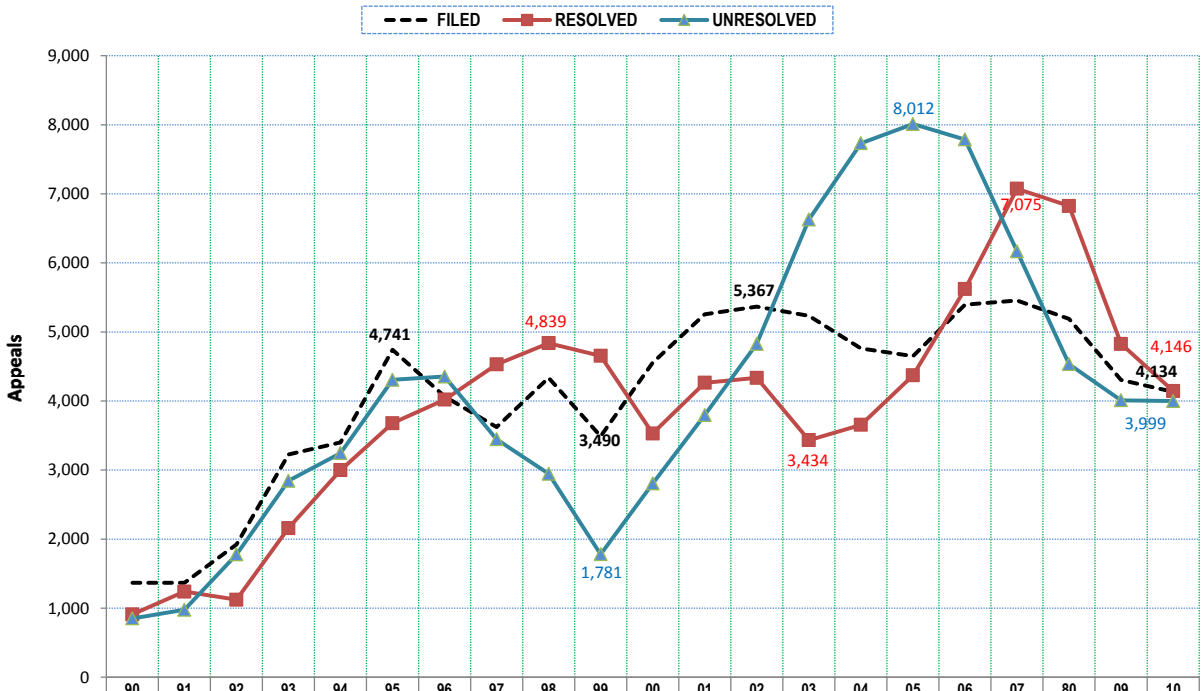
The Occupational Safety and Health Appeals Board (OSHAB) consists of three members appointed by the governor for four-year terms. By statute, the members are selected each from the field of management, labor and the general public. The chairman is selected by the governor.

The mission of OSHAB is to fairly, timely and efficiently resolve appeals and to provide clear, consistent guidance to the public, thereby promoting workplace health and safety. OSHAB handles appeals from private and public sector employers regarding citations issued by DOSH for alleged violation of workplace health and safety laws and regulations.

The chart below shows the OSHAB workload: appeals filed, resolved, and unresolved. From 1990, the numbers of appeals filed with OSHAB yearly grew steadily until 1995, reaching 4,741 cases in 1995. From 1995 to 2009, the number of appeals filed yearly stabilized at an average number of 4,695 cases, with a maximum of 5,457 appeals filed in 2007.

From 1990 to 1996, an average of 82 percent of filed appeals was resolved each year. From 1997 to 2000, the OSHAB processed appeals in a shorter time frame (10 months) than the Fed/OSHA standard, averaging 123 percent of yearly filed cases; therefore, the number of unresolved appeals reached its minimum in 1999. From 2000 to 2006, the processed appeals had slowed down again because an average of 83 percent of filed appeals was resolved each year, increasing the number of unresolved cases to its maximum of 8,012 cases in 2005. From 2005 to 2010, the numbers of unresolved cases decreased by 50 percent since an average of 124 percent of yearly filed cases were resolved in 2007, 2008 and 2009. In 2010, the numbers of resolved cases were close to numbers of filed cases leaving the numbers of unresolved cases at 2009 level.

Figure 124: Occupational Safety and Health Appeals Board (OSHAB) Workload, 1990-2010

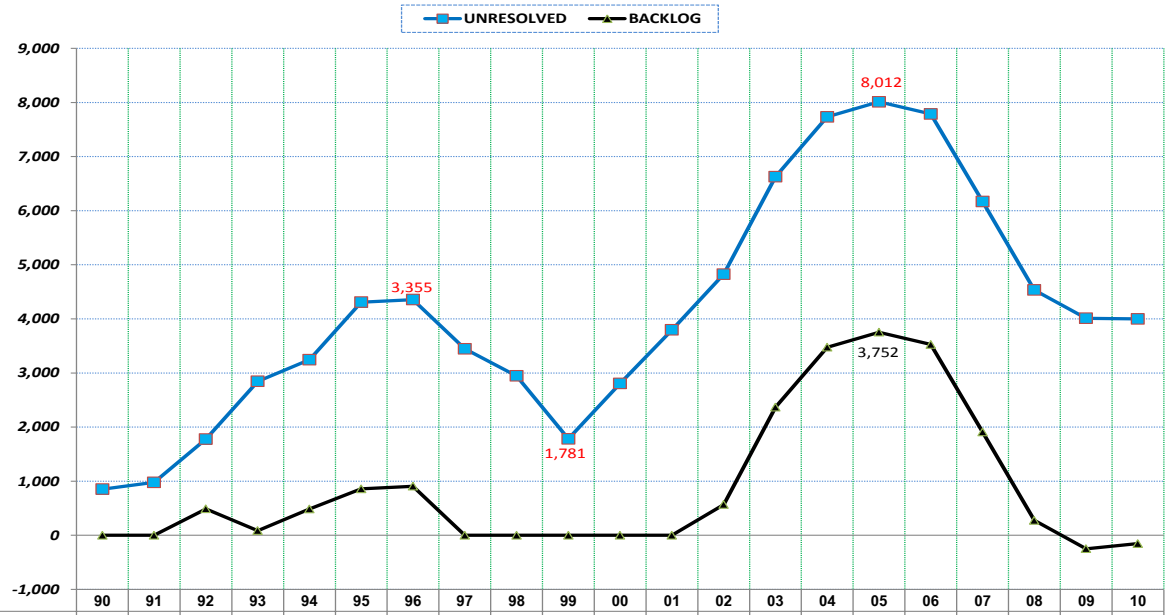


	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	80	09	10
FILED	1,369	1,367	1,923	3,228	3,400	4,741	4,067	3,623	4,338	3,490	4,555	5,255	5,367	5,235	4,762	4,651	5,396	5,457	5,190	4,305	4,134
RESOLVED	911	1,241	1,123	2,161	2,999	3,679	4,020	4,531	4,839	4,655	3,530	4,265	4,336	3,434	3,656	4,373	5,621	7,075	6,825	4,828	4,146
UNRESOLVED	852	978	1,778	2,845	3,246	4,308	4,355	3,447	2,946	1,781	2,806	3,796	4,827	6,628	7,734	8,012	7,787	6,169	4,534	4,011	3,999

Data Source: OSHAB

The trend and level of backlogged appeals reflect changes in unresolved cases as they accumulate from previous years. As the chart below shows, the pattern of backlog repeats the pattern of unresolved cases described in the above paragraph.

Figure 125: Occupational Safety and Health Appeals Board Backlogs, 1990-2010

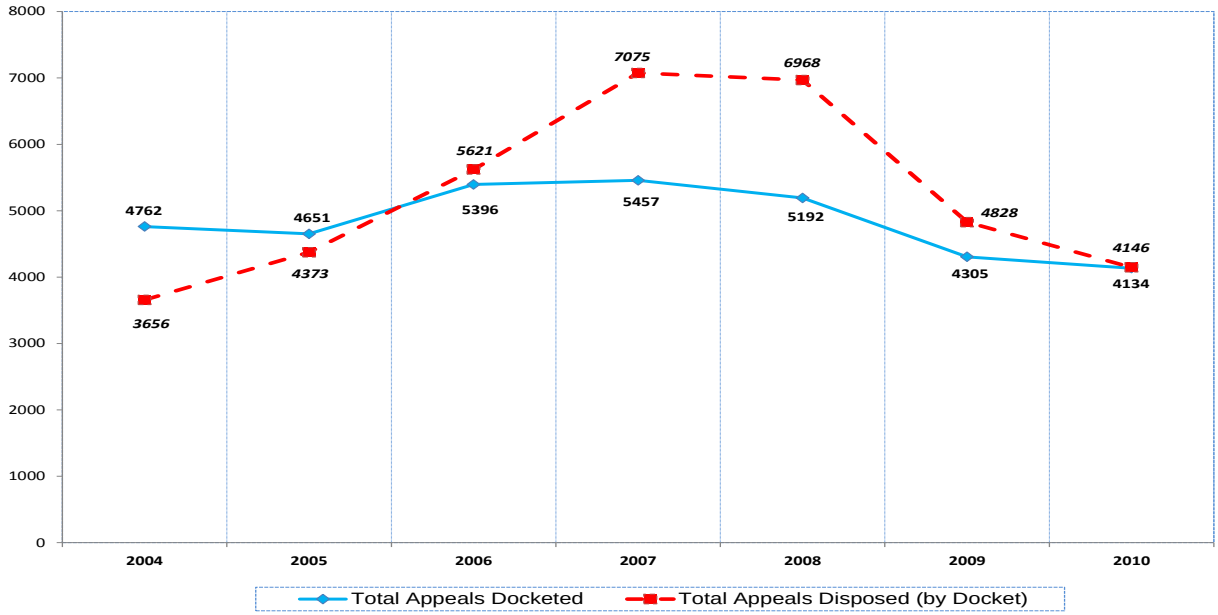


	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10
UNRESOLVED	852	978	1,778	2,845	3,246	4,308	4,355	3,447	2,946	1,781	2,806	3,796	4,827	6,628	7,734	8,012	7,787	6,169	4,534	4,011	3,999
BACKLOG	0	0	488	85	486	858	905	0	0	0	0	0	567	2,368	3,474	3,752	3,527	1,909	274	-249	-155

Data Source: OSHAB

The chart below shows the total number of appeals docketed and disposed from 2004 to 2010.

Figure 126: Occupational Safety and Health Appeals Board: Appeals Docketed and Disposed, 2004-2010



Data Source: OSHAB

Educational and Outreach Programs

In conjunction and cooperation with the health and safety and workers' compensation community, DIR administers and participates in several major efforts to improve occupational health and safety through education and outreach programs.

Worker Occupational Safety and Health Training and Education Program

The Commission on Health and Safety and Workers' Compensation (CHSWC) is mandated by Labor Code Section 6354.7 to maintain the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The purpose of WOSHTEP is to promote injury and illness prevention programs. For further information about WOSHTEP and its activities, see the "Projects and Studies" section of this report.

School Action for Safety and Health

Per the mandate set forth in the Labor Code, CHSWC is to assist inner-city schools or any school or district in implementing effective occupational injury and illness prevention programs (IIPPs). CHSWC has established a model program, California's School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention programs. For further information about SASH and its activities, see the "Projects and Studies" section of this report.

The California Partnership for Young Worker Health and Safety

CHSWC has convened the California Partnership for Young Worker Health and Safety. The Partnership is a statewide task force that brings together government agencies and statewide organizations representing educators, employers, parents, job trainers and others. The Partnership develops and promotes strategies to protect youth at work and provides training, educational materials, technical assistance, and information and referrals to help educate young workers. See the "Projects and Studies" section of this report for further information about the Partnership.

Cal/OSHA Consultation

Consultative assistance is provided to employers through on-site visits, telephone support, publications and educational outreach. All services provided by Cal/OSHA Consultation are provided free of charge to California employers.

Partnership Programs

California has developed several programs that rely on industry, labor and government to work as partners in encouraging and recognizing workplace health and safety programs that effectively prevent and control injuries and illnesses to workers. These partnership programs include the Voluntary Protection Program (VPP), Golden State, SHARP, Golden Gate, and special alliances formed between industry, labor and OSHA.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Background

In California, approximately two-thirds of the total payroll in the State is covered for workers' compensation through insurance policies, while the remainder is through self-insurance. There are more than 200 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (State Fund).

The California Department of Insurance (CDI) oversees these insurers. To accomplish its principal objective of protecting insurance policyholders in the State, CDI examines insurance companies to ensure that operations are consistent with the requirements of the Insurance Code.

Minimum Rate Law and Open Rating

In 1993, workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it beginning in 1995 with an open-competition system of rate regulation in which insurers set their own rates based on "pure premium advisory rates" developed by the Workers' Compensation Insurance Rating Bureau (WCIRB). These rates, approved by the Insurance Commissioner (IC) and subject to annual adjustment, are based on historical loss data for more than 500 job categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates that are intended to cover other costs and expenses, including unallocated loss-adjustment expenses.

Insurance Market After Elimination of Minimum Rate Law

Subsequent to the repeal of the minimum rate law effective January 1995, changes were noted in the actions of insurers and employers.

Price Competition

Open rating apparently spurred competition among insurers seeking to retain or add to their market share. Some insurers attempted to increase their market share by writing coverage at low prices that eventually proved to be below loss costs. This deregulated market kept premium rates near their historic lows throughout the latter half of the 1990s, even though losses were no longer declining.

As the link between the price of insurance and loss costs became more and more tenuous, some insurers left the State, others ceased writing workers' compensation or were merged or acquired by other carriers, and still others, including several of the largest insurers in the State, became insolvent and had to be taken over or supervised by the State. As a result, the workers' compensation market became much more concentrated than in the past. Aside from State Fund, there were only a few large national carriers that accounted for the largest portion of the statewide premium.

Insurers Liquidated Since 2000

2000
- California Compensation Insurance Company
- Combined Benefits Insurance Company
- Commercial Compensation Casualty Insurance Company
- Credit General Indemnity Company
- LMI Insurance Company
- Superior National Insurance Company
- Superior Pacific Insurance Company

2001
- Credit General Insurance Company
- Great States Insurance Company
- HIH America Compensation & Liability Insurance Company
- Amwest Surety Insurance Company
- Sable Insurance Company
- Reliance Insurance Company
- Far West Insurance Company
- Frontier Pacific Insurance Company

2002
- PHICO
- National Auto Casualty Insurance Company
- Paula Insurance Company
- Alistar Insurance Company

2003
- Western Growers Insurance Company
- Legion Insurance Company
- Villanova Insurance Company
- Home Insurance Company
- Fremont Indemnity Corporation
- Wasatch Crest Insurance Co. (No WC policies)
- Pacific National Insurance Company

2004
- Protective National Insurance Company
- Holland-America Insurance Company
- Casualty Reciprocal Exchange

2005
- Cascade National Insurance Company/Washington
- South Carolina Insurance Company/South Carolina
- Consolidated American Insurance Company/South Carolina

Source: CIGA

Insurance Market Changes

Since 2000, a significant number of workers' compensation insurance companies have experienced problems with payment of workers' compensation claims. Thirty-nine (39) insurance companies have gone under liquidation, and 22 companies have withdrawn from offering workers' compensation insurance during that time. However, since 2004, 45 insurance/reinsurance companies have entered[55] the California workers' compensation market, while only 18 companies withdrew from the market.[56]

Changing Insurers

WCIRB estimated that before open rating, about 25 percent of California employers with experience modifications (Ex-mods) changed insurance carriers each year. After open rating, about 35 percent of the employers did so. However, in many post-open rating situations, employers had no choice but to change insurers, as the market had deteriorated to the point that many carriers, including several of the largest workers' compensation insurers in the State, ceased to exist or stopped writing workers' compensation in California.

Reinsurance

After open rating, many carriers shifted the risk of their workers' compensation claims to other insurance companies, some of which were inexperienced with the California workers' compensation insurance market. It was reported that many carriers used reinsurance aggressively in order to mitigate the risk of having to make large future payoffs. Some primary workers' compensation carriers offered extremely low rates that proved to be inadequate in the face of soaring losses. Some reinsurance companies also sold off their risk to other reinsurers in a process called "retrocession." During 1999, several major reinsurance pools experienced financial difficulty and ceased operations.

Impact of Recent Workers' Compensation Reforms on Insurance Companies

Workers' compensation reform legislation, Senate Bill (SB) 228, Assembly Bill (AB) 227 and SB 899, were enacted with the intent of controlling costs and improving the benefit-delivery process in the workers' compensation system.

In 2007, SB 316 eliminated a duplicative reserve requirement that was inadvertently not removed when risk-based capital requirements went into effect for workers' compensation insurers in 2002. That same bill also mandated a study by the Commission on Health and Safety and Workers' Compensation (CHSWC) of the causes of many of the insolvencies in this decade.

[55] Based on information provided by CDI on newly licensed workers' compensation insurance companies as of 04/30/2011

[56] The information on the companies that have withdrawn and entered the market since 2004 is through 04/30/2011.

(continued from previous page)

Insurers Liquidated Since 2000

2006
Vesta Fire Insurance Company
Hawaiian Insurance & Guaranty Company
Municipal Mutual Insurance Company

2010
Insurance Corporation of New York (The)

2011
Atlantic Mutual Insurance Co./New York
Centennial Insurance Company/New York
Reinsurance Company of America/ Illinois

Source: CIGA

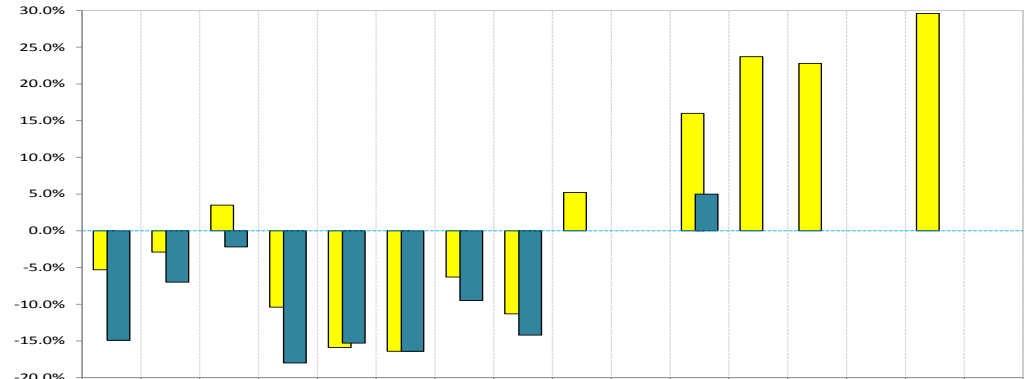
The study has been completed and includes recommendations to contain the risk of future insolvencies. (See "California's Volatile Workers' Compensation Insurance Market: Problems and Recommendations for Change.")
http://www.dir.ca.gov/chswc/Reports/2009/InsolvencyReport.pdf

Workers' Compensation Advisory Premium Rates

As a result of recent legislative reforms, WCIRB recommended changes and the IC approved either decreases or no changes in the pure premium advisory rates between January 2004 and January 2011, with the exception of the January 2009 filing.

On August 22, 2011, the WCIRB submitted its January 1, 2012 pure premium rate filing to the California Insurance Commissioner. The pure premium rates proposed in this filing are benchmarked to the average insurer filed pure premium rate. The average of 494 classification pure premium rates is $2.33 per $100 of payroll and 1.8 percent less than the corresponding average of insurer filed pure premium rates for July 1, 2011. On November 4, 2011, the Commissioner issued a decision approving new advisory pure premium rates effective January 1, 2012, which average $2.30 per $100 of payroll. (A history of pure premium rates since 1993 appears later in this section.)

Figure 127: Changes in Workers' Compensation Advisory Premium Rates - WCIRB Recommendation v. Insurance Commissioner Approval



	1/1/04	7/1/04	1/1/05	7/1/05	1/1/06	7/1/06	1/1/07	7/1/07	1/1/08	7/1/08*	1/1/09	7/1/09	1/1/10	7/1/10*	1/1/11	7/1/11*
WCIRB Recommendation	-5.3%	-2.9%	3.5%	-10.4%	-15.9%	-16.4%	-6.3%	-11.3%	5.2%		16%	23.7%	22.8%		29.6%	
Insurance Commissioner Approved	-14.9%	-7.0%	-2.2%	-18.0%	-15.3%	-16.4%	-9.5%	-14.2%	0%		5.0%	0.0%	0.0%		0.0%	

* WCIRB did not issue any recommendations for changes to pure premium rates effective 7/1/2008 , 7/1/2010, and 7/1/2011, and the IC did not issue the interim advisory rates for these periods.

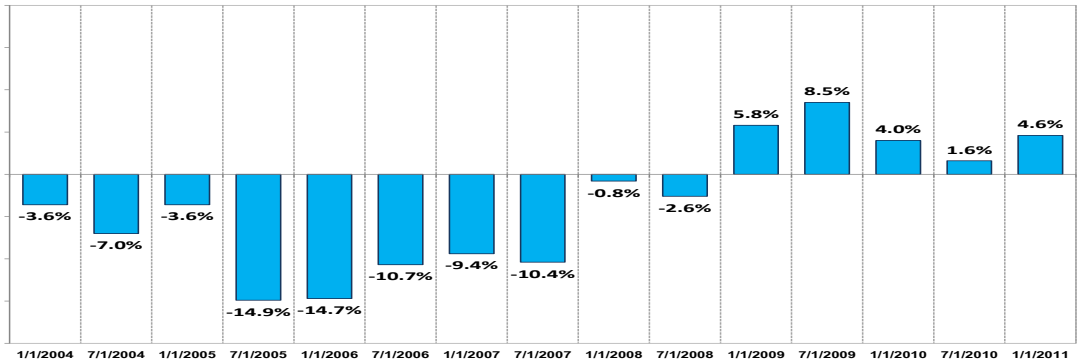
Note: On September 27, 2010, the WCIRB amended its January 1, 2011 filing to propose a change in the claims cost benchmark of +27.7 percent in lieu of the +29.6 percent reflected in its August 18, 2010 filing.

Data Source: WCIRB

California Workers' Compensation Filed Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the IC on advisory premium rates, workers' compensation insurers have reduced their average filed rates between 2004 and 2008, as indicated in the chart below. However, in 2009, average rates filed by insurers increased.

Figure 128: Average Workers' Compensation Rate Reductions Filed by Insurers



Data Source: California Department of Insurance (CDI)

California Workers' Compensation Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the IC on advisory claims cost benchmarks and pure premium rates, the top ten California workers' compensation insurers have reduced their filed rates as indicated in the chart below.

As of January 1, 2011, the cumulative premium weighted average rate reduction filed by insurers with the CDI since the reforms is approximately 44 percent for all writers including State Fund. There have been eight advisory pure premium rate reductions since the passage of AB 227 and SB 228, and individually stated, filed insurer rates were reduced 3.6 percent on January 1, 2004, 7.0 percent on July 1, 2004, 3.6 percent on January 1, 2005, 14.9 percent on July 1, 2005, 14.7 percent on January 1, 2006, 10.7 percent on July 1, 2006, 9.4 percent on January 1, 2007, and 10.4 percent on July 1, 2007. Insurer rates were further reduced by 0.8 percent on January 1, 2008, and 2.6 percent on July 1, 2008, at times when the advisory rates remained unchanged. For the first time since the reforms, the advisory pure premium rates were increased effective January 1, 2009, and filed insurer rates increased 5.8 percent. Filed insurer rates were further increased 8.5 percent on July 1, 2009, 4.0 percent on January 1, 2010, 1.6 percent on July 1, 2010, and 4.6 percent on January 1, 2011, also at times when the advisory rates remained unchanged.[57]

WCIRB reports that actual rates charged in the market place as of September 30, 2011, had fallen by approximately 63 percent since the enactment of AB 227, SB 228, and SB 899. The average rate per $100 of payroll fell from $6.29 in the second half of 2003 to $2.32 in 2010.[58]

Table 45: California Workers' Compensation Top 10 Insurers Rate Filing Changes

COMPANY NAME	GROUP NAME	Market Share 2010	*Cumulative Rate Change 1-04 to 1-11*	1-1-2011 % Filed Rate Change	1-1-2010 % Filed Rate Change	7-1-2009 % Filed Rate Change	1-1-2009 % Filed Rate Change
STATE COMPENSATION INSURANCE FUND		16.03%	*-39.70%*	*5.20%*	*5.00%*	15.00%	*8.90%*
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA	Travelers Group	6.08%	*-46.18%*	*5.10%*	*0.00%*	*13.00%*	*9.20%*
NATIONAL UNION FIRE INS COMPANY OF PITTS	AIG	3.00%	*-44.75%*	*8.00%*	*8.00%*	*7.00%*	*10.00%*
EVEREST NATIONAL INSURANCE COMPANY	Everest Re Group	2.99%	*-51.77%*	*5.50%*	*2.00%*	*5.00%*	*-3.20%*
ZENITH INSURANCE COMPANY	Fairfax Financial Gp	2.98%	*-29.63%*	*2.90%*	*2.70%*	*4.00%*	*4.00%*
ZURICH AMERICAN INSURANCE COMPANY	Zurich Ins Group	2.88%	*-52.69%*	*10.00%*	*1.70%*	*10.0%*	*5.80%*
EMPLOYERS COMPENSATION INSURANCE COMPANY	Employers Holdings Group	2.53%	*-51.92%*	*2.45%*	*3.00%*	*10.50%*	*10.00%*
STAR INSURANCE COMPANY	Meadowbrook Insurance Grp	2.46%	*-51.33%*	*7.60%*	*9.40%*	*1.90%*	*-27.10%*
CYPRESS INSURANCE COMPANY	Berkshire Hathaway Grp	2.13%	*-56.94%*	*1.10%*	*6.30%*	*10.30%*	*5.00%*
AMERICAN ZURICH INSURANCE COMPANY	Zurich Ins Group	2.04%	*-63.70%*	*10.00%*	*1.70%*	*10.00%*	*-14.60%*

[57] Source: California Department of Insurance, RFLA3 Rate Filing Bureau.
[58] Source: WCIRB Summary of September 30, 2011 Insurer Experience, released December 8, 2011, Exhibit 2.

Since the first reform package was chaptered, 54 new insurers have entered the market and existing private insurers have increased their writings. The significant rate reductions totaling 44 percent since the first reforms were enacted, coupled with the reduced market share of State Fund (53.0 percent at its peak in 2003, declining to 16 percent in 2010), point to the dramatic success of the cost containment reforms and a stabilizing market with increased capacity and greater rate competition. However, the estimated 2010 accident year combined loss and expense ratio of 130 percent[59] points to an erosion of the effectiveness of the cost containment reforms over time.[60]

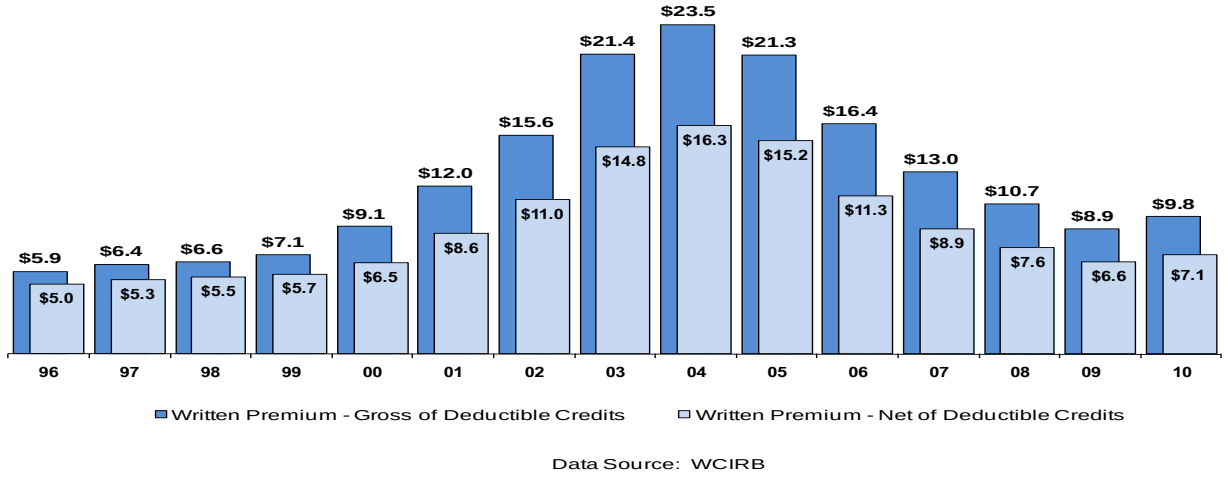
Workers' Compensation Premium

After elimination of the minimum rate law, the total written premium declined from a high of $8.9 billion in 1993 to a low of $5.7 billion ($5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth, movement from self-insurance to insurance, and other factors, rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the decade.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The total written premium has increased by 37 percent to $21.4 billion from 2002 to 2003 and increased by about 10 percent to a peak of $23.5 billion from 2003 to 2004. The written premium declined by 62 percent from $23.5 billion to $8.9 billion between 2004 and 2009 due to rate decreases. From 2009 to 2010, there was a 10 percent increase in written premium.

The chart below shows the California workers' compensation written premium before and after the application of deductible credits. Note that these amounts are exclusive of dividends.

Figure 129: Workers' Compensation Written Premium as of September 30, 2011 (Billion $)



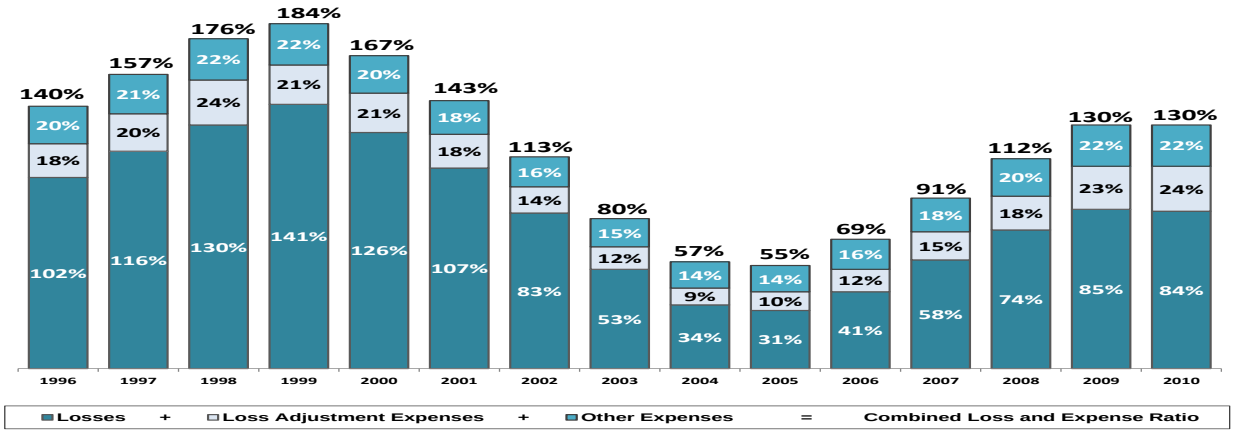
[59] Source: WCIRB Summary of September 30, 2011 Insurer Experience, released December 8, 2011.
[60] Source: California Department of Insurance, RFLA3 Rate Filing Bureau

Combined Loss and Expense Ratio

The accident year combined loss and expense ratio, which measures workers' compensation claims payments and administrative expenses against earned premium, increased during the late 1990s, declined from 1999 through 2005, and increased annually from 2005 to 2009. There was no change in combined loss and expense ratio from 2009 to 2010.

In accident year 2010, insurers' claim costs and expenses amounted to $1.30 for every dollar of premium collected.

Figure 130: California Workers' Compensation Combined Loss and Expense Ratios (as of September 30, 2011)



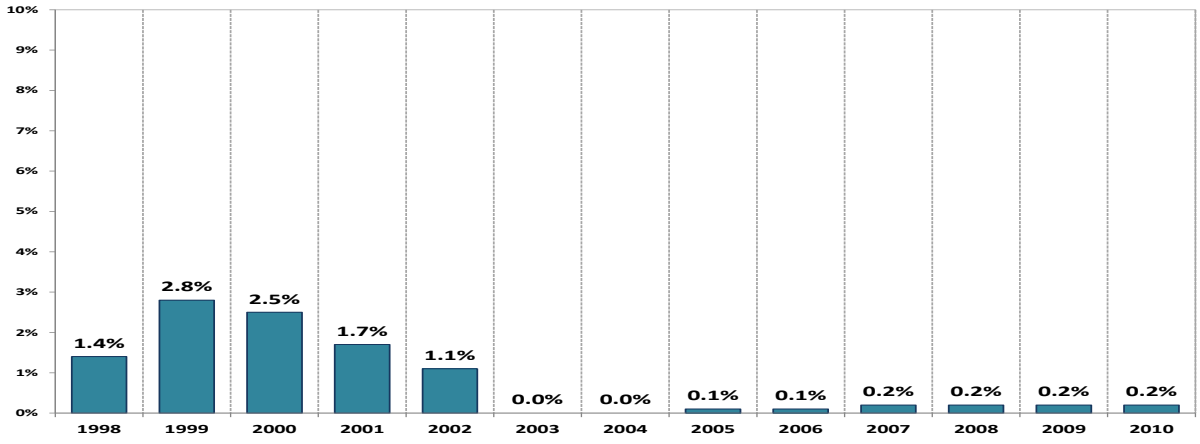
Data Source: WCIRB

WCIRB estimates that the total cost of benefits for injuries occurring prior to January 1, 2011, is approximately $2.7 billion less than insurer-reported loss amounts.

Policy Holder Dividends

Dividends paid to policyholders increased slightly from 1998 to 1999, were less than 3 percent from 1997 to 2002, were not paid at all in 2003 and 2004, and then were reinstated from 2005 through 2010 at a very low rate.

Figure 131: Insurer Policy Holder Dividends as a Percentage of Earned Premiums (by Calendar Year)



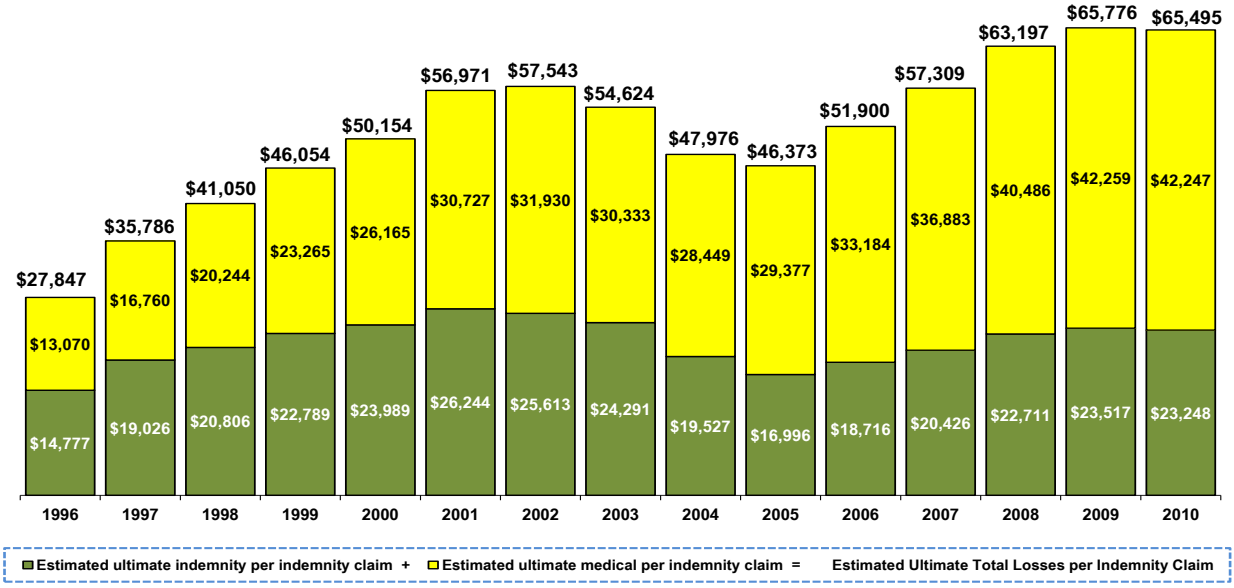
Data Source: WCIRB

Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply during the late 1990s.

The total average cost of indemnity claims more than doubled from 1996 to 2002 and then decreased by 19.4 percent from 2002 to 2005, reflecting the impact of AB 227, SB 228 and SB 899. However, the total indemnity and medical average costs per claim increased by about 42 percent between 2005 and 2009. In 2010, the total indemnity and medical average costs per claim stayed at the 2009 level. It should be noted that both the 2010 indemnity and medical average severities showed no change from their 2009 levels.[61] WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

Figure 132: Estimated Ultimate Total Loss* per Indemnity Claim as of September 30, 2011



* Excludes medical-only

Source: WCIRB

[61] Source: WCIRB Summary of September 30, 2011 Insurer Experience, released December 8, 2011, Exhibits 8.2 and 8.3.

Insurer Profit/Loss

Workers' compensation insurers experienced large fluctuations in profits and losses during the past decade, as measured by actual dollars and percentage of earned premium. Since the reforms of 2004, insurer underwriting profits have been uncharacteristically high. Investment income typically was the main source of insurer profits, but underwriting profits from policies have been a recent development. In 2008, workers' compensation insurers experienced losses for the first time since 2004, and both in 2009 and 2010, the insurer underwriting loss was 16 percent of earned premium.

Figure 133: Insurer Pre-Tax Underwriting Profit/Loss, 1998-2010
(Million $)

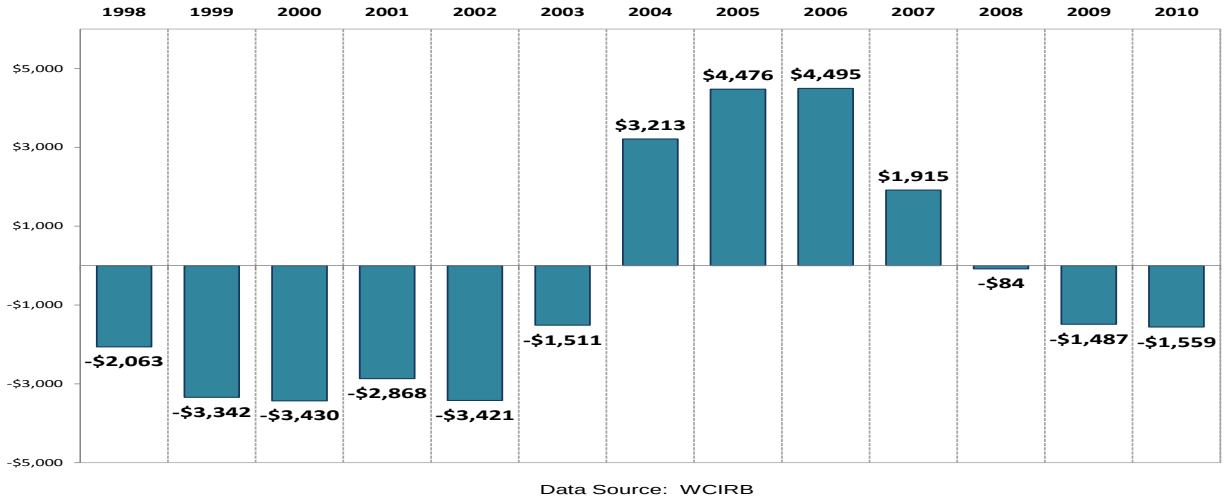
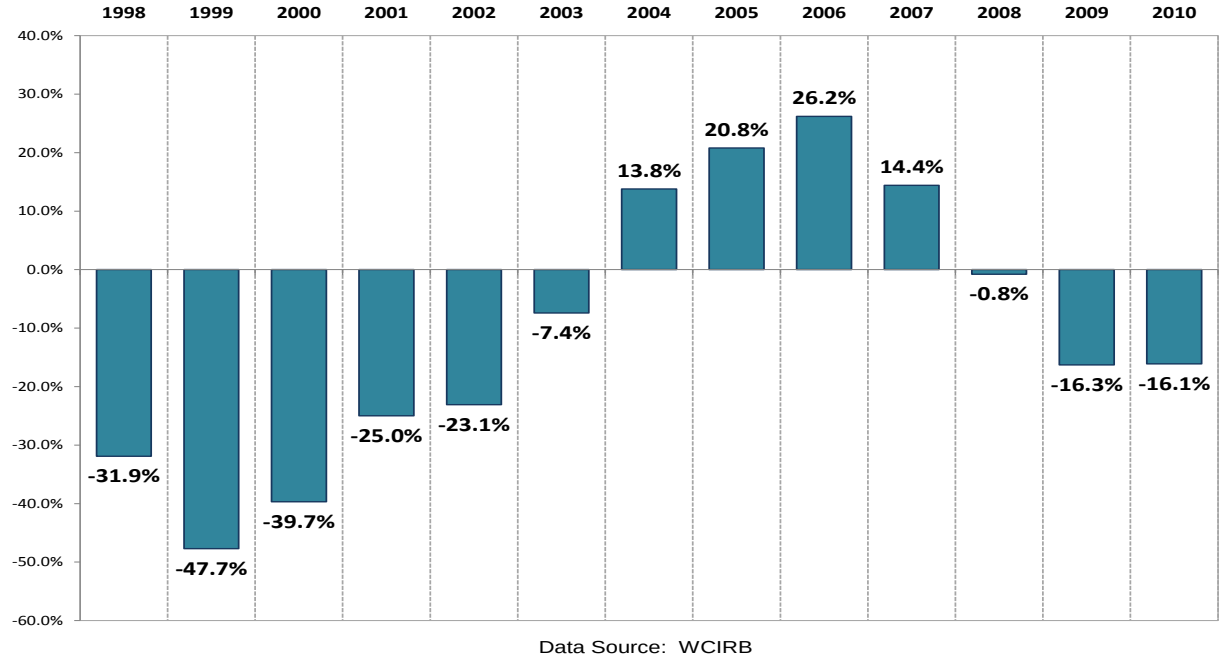


Figure 134: Insurer Pre-Tax Underwriting Profit/Loss as a Percentage of Earned Premium, 1998–2010



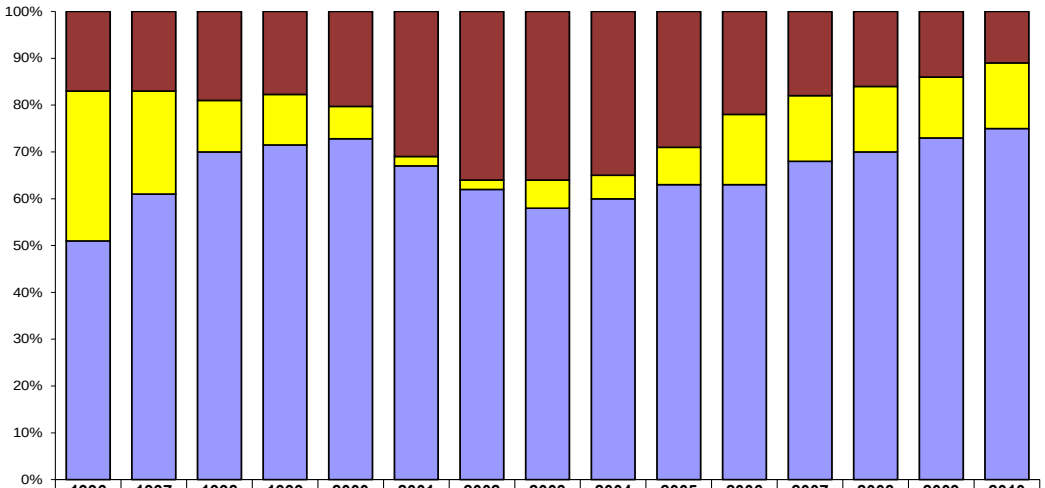
Current State of the Insurance Industry

Market Share

A number of California insurers left the market or reduced their writings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993. The chart below shows changes in the workers' compensation insurance market share from 1996 to 2010.

According to WCIRB, from 2002 through 2004, State Fund attained about 35 percent of the California workers' compensation insurance market, double the market share it had in the 1990s. However, between 2004 and 2010, State Fund's market share decreased to 11 percent. The market share of California domestic insurers, excluding State Fund, increased from 5 percent to 15 percent between 2004 and 2006 and then averaged about 14 percent from 2006 to 2010.

Figure 135: Workers' Compensation Insurance Market Share in California by Type of Insurer Based on Written Premium Prior to Deductible Credits



	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
State Fund	17%	17%	19%	18%	20%	31%	36%	36%	35%	29%	22%	18%	16%	14%	11%
California Insurers	32%	22%	11%	11%	7%	2%	2%	6%	5%	8%	15%	14%	14%	13%	14%
National Insurers	51%	61%	70%	71%	73%	67%	62%	58%	60%	63%	63%	68%	70%	73%	75%

Source: WCIRB

Please note that totals may not equal 100% due to rounding.

"California Insurers" are difined as private insurers who write at least 80% of their workers' compensation business in California

September 11, 2001 Impact on Insurance Industry

The problems in the reinsurance market caused by the events of September 11, 2001, have significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, have a significant effect on the cost of workers' compensation insurance. This effect extends to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace. The insurance industry has remained concerned about the renewal of the Terrorism Risk Insurance Act, often known as TRIA, which was reauthorized in 2007 to extend to December 2014.

Advisory Workers' Compensation Pure Premium Rates
A History Since the 1993 Reform Legislation

1993

Insurance Commissioner action:

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

1994

WCIRB recommendation:

No change in pure premium rates.

Insurance Commissioner action:

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

1995

WCIRB recommendation:

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

Insurance Commissioner action:

A total of 18 percent decrease to the premium rates in effect on January 1, 1994, approved effective January 1, 1995 (including the already approved 16 percent decrease effective October 1, 1994).

1996

WCIRB recommendation:

An 18.7 percent increase in pure premium rates.

Insurance Commissioner action:

An 11.3 percent increase effective January 1, 1996.

1997

WCIRB recommendation:

A 2.6 percent decrease in pure premium rates.

Insurance Commissioner action:

A 6.2 percent decrease effective January 1, 1997.

1998

WCIRB recommendation:

The initial recommendation for a 1.4 percent decrease was later amended to a 0.5 percent increase.

Insurance Commissioner action:

A 2.5 percent decrease effective January 1, 1998.

1999

WCIRB recommendation:

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

Insurance Commissioner action:

No change in pure premium rates in 1999.

Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation

2000

WCIRB recommendation:

An 18.4 percent increase in the pure premium rate for 2000.

Insurance Commissioner action:

An 18.4 percent increase effective January 1, 2000.

2001

WCIRB recommendations:

The WCIRB initial recommendation of a 5.5 percent increase in the pure premium rate was later amended to a recommendation for a 10.1 percent increase.

Insurance Commissioner action:

A 10.1 percent increase effective January 1, 2001.

January 1, 2002

WCIRB recommendations:

The WCIRB initial recommendation of a 9 percent increase in the pure premium rate was later amended to a recommendation for a 10.2 percent increase effective January 1, 2002.

Insurance Commissioner action:

The Insurance Commissioner approved a 10.2 percent increase effective January 1, 2002.

April 1, 2002

WCIRB recommendations:

On January 16, 2002, the WCIRB submitted recommended changes to the California Workers' Compensation Uniform Statistical Reporting Plan – 1995, effective March 1, 2002 and the California Workers' Compensation Experience Rating Plan – 1995, effective April 1, 2002, related to insolvent insurers and losses associated with the September 11, 2001, terrorist actions. No increase in advisory premium rates was proposed.

Insurance Commissioner action:

The Insurance Commissioner approved the WCIRB's requests effective April 1, 2002.

July 1, 2002

WCIRB recommendation:

The WCIRB filed a mid-term recommendation that pure premium rates be increased by 10.1 percent effective July 1, 2002, for new and renewal policies with anniversary rating dates on or after July 1, 2002.

Insurance Commissioner action:

On May 20, 2002, the Insurance Commissioner approved a mid-term increase of 10.1 percent effective July 1, 2002.

January 1, 2003

WCIRB recommendations:

On July 31, 2002, the WCIRB proposed an average increase in pure premium rates of 11.9 percent for 2003. On September 16, 2002, the WCIRB amended the proposed 2003 pure premium rates submitted to the California Department of Insurance (CDI). Based on updated loss experience valued as of June 30, 2002, the WCIRB proposed an average increase of 13.4 percent in pure premium rates to be effective on January 1, 2003, and later policies.

Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation

January 1, 2003

Insurance Commissioner action:

On October 18, 2002, the Insurance Commissioner approved a 10.5 percent increase in pure premium rates applicable to policies with anniversary rating dates in 2003. This increase takes into account the increases in workers' compensation benefits enacted by AB 749 for 2003.

July 1, 2003

WCIRB recommendation:

The WCIRB filed a mid-term recommendation on April 2, 2003, that pure premium rates be increased by 10.6 percent effective July 1, 2003, for policies with anniversary dates on or after July 1, 2003.

Insurance Commissioner action:

The Insurance Commissioner approved a 7.2 percent increase in pure premium rates applicable to new and renewal policies with anniversary rating dates on or after July 1, 2003.

January 1, 2004

WCIRB recommendations:

On July 30, 2003, the WCIRB proposed an average increase in advisory pure premium rates of 12.0 percent to be effective on January 1, 2004, for new and renewal policies with anniversary rating dates on or after January 1, 2004.

The original WCIRB filing of an average increase of 12 percent on July 30, 2003, was later amended on September 29, 2003, to an average decrease of 2.9 percent to reflect the WCIRB's initial evaluation of AB 227 and SB 228.

In an amended filing made on November 3, 2003, the WCIRB recommended that pure premium rates be reduced, on average, from 2.9 percent to 5.3 percent.

Insurance Commissioner action:

On November 7, 2003, the Insurance Commissioner approved a 14.9 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2004.

July 1, 2004

WCIRB recommendation:

On May 13, 2004, the WCIRB proposed advisory pure premium rates that are a 2.9 percent decrease from the January 1, 2004, approved pure premium rates. These rates reflect the WCIRB's analysis of the impact of provisions of SB 899 on advisory pure premium rates.

Insurance Commissioner action:

In a decision issued May 28, 2004, the Insurance Commissioner approved a 7.0 percent decrease in pure premium rates, effective July 1, 2004, with respect to new and renewal policies, as compared to the approved January 1, 2004, pure premium rates.

January 1, 2005

WCIRB recommendation:

On July 28, 2004, the WCIRB proposed advisory premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005, that are, on average, 3.5 percent greater than the July 1, 2004, advisory pure premium rates approved by the Insurance Commissioner.

Insurance Commissioner action:

In a decision issued November 17, 2004, the Insurance Commissioner approved a total 2.2 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005.

Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation

July 1, 2005

WCIRB recommendations:

On March 25, 2005, the WCIRB submitted a filing to the California Insurance Commissioner recommending a 10.4 percent decrease in advisory pure premium rates effective July 1, 2005, on new and renewal policies.

On May 19, 2005, in recognition of the cost impact of the new Permanent Disability Rating Schedule adopted pursuant to SB 899, the WCIRB amended its recommendation. In lieu of the 10.4 percent reduction originally proposed in March, the WCIRB recommended a 13.8 percent reduction in pure premium rates effective July 1, 2005. In addition, the WCIRB recommended a 3.8 percent reduction in the pure premium rates effective July 1, 2005, with respect to the outstanding portion of policies incepting January 1, 2005, through June 30, 2005.

Insurance Commissioner action:

On May 31, 2005, the Insurance Commissioner approved an 18 percent decrease in advisory pure premium rates effective July 1, 2005, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2005. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to $23,288. The Insurance Commissioner also approved a 7.9 percent decrease in pure premium rates, effective July 1, 2005, applicable to policies that are outstanding as of July 1, 2005. The reduction in pure premium rates applicable to these policies reflects the estimated impact on the cost of benefits of the new Permanent Disability Rating Schedule.

January 1, 2006

WCIRB recommendations:

On July 28, 2005, the WCIRB submitted to the California Insurance Commissioner a proposed 5.2 percent average decrease in advisory pure premium rates as well as changes to the California Workers' Compensation Uniform Statistical Reporting Plan -1995 and the California Workers' Compensation Experience Rating Plan - 1995.

On September 15, 2005, the WCIRB amended its filing to propose an average 15.9 percent decrease in pure premium rates based on insurer loss experience valued as of June 30, 2005, and a re-evaluation of the cost impact of the January 1, 2005 Permanent Disability Rating Schedule.

Insurance Commissioner action:

On November 10, 2005, the Insurance Commissioner approved an average 15.3 percent decrease in advisory pure premium rates effective January 1, 2006, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2006. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to $20,300.

July 1, 2006

WCIRB recommendations:

On March 24, 2006, the WCIRB submitted a rate filing to the California Department of Insurance recommending a 16.4 percent decrease in advisory pure premium rates to be effective on policies incepting on or after July 1, 2006. The recommended decrease in pure premium rates is based on an analysis of loss experience valued as of December 31, 2005. The WCIRB filing also includes an amendment to the California Workers' Compensation Experience Rating Plan-1995, effective July 1, 2006, to adjust the experience rating eligibility threshold to reflect the proposed change in pure premium rates. A public hearing on the matters contained in the WCIRB's filing was held April 27, 2006.

Insurance Commissioner action:

On May 31, 2006, the Insurance Commissioner approved a 16.4 percent decrease in advisory pure premium rates effective July 1, 2006, applicable to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2006. In addition, the experience rating eligibility threshold was reduced to $16,971 to reflect the decrease in pure premium rates.

Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation

January 1, 2007

WCIRB recommendation:

On October 10, 2006, the WCIRB recommended a 6.3 percent decrease in advisory pure premium rates decrease for California policies incepting January 1, 2007.

Insurance Commissioner action:

On November 2, 2006, the Insurance Commissioner approved an average 9.5 percent decrease in advisory pure premium rates effective January 1, 2007, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2007. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to $16,000.

July 1, 2007

WCIRB recommendation:

On March 30, 2007, the WCIRB recommended an 11.3 percent decrease in advisory pure premium rates for California to be effective on policies incepting on or after July 1, 2007.

Insurance Commissioner action:

On May 29, 2007, the Insurance Commissioner approved an average 14.2 percent decrease in advisory pure premium rates effective July 1, 2007, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2007. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to $13,728.

January 1, 2008

WCIRB recommendations:

On September 23, 2007, the WCIRB recommended 4.2 percent increase in advisory pure premium rates for California to be effective on policies incepting on or after January 1, 2008.

On October 13, 2007, the Governor signed Assembly Bill (AB) 338 which extends the time period for which temporary disability payments may be taken. On October 19, 2007, the WCIRB amended its January 1, 2008 pure premium rate filing to propose an overall 5.2 percent increase in pure premium rates in lieu of 4.2 percent to incorporate the impact of AB 338.

Insurance Commissioner action:

On November 28, 2007, the Insurance Commissioner approved no overall change to the advisory pure premium rates effective January 1, 2008.

July 1, 2008

WCIRB recommendation:

On March 26, 2008, accepting a recommendation made by the WCIRB Actuarial Committee, the WCIRB Governing Committee decided that the WCIRB would not propose a change in advisory pure premium rates for California to be effective on policies incepting on or after July 1, 2008.

Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation

January 1, 2009

WCIRB recommendations:

On August 13, 2008, the WCIRB recommended a 16 percent increase in advisory pure premium rates for California to be effective on policies incepting on or after January 1, 2009. See the WCIRB website below for further details and updates to this information.

At its September 10, 2008 meeting, the Governing Committee agreed that the WCIRB's January 1, 2009 pure premium rate filing should be amended to reflect the most recent accident year experience valued as of June 30, 2008, as well as a revised loss development methodology. The original filing should be supplemented to include a recommendation that the proposed January 1, 2009 pure premium rates be adjusted to reflect (a) the impact of the Division of Workers' Compensation proposed changes to the Permanent Disability Rating Schedule (+3.7%) if adopted as proposed and (b) the impact of SB 1717 (+9.3%) if signed into law by the Governor.

Insurance Commissioner action:

On October 24, 2008, the Insurance Commissioner approved a 5 percent increase in pure premium rates effective January 1, 2009, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2009.

July 1, 2009

WCIRB recommendations:

On March 27, 2009, WCIRB recommended a 24.4 percent increase in advisory pure premium rates for California to be effective on policies incepting on or after July 1, 2009.

WCIRB amended its filing on April 23, 2009, to reflect the revised aggregate financial data calls recently submitted by an insurer to WCIRB. These revisions reduced the indicated July 1, 2009, increase in the claims cost benchmark from 24.4 percent to 23.7 percent.

Insurance Commissioner action:

On July 8, 2009, the Insurance Commissioner approved no change to the pure premium rates effective July 1, 2009, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2009.

January 1, 2010

WCIRB recommendation:

On August 18, 2009, the WCIRB submitted a pure premium rate filing to the California Insurance Commissioner recommending a 22.8 percent increase in advisory pure premium rates with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2010.

Insurance Commissioner action:

On November 9, 2009, the Insurance Commissioner approved no change to the pure premium rates effective January 1, 2010, applicable to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2010.

Advisory Workers' Compensation Pure Premium Rates

A History since the 1993 Reform Legislation

July 1, 2010

WCIRB recommendations:

On April 7, 2010, WCIRB voted not to submit a pure premium rate filing for July 1, 2010. The WCIRB's analysis of pure premium and loss experience valued as of December 31, 2009, showed that the indicated July 1, 2010 change in pure premium rates was essentially unchanged from the indication reflected in the January 1, 2010 filing.

Insurance Commissioner action:

The Insurance Commissioner did not issue the interim advisory rate for this period.

January 1, 2011

WCIRB recommendation:

On August 18, 2010, the WCIRB submitted a pure premium rate filing to the California Insurance Commissioner recommending a 29.6 percent increase in advisory pure premium rates with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011. On September 27, 2010, the WCIRB amended its January 1, 2011 filing to propose a change in the claims cost benchmark of +27.7 percent in lieu of the +29.6 percent reflected in its August 18, 2010 filing.

Insurance Commissioner action:

On November 18, 2010, the Insurance Commissioner approved no change to the pure premium rates effective January 1, 2011, applicable to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011. Other proposed changes to the USRP, ERP and Miscellaneous Regulations were approved as filed with the exception that the experience rating eligibility was increased to $16,700 to reflect the 0 percent approved change in the Claims Cost Benchmark.

July 1, 2011

WCIRB recommendations:

On May 19, 2011, the WCIRB decided not to submit a pure premium rate filing for July 1, 2011. The WCIRB noted that a decision on a mid-year filing would likely not be available prior to the WCIRB's upcoming January 1, 2012 Advisory Pure Premium Rate Filing in mid-August and two pending filings with the CDI had the potential to create a confusion.

Insurance Commissioner action:

The Insurance Commissioner did not issue the interim advisory rate for this period.

Advisory Workers' Compensation Premium Rates

A History since the 1993 Reform Legislation

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January 1, 2012

WCIRB recommendations:

On August 22, 2011, the WCIRB submitted its January 1, 2012 pure premium rate filing to the California Insurance Commissioner. The pure premium rates proposed in this filing are benchmarked to the average insurer filed pure premium rate. The average of 494 classification pure premium rates is $2.33 per $100 of payroll and 1.8 percent less than the corresponding average of insurer filed pure premium rates for July 1, 2011.

Insurance Commissioner action:

On November 4, 2011, the Commissioner issued a decision approving new advisory pure premium rates effective January 1, 2012, that average $2.30 per $100 of payroll.

https://wcirbonline.org/resources/rate_filings/current_rate_filings.html

Source: WCIRB

SPECIAL REPORT: PERMANENT DISABILITY UPDATE

Introduction

In past years, the Commission on Health and Safety and Workers' Compensation (CHSWC) Annual Report has contained a section entitled "Special Report: Permanent Disability Rating Compensation." Readers may find the report beginning at page 189 of the 2009 Annual Report, available at http://www.dir.ca.gov/chswc/Reports/CHSWC_AnnuualReport2009.pdf. The body of research and the policy issues have changed little, so the 2009 "Special Report: Permanent Disability Rating Compensation" will not be restated here. Instead, this report will highlight recent developments. The major developments have been in judicial interpretation of the statutes governing permanent disability (PD) rating, trends in rating behavior, and research on return to work.

Judicial Interpretations

Labor Code Section 4660 as amended by Senate Bill (SB) 899 in 2004 required certain revisions of the permanent disability rating schedule (PDRS). The PDRS that took effect on 1/1/2005 provides ratings based on impairment evaluations according to the American Medical Association *Guides to the Evaluation of Permanent Impairment,* 5th edition (AMA *Guides*) and an adjustment for diminished future earning capacity (FEC factor) corresponding to each type of injury. The Labor Code also provides that the rating schedule shall be prima facie evidence of the percentage of PD attributed to each injury. Prima facie evidence can support a decision, but it can also be rebutted. When and how the 2005 PDRS could be rebutted remained unanswered for four years after it was adopted.

In 2009, the Workers' Compensation Appeals Board (WCAB) issued decisions setting out the rationale and parameters for individual cases to deviate from a strict interpretation of the AMA *Guides* and for individual cases to rebut the prescribed FEC factor. The cases were *Almaraz v. Environmental Recovery Services and State Compensation Insurance Fund*, *Guzman v. Milpitas Unified School District,* and *Ogilvie v City and County of San Francisco*. The *Almaraz/Guzman* and *Ogilvie* decisions, as they came to be known, were initially issued on February 3, 2009, and subsequently revised after further reconsideration on September 3, 2009.

In a joint decision in the *Almaraz* and *Guzman* cases, the Appeals Board allowed an evaluating physician to use "any chapter, table, or method in the AMA *Guides* that most accurately reflects the injured employee's impairment." The Appeals Board's ruling was upheld by the Court of Appeals in *Milpitas Unified School Dist. V. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal. App 4th 808, and the Supreme Court has denied review.

In *Ogilvie*, the Appeals Board allowed an individual's FEC factor to be calculated from the individual's post-injury earnings loss and impairment rating in lieu of the FEC factor prescribed by the 2005 PDRS. The Appeals Board's ruling was overturned by the Court of Appeals in *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 76 Cal. Comp Cases 624. The Court of Appeals held that Labor Code Section 4660 "provides no indication that some other measure may be substituted for the earning capacity component [in the rating schedule] in order to arrive at an overall rating most suitable for a particular employee." Although there is some uncertainty about the remaining avenues to rebut the scheduled FEC factor, and the employer in the case unsuccessfully sought review by the Supreme Court on that point, it is generally accepted that the Court of Appeals decision substantially limits the opportunities for rebutting the scheduled FEC factor.

The California Workers' Compensation Insurance Rating Bureau (WCIRB) initially estimated the impact of *Almaraz/Guzman* and *Ogilvie* as a 5.8 percent increase in compensation costs, and experience to date seems to be consistent with that estimate. It remains to be seen what the impact will be as practitioners become more familiar with the methods of rating PD allowed by these decisions.

Ratings Trend

A more widespread but less dramatic way in which compensation is being increased on a case-by-case basis is the trend in disability ratings. According to CHSWC research by the RAND Institute for Civil Justice, the average rating under the 2005 PDRS was about 15 percent when the new rating schedule was first adopted, but after about 18 months, it began a consistent upward trend so that the average rating is over 20 percent by the beginning of 2010. In the 18 months ending June 30, 2011, the average rating in unrepresented cases was 13.3 percent and in represented cases 26.5 percent, a difference which can be explained in part by the likelihood of a worker choosing to become represented if the injury is more severe and in part by the product of the attorney representation.

Wage Loss and Return to Work

New research also bears on the public policy issues surrounding PD compensation. A CHSWC study by RAND has found that return-to-work rates for injured workers have been improving after reaching a low point for injuries occurring in 2003. This improvement means that the earnings losses associated with lost-time injuries are also improving. Soon after the adoption of the 2005 PDRS, it was hypothesized that improved return to work would offset some of the reduction in PD compensation. (See the 2009 "Special Report: Permanent Disability Rating Compensation" for earlier research and for details on how compensation has been reduced.) Current research by RAND[62] demonstrates that improved return to work only partially offsets the reduced compensation, and the overall replacement rate (the percentage of earnings loss that is replaced by compensation benefits) is significantly reduced compared to pre-reform levels.

Status of Permanent Disability Policy Deliberations

The 2005 PDRS was due for revision by January 1, 2010. The Acting Administrative Director (AD) of the Division of Workers' Compensation (DWC) proposed such a revision and initiated the rulemaking process in May 2008. That process was never completed, and the 2005 PDRS has not been revised. The tension between adequacy of compensation and affordability of coverage remains unresolved. Future efforts to deal with these policy issues may be undertaken in light of the more recent insights into the performance of the PD rating system and potential savings that could be applied to offset the cost of increased PD compensation.

[62] Seabury, et al, "Workers' Compensation Reform and Return to Work: The California Experience" RAND, 2011.

SPECIAL REPORT: WORKERS' COMPENSATION REFORM AND RETURN TO WORK: THE CALIFORNIA EXPERIENCE

Introduction

Promoting the early and sustained return to work of injured and disabled workers is an important goal of state workers' compensation systems. Return to work benefits workers by reducing the adverse economic consequences of an injury, and it benefits employers by reducing disability benefits and other costs. In California, workers who are permanently disabled as a result of a workplace injury have been found to have poor return-to-work rates on average. The poor return-to-work rates meant that permanently disabled workers in California had worse economic outcomes, even though the workers' compensation costs for California employers were among the highest in the country.

Evidence on the poor adequacy and poor affordability of permanent partial disability (PPD) benefits was a key factor in the multiple reform efforts to workers' compensation in California in early 2000s. The notion that improving return to work could make the system more affordable while also improving the adequacy of benefits motivated many of the reforms to the California workers' compensation system. This report discusses how these reforms affected return to work and the adequacy of benefits for disabled workers in the California workers' compensation system.

Background and Legislative History

In order to understand the role of workers' compensation reforms on the rates of return to work by injured and disabled workers in California and the implications for the adequacy of disability benefits, the Commission on Health and Safety and Workers' Compensation (CHSWC) study by RAND addressed the following broad set of research questions:

- How do public policies, both within and outside the workers' compensation system, influence return to work?
- How have these policies changed in California over the past ten years?
- How have rates of return to work by injured and disabled workers in California changed in the past ten years?
- What has been the impact of reforms in the workers' compensation system on benefit adequacy for injured and disabled workers? How, if at all, have changes in benefit adequacy been influenced by changes in return to work?

The study classifies return-to-work policy efforts into three broad categories: medical management; incentive-based approaches; and accommodation-based approaches. The medical management approaches attempt to improve return to work by improving the quality and timely receipt of medical care or by improved coordination and communication with medical providers. Some reforms that target this involve the assignment of control of provider choice, or the direct regulation of care through utilization review or treatment guidelines. The incentive-based approaches use financial rewards (or punishments) to influence the behavior of employers or the workers themselves, often by manipulating disability benefits based on return-to-work status. Finally, accommodation-based methods alter the requirements of the job, either the schedule or the tasks required or the physical environment, in order to make it easier for a disabled worker to perform the necessary tasks. Some states adopt subsidies to accommodations in order to improve employment for disabled workers.

From 2001-2004, California adopted reforms that impacted all three of these approaches to improve return to work. In 2003, Senate Bill (SB) 228 made massive changes to medical treatment delivery for workers' compensation cases, including the adoption of utilization review based on treatment guidelines

and caps on certain therapies. In 2004, SB 899 enacted a two-tier permanent disability benefit that requires employers to pay 15 percent higher benefits when they make no offer of return to work and 15 percent lower benefits when an offer is made. The State also made significant changes to the vocational rehabilitation services offered, switching to a voucher program. There were important changes outside of the workers' compensation system as well. In 2001, the State reformed the Fair Employment and Housing Act (FEHA), which protects the disabled from discrimination by their employers, in such a way that potentially penalizes employers who fail to offer "reasonable" accommodations to workers disabled due to a workplace injury. Any or all of these could have affected return to work.

In addition to the two-tiered benefit adopted in 2004, the State also dramatically reformed the evaluation system for permanent disabilities. One effect of this reform is that permanent disability benefits were cut substantially. A cut in disability benefits would reduce the overall level of income replacement (defined as the fraction of lost wages replaced by benefits) for injured workers, unless return to work improved and reduced earnings losses enough to offset the decline in benefits. The study combines administrative data on workers' compensation benefits and earnings of injured and disabled workers in order to estimate how return to work changed after the reforms and to evaluate the net impact on the replacement of lost income.

Findings

The findings of the study include:

- The study conducted a survey of employers that suggests both large and small employers are keenly aware of return-to-work issues and have taken steps to improve return to work. Their answers suggest that workers' compensation costs play a key role in determining their return-to-work decisions.

- The survey also examined how the workers' compensation reforms and the changes to FEHA impacted decisions to accommodate disabled workers in workers' compensation cases. About 40 percent of employers identified both the workers' compensation reforms and changes to FEHA as important factors in return-to-work decisions. These survey findings confirm that policies both within and outside the workers' compensation system are potentially important tools for influencing return to work.

- The empirical findings suggest that return to work improved dramatically in California during the study period. Workers injured in 2003-2006 were significantly more likely to be working one or two years after an injury than workers injured in 2000-2002. Overall employment and employment for the at-injury employer showed improvement. Some of the biggest gains in return to work were observed for the most severely disabled workers.

- The study notes that pinpointing exactly why return to work improved so much is a challenge. According to this study, return to work was improving even before SB 899 reforms were adopted. Workers injured in 2003 and 2004 were not eligible for the tiered benefit, rendering it unlikely to be a driving factor behind the observed trend. At the same time, the study finds modest evidence that the tiered benefit improved return to work for workers employed at medium-sized firms. The findings also cast doubt on the effectiveness of the old vocational rehabilitation system in California in terms of improving employment outcomes for injured workers. The results suggest that the biggest gains in employment for injured workers came from workers who were most likely to participate in the vocational rehabilitation system. This does not necessarily mean that the system had no positive effect on return to work, but it suggests that any such effects were minor. The timing of the return-to-work gains suggests that the changes to FEHA, the medical treatment reforms, or the general activities by employers to improve return to work in response to rising costs might have been important factors.

- Examination of the reforms on the income replacement provided to injured workers indicated that the impact was striking. Indemnity benefits fell dramatically, and most of the decline was experienced by workers with permanent disabilities. Part of the decline experienced by workers

with permanent disabilities was due to the changes to the disability rating schedule, and part was due to the repeal of the vocational rehabilitation system. The reforms also appear to have led to a decline in the fraction of workers who receive permanent disability benefits.

- The decline in indemnity benefits led to a decline in the average replacement rate of lost income. Replacement rates fell about 26 percent on average. The gains in return to work helped offset some of the declines, but not all. Estimates are that if return to work had stayed at its lowest point, replacement rates would have fallen 15 percent more than they ultimately did.

- Declines in replacement rates were experienced most profoundly by the most severely disabled workers. This is despite the fact that the most severely disabled workers experienced the biggest gains in return to work. It is also noteworthy that replacement rates for these workers fell the most, even though SB 899 specifically raised benefits for workers with more severe disabilities and lowered them for workers with less severe disabilities (as measured by the disability rating system). Given the changes to the rating system, however, very few individuals are so severely disabled as to qualify for the higher disability benefits. Additionally, the most severely disabled were more likely to have qualified for vocational rehabilitation benefits.

- Some have argued that there has been an upward trend in physician disability ratings, which tie directly to permanent disability benefits. The study reviewed whether there was a significant increase in disability ratings from 2006-2009. There was some evidence of an increase, with permanent disability ratings rising about 8-10 percent per year from 2007-2009. This offsets about a third of the decline in the level of permanent disability awards that workers are eligible for, with a decline of 40 percent from 2004 as opposed to the 60 percent that was observed immediately after adoption of the new schedule.

Recommendations

CHSWC recommendations include:

- Despite the improvements in return to work, the study finds that the level of income replacement provided to disabled workers fell significantly. To maintain previous levels of benefit adequacy, an increase in benefit levels is necessary.

- While California clearly made strides in terms of return-to-work gains, there still are areas where the State could improve. The general lack of use and impact of the workplace modification subsidy program are discouraging; it still seems that more could be done to improve return to work at smaller employers. Most of the return-to-work programs discussed are likely to be geared towards larger employers, who have more flexibility to modify staff and reallocate workers. More research needs to be done to understand what kinds of programs would be most effective for smaller businesses:

    - For example, do self-insurance pools of smaller employers do a better job of promoting return to work than insured small employers do on their own?

    - Would a premium discount for an approved return-to-work program help improve return to work? Would these programs be cost-effective for small employers?

- There are also important issues that should be monitored going forward. The CHSWC study by RAND found evidence of a general trend towards increasing disability ratings over time, and it is particularly prominent in cases with attorney representation. If the medical-legal system is introducing uncertainty or subjectivity into the rating process, this could be another factor that promotes disputes and worsens outcomes for injured workers and their employers.

- Further work is needed to understand the impact of medical treatment guidelines and utilization review on return to work and employment,

- Another implication of this study is the need to further explore the potential gains to the integration of occupational and non-occupational disability compensation. While much work needs to be done to understand the potential implications and challenges of integration of care, both overall and with respect to the impact on return to work, it is an area that merits further consideration.

For further information …

"Workers' Compensation Reform and Return to Work: The California Experience," RAND (2010). http://www.dir.ca.gov/chswc/Reports/2010/WCReformandReturntoWork.pdf

SPECIAL REPORT: HOW EFFECTIVE ARE EMPLOYER RETURN-TO-WORK PROGRAMS?

Introduction

Workplace injuries and illnesses are extremely costly. In addition to the pain and suffering due to the injury itself, workers can experience severe and prolonged earnings losses. Accidents are costly to employers as well. Employers face the cost of reimbursing their injured workers and also face indirect costs such as lost productivity. As part of their ongoing efforts to mitigate these costs, policymakers are continuously motivated to find new ways to reduce the duration of work-related absence and improve early return to work, a key metric for the impact of an injury on both workers and employers. Reducing the recovery time for workers who are injured or disabled by a workplace accident is a key policy goal. This has motivated the promotion of employer return-to-work programs, despite a lack of systematic evidence on the effectiveness of such programs.

The Commission on Health and Safety and Workers' Compensation (CHSWC) study and report by RAND, "How Effective are Employer Return-to-Work Programs?," provide new evidence on the effectiveness of employer return-to-work programs using combined data on the duration of time out of work for workers' compensation claimants with detailed information on employer return-to-work programs. The study focuses on the cost-effectiveness of program use.

Background

Many policy initiatives that are intended to improve return to work for injured or disabled workers operate through employers. For instance, some states offer subsidies to offset the costs to employers of hiring, retaining or accommodating disabled workers. These policies are adopted, however, with relatively little consensus in the scientific literature as to the effectiveness of these employer-based efforts. There have been numerous studies that have demonstrated that these policies have some impact on reducing the duration of work absences; however, there is little evidence as to whether or not the impact is large enough to justify the cost of intervening.

The study used a unique data set that combines information from a firm-level survey of activities and policies designed to improve return to work matched to the post-injury employment outcomes for workers injured at these firms. The survey covered 40 large, self-insured employers in California and obtained detailed information about the formal programs and practices used to lower the duration of work-injury absences, including information such as the frequency of use of various modifications and accommodations. These survey data were matched to more than 17,000 workers injured from 1991-1995, and five years of post-injury employment data were collected. A key feature of the analysis is that some employers adopted a program during the period over which the study observed workplace injuries, which allowed the study to employ firm fixed effects and to eliminate the firm heterogeneity that potentially confounds the analyses of many previous studies, making it more difficult to attribute causality to the programs themselves.

Characterizing the Employer Use of Return-to-Work Programs

Study data included information on the return-to-work practices of a sample of large, private self-insured employers in California coming from a survey conducted by RAND in 2000. The survey asked employers to provide information about methods used to return injured employees to work, how often they are used, and the subjective importance of each method in relation to the overall effectiveness of the program (as of the time of the survey, 2000). The four primary characteristics of return-to-work programs identified in the survey are: modified work tasks; providing a modified workstation or modified equipment; reduced time and work schedule changes; and providing a different job in either the same or a different department. Modified work, which is any temporary change in work tasks or functions, modified workstations and modified equipment, which allow injured workers to perform work functions while recovering from an

injury, reduced time/work schedules, and providing a different job are examples of actions employers may take to facilitate the return of an injured worker to the workplace.

Modifying work tasks was the most common intervention used among employers in the sample, with 82 percent of the firms reporting that they use this method frequently or quite often. Roughly half of the sample reported providing a modified workstation or modified equipment frequently or most of the time. Reduced time and work schedule changes were fairly common with 45 percent of the sample reporting use; 32 percent of the firms reported that they provided a different job in either the same or a different department frequently or quite often.

Return-to-Work Programs are Associated with Lower Duration of Injury-Related Absences

To estimate the impact of program use on return to work, the study combined the survey information with data on the post-injury employment outcomes of workers at the surveyed firms. The study then linked workers' compensation claims information, including whether the claim was temporary or permanent, how much was paid out in benefits, how many weeks of benefits were received, etc., which was collected directly from the employers to administrative data on wages. Quarterly earnings data of all workers' compensation claimants in the sample for up to 20 quarters after injury were used. As the primary measure of return to work, the study estimated the number of weeks until the worker recorded positive wages for at least two consecutive quarters after temporary disability benefits had been exhausted.

The study identifies the difference in return-to-work rates for employees who are injured with and without a return-to-work program in place. More than half of workers with or without a program return in the first ten weeks. If a program is in place, however, there is a noticeable difference by ten weeks, with workers in a program being more likely to return to work. This gap persists and widens over the entire first year after the date of injury.

The study identified particularly large effects of the programs for injured workers with the most severe injuries. Workers with permanent disability represent 40 percent of the sample, and they have a median duration of injury-related absence of 39.7 weeks (the mean is 69.5 weeks). The impact of the program is to reduce the median duration for those with a permanent disability by 18.8 weeks, or 47 percent. The effect is somewhat smaller if employer-fixed effects are included and the mean difference is looked at, but there is still a drop of 27 percent. This suggests that much of the program effect is driven by the large reduction in injury duration for the most severely injured workers.

Program Use is Cost-Effective for Employers

Study estimates indicate that the employer return-to-work programs reduce the duration of injury-related absences, but does that make their use profitable for firms? The accommodations required can sometimes be quite costly, and ultimately, the key point of interest is whether the benefits from improved return to work outweigh the costs to implement and maintain the programs. The study reports some estimates of the cost-effectiveness of a program for employers in different scenarios. For an estimate of the program benefits to employers, the dollar savings on temporary total disability payments from shorter injury durations are used. Different scenarios reflect different levels of weekly wages for employees, with higher weekly wages reflecting higher weekly benefits (and thus greater benefits of returning workers sooner). The study compares these levels against different levels of average program costs per injured workers, using a range reflected by the survey data.

The study identifies the number of weeks of injury duration a program must reduce in order for a return-to-work program to break even. For example, in a low-benefit, low-cost scenario, the break-even estimate is equal to 1.4 weeks, and any additional reductions in average durations generate a net benefit for the employer. Comparing the study's treatment-effect estimates with the break-even numbers, the return-to-work programs generate net benefits for all but the most expensive programs when wages (and thus weekly benefits) are high. With average wages, the return-to-work programs are beneficial when the program cost per injured worker is below $1,500, and with low wages, the programs are beneficial when the program cost per injured worker is below $1,000.

Conclusions

The study finds that return-to-work program adoption is associated with a large reduction in the duration of work-related absences and that the programs are cost-effective for large employers. The study however, does not necessarily indicate that adopting a return-to-work program would be cost-effective for any randomly selected employer. The costs per worker are likely to be higher for smaller firms if there are fixed costs of setting up a return-to-work program (particularly likely for a return-to-work program making a heavy emphasis on physical modifications). The effectiveness of return-to-work programs may also differ for different types of workers; smaller firms or firms with more homogenous job functions might find it more difficult to offer modified work. The study suggests that future research work should consider how return-to-work programs can be implemented effectively at small firms.

For further information …

"How Effective are Employer Return-to-Work Programs?," RAND (2010).
http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_RANDRTW.pdf

SPECIAL REPORT: MEDICAL CARE UNDER CALIFORNIA'S WORKERS' COMPENSATION PROGRAM

Introduction

California's workers' compensation system was at the center of intense debate and legislative activity during the period leading up to reforms in 2003 and 2004. High rates of growth in medical care expenditures stimulated a series of reform efforts to control medical-treatment expenses for injured workers and to improve program efficiency. The Commission on Health and Safety and Workers' Compensation (CHSWC) asked RAND to examine the impact that such policy changes could have on the medical care provided to injured workers. The CHSWC study by RAND "Medical Care under California's Workers' Compensation Program: Effects of the Reforms and Additional Opportunities to Improve the Quality and Efficiency of Care" focuses on policies and incentives in the post-reform period that affected the use and costs of care and recommends policy changes that would improve the quality and efficiency of care. Previous papers issued under the umbrella of this study include the following topics: inpatient hospital services; facility services for ambulatory surgery; and repackaging pharmacy drugs.

Purpose and Approach

The purpose of this CHSWC study by RAND was to analyze the effects of new workers' compensation policies on access to medically appropriate care and efficiency of service delivery. The study also recommended additional changes that might increase both quality and efficiency of care in California's workers' compensation system. The study was unable to obtain access to longitudinal claim-level data spanning the pre post-reform periods that are needed to analyze fully the impacts of the legislative changes on medical treatment provided to injured workers. As a result, the study focused on how the reforms affect access to medically appropriate care and its quality and efficiency.

The following questions were analyzed:

- What has been the impact of the reforms' provisions on overall medical expenditures and on the use and payments for major types of services?
- What has been the experience with medical provider networks (MPNs)?
- What has been the impact on medical cost-containment expenses and selected activities, i.e., utilization review (UR) and medical-necessity disputes?
- Is it feasible to use the Workers' Compensation Information System (WCIS) to establish an ongoing system for monitoring access to medically appropriate care?

The report summarizes the reforms' effect on: the utilization and costs of care; physician and other practitioner services; inpatient hospital and ambulatory surgery services; outpatient drugs and other pharmaceuticals; MPNs; medical cost containment and other activities; monitoring system performance through the Workers' Compensation Information System (WCIS); and administrative processes and expenses.

Utilization and Costs of Care

This study's examination of overall changes in annual medical expenditures for workers' compensation medical care shows the following.

- Total annual paid medical losses fell sharply following implementation of the reform provisions but have been rising since 2008. These aggregate losses have been affected not only by the medical-reform provisions but also by significant reductions in the number of workers' compensation claims.

- Reduced payments to providers were the major contributing factor to the initial reductions in annual paid losses. Subsequently, expenses for actual medical care have been rising less rapidly than expenses related to administration of the medical benefit, such as medical cost-containment expenses, medical-legal expenses, and direct payments to workers (which are mostly claim settlements).

- Paid medical losses remain significantly lower than they would have been in the absence of the reform provisions but continue to be higher than those of workers' compensation programs in other states.

Physician and Other Practitioner Services

Physician and other practitioner services were most affected by the changes in medical-treatment policies, especially policies that required the adoption of medical-treatment guidelines and the limitation on the chiropractic, physical therapy, and occupational therapy services to 24 visits per industrial injury. Estimated systemwide payments (by insurers and self-insured employers) for physician and practitioner services declined from a high of $3.1 billion in 2003 to $2.1 billion in 2009.

Stakeholders interviewed in 2006-2007 believed that the guidelines were well designed for acute conditions but were deficient for not addressing chronic pain, alternative therapies, and use of pharmaceuticals. These conditions have largely been addressed through additional guidelines for acupuncture and chronic pain, although it is too early to assess the impact of these new guidelines.

However, two other concerns expressed by stakeholders might remain applicable. First, concerns were often expressed not about the guidelines per se but that they were being applied too stringently during UR and that insufficient attention was paid to the individual patient's condition that might warrant deviation from the guideline. Second, there were some concerns that the Labor Code requirement that any medical guidelines to be adopted must be evidence-based, nationally recognized and peer-reviewed, and precluded providing needed guidelines for therapies that do not have a robust evidence base.

Inpatient Hospital and Ambulatory Surgery Services

Expenditures for inpatient hospital services declined with the expansion of the Official Medical Fee Schedule (OMFS) to high-cost inpatient services, such as trauma and burns, but they have since risen above pre-reform levels because of regular updates for inflation and other factors. The study also identified two potential inefficiencies: a duplicate payment for hardware implanted during spinal surgery; and the inflationary impact of improvements in coding that increase payments without a corresponding increase in the costs of care.

The OMFS was also expanded to cover facility fees for ambulatory surgery services provided by hospitals and freestanding ambulatory surgery centers, which have a lower cost structure than hospitals. Paying a lower rate, freestanding surgery centers would increase the value of those services and reduce the incentive to shift care inappropriately from hospitals and physician offices. The saving from eliminating unnecessary institutional expenditures could be used to reduce employer costs or increase payments to physicians and other practitioners.

Outpatient Drugs and Other Pharmaceuticals

Despite the reform provisions affecting outpatient drugs, there has been significant growth in both the average number of prescriptions and the average payment per claim for prescriptions.[63] One reason for the increase is physician-dispensed compound drugs and convenience-packaging of drugs and medical foods (co-packs). Another important contributing factor has been a growing use of Schedule II

[63] Swedlow, Alex, and John Ireland, *California Workers' Compensation Reform Outcomes, Research Update*, Part 1: *Changes in Medical Cost Containment Payments Accident Years 2002–2007*, Oakland, Calif.: California Workers' Compensation Institute, October 2008.

medications (drugs with accepted medical use that have a high potential for abuse or addiction). Both issues were addressed to some extent in the medical-treatment guidelines that were issued in 2007 for chronic pain. It is too early to know how effectively the guidelines will address pharmaceutical overuse issues, but it appears that additional guidelines are needed to address compound drugs and medical foods and that OMFS changes are needed to ensure that allowances for these products are reasonable. However, the experience with earlier attempts to address pharmaceutical overuse suggests that the benefits gained from making these policy changes are likely to be temporary unless greater attention is given to improving the overall physician incentives.

Medical Provider Networks

Under the reform provisions, a self-insured employer or insurer may establish an MPN to provide care to injured workers throughout their course of medical treatment. Unless a worker has pre-designated a personal physician as his or her primary care physician prior to injury, the employer assigns the worker to a network physician for initial medical treatment. The worker is free to choose another provider within the network after the first visit but has very limited rights to receive out-of-network care.

As of March 2011, there are 1,401 active MPNs. The MPN penetration rate is uncertain, but it appears that most care is provided under either an MPN contract or another type of contract. The combined proportion of payments made under MPNs and other contracts for accident year (AY) 2007 is 59 percent and lower for older claims. Currently, most MPNs are broad panels selected primarily to meet access requirements and provide fee-discounting opportunities. A few payors, most notably, some self-insured employers, have contracted selectively with providers.

With a few notable exceptions, another administrative entity usually forms the MPN and contracts directly with network physicians. The payor contracts with that administrative entity to "lease" the provider network and does not directly contract with the physicians. The administrative entity leases the same network to multiple payors, resulting in different payors applying for MPN approval for the same group of providers. This creates unnecessary administrative burden and makes it difficult to assess the performance of individual MPNs. As a practical matter, accountability for network performance is not clearly established, and information needed to assess adequacy of network coverage is not obtained. Re-approval is required when there is a material modification (including a 10 percent change in network providers), but there is no recertification process, and the AD has no intermediate sanctions for poor performance; termination is the only recourse for MPNs that fail to meet the required standards.

These shortcomings could be remedied through changes in the Labor Code. The most important change would be to change the definition of the applicant for MPN approval to be the group of providers or entity that establishes the MPN (employer, insurer, or other administrative entity).

Medical Cost-Containment Expenses and Activities

Medical cost-containment activities are payor actions to monitor and manage the price, use, and volume of medical services and products based on clinical efficiency and need. The expenses for these activities have risen rapidly since the implementation of the reform provisions. Because the categories of expenses are not reported separately, it is difficult to determine the reasons for the increases, although it appears that major factors are expenses incurred for leasing MPNs and costs associated with medical-necessity determinations.

In this study's stakeholder interviews, providers raised considerable concern over the dispute resolution process for medical-necessity determinations. The current independent medical review (IMR) process for MPN medical-necessity disputes is not functional because workers may simply keep changing physicians when there is a dispute over appropriate medical care. A large share of expedited hearings and many regular hearings involve medical-necessity issues. When these issues reach hearings, judges make decisions based on their understanding of evidence presented to them, but the rulings on these issues are not decided by medical experts in the medical treatment at issue.

Potentially, external review of medical-necessity issues could reduce the complexity of California's dispute resolution process, increase the timeliness and appropriateness of medical-necessity appeal determinations, and reduce medical cost-containment expenses.

Monitoring System Performance Through the Workers' Compensation Information System

The overarching purpose of performance-measurement systems is to provide information that will enable policymakers and other stakeholders to identify areas in which performance is suboptimal.

Complete and reliable reporting to WCIS is critical to DWC's ability to monitor performance. Medical data reporting is required for all services provided on or after September 22, 2006. DWC reports that WCIS data are incomplete, with approximately 11–12 percent of claims not reported into the system and further underreporting of medical data (California Department of Industrial Relations, 2011). Section 138.6 of the Labor Code which sets out the administrative director's (AD's) authority with respect to reporting requirements for WCIS does not include penalties for the failure of a claim administrator to comply with the electronic data-reporting requirements. Notably, two of the three other states with medical data-reporting requirements (Florida and Texas) both have financial penalties associated with failure to comply with reporting compliance. Texas has very high compliance rates; achieving such rates is likely possible only when requirements are paired with financial penalties for noncompliance. (Like California, Oregon does not have any penalties.)

There are many significant challenges to implementing a performance-monitoring system that focuses on the quality of medical care delivered to injured workers.

Recommendations

Create Incentives for Providing Medically Appropriate Care Efficiently

The value of medical treatment would be improved by the following:

- Implement a resource-based fee schedule that provides for regular updates and equitable payment levels.
- Create nonmonetary incentives for providing medically appropriate care. Within the MPN context, incentives could be created through more selective contracting with providers and reducing UR and prior-authorization requirements for high-performing physicians.
- Reduce unnecessary expenditures for inpatient hospital care by eliminating the duplicate payment for spinal hardware and the inflationary impact of coding improvement.
- Reduce unnecessary expenditures for ambulatory surgery by reducing the OMFS multiplier for procedures performed in freestanding ambulatory surgery centers.
- Reduce the incentives for inappropriate prescribing practices by curtailing in-office physician dispensing.
- Implement the pharmacy benefit network provisions.

Increase Accountability for Performance

- Accountability for performance could be increased by making the following revisions in the Labor Code:
- Revise the MPN certification process to place accountability for meeting MPN standards on the entity contracting with the physician network.

- Strengthen DWC authorities to do the following:
  - Provide intermediate sanctions for failure to comply with MPN requirements.
  - Provide penalties for the failure of a claim administrator to comply with the data-reporting requirements.

Modify the Labor Code to remove payors and MPNs from the definition of individually identifiable data so that performance on key measures can be publicly available.

Facilitate Monitoring and Oversight

Program oversight activities could be facilitated by the following:

- Provide DWC with more flexibility to add needed data elements to medical data-reporting; for example, revise the WCIS reporting requirements to require a unique identifier for each MPN.

- Require that medical cost-containment expenses be reported by category of cost (e.g., bill review, network leasing, UR, case management).

- Compile information on the types of medical services that are subject to UR denials and expedited hearings.

- Expand ongoing monitoring of system performance.

Increase Administrative Efficiency

Efficiency in the administration of medical benefits could be increased by the following:

- Use an external medical review organization to review medical-necessity determinations. A separate dispute-resolution process for medical-necessity determinations also creates a mechanism to monitor the quality of payor decisions and to identify areas in which expansions or revisions in the Medical Treatment Utilization Schedule (MTUS) are needed.

- Explore best practices of other workers' compensation programs and health programs in carrying out medical cost-containment activities.

Status

Completed August 2011.

For further information …

Medical Care Provided Under California's Workers' Compensation Program (RAND, 2011).
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_MedicalCareReformsandOpps_2011.pdf

Inpatient Hospital Services: An Update on Services Provided Under California's Workers' Compensation Program Report, RAND.
http://www.dir.ca.gov/chswc/Reports/CHSWC_InpatientHospitalServices.pdf

Facility Services for Ambulatory Surgery, RAND, 2009.
http://www.dir.ca.gov/chswc/Reports/2009/FacilityServicesforAmbulatorySurgery.pdf

Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program: An Overview of the Issues, RAND, January 2011.
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_UseofCompoundDrugsMedicalFoodsCo-Packs.pdf

"Regulatory Actions that Could Reduce Unnecessary Medical Expenses Under California's Workers' Compensation Program," RAND (July 2009).
http://www.dir.ca.gov/chswc/Reports/2009/RANDpaper.pdf

SPECIAL REPORT: USE OF COMPOUND DRUGS, MEDICAL FOODS, AND CO-PACKS IN CALIFORNIA'S WORKERS' COMPENSATION PROGRAM

Introduction

There is considerable controversy over the use of compound drugs, medical foods and co-packs for workers' compensation patients. A recent report issued by the California Workers' Compensation Institute (CWCI) found that payments for compound drugs, convenience packaging of drugs and medical foods (co-packs), and medical foods grew from 2.3 percent to 12 percent of medication expenses between the first quarter of January 2006 and the first quarter of 2009.[64]

Background

Pharmacy compounding has traditionally involved combining drug ingredients to meet the needs of specific patients for medications that are not commercially available. It has been undertaken on a patient-by-patient basis for patients who, for example, might be allergic to inactive ingredients in Federal Drug Administration (FDA)-approved drugs or may need a different dosage strength or route of administration.

FDA does not regulate pharmacy-compounded products in recognition of the important public health function performed by traditional compounding. Rather, compounding pharmacies are subject to state laws governing the practice of pharmacy. There are red flags for enforcement action by the FDA on compounded drugs such as:

- Compounding drugs in anticipation of receiving prescriptions, except in very limited quantities in relation to amounts compounded after receiving valid prescriptions.
- Compounding drugs that were withdrawn or removed from the market for safety reasons.
- Compounding finished drugs from bulk active ingredients that are not components of FDA-approved drugs.
- Using drug substances without assuring that they were manufactured in FDA-approved facilities.
- Compounding drugs for third parties who resell to individual patients or offering compounded drug products at wholesale to other state-licensed persons or commercial users.
- Compounding drug products that are commercially available in the marketplace or that are essentially copies of commercially available FDA-approved drug products.

CHSWC Study by RAND on Compound Drugs

Scope of the Study

The Commission on Health and Safety and Workers' Compensation (CHSWC) contracted with RAND to conduct a study to examine issues surrounding compound drugs. The study examined several aspects related to compound drugs including medical necessity, allowance, and physician incentives.

The CHSWC study by RAND investigated the following questions:

- What are compound drugs, co-packs, and medical foods? How are they regulated?

[64] Ireland, J., & Swedlow, A. (August 2010). The Cost and Utilization of Compound Drugs, Convenience Packs, and Medical Foods in California Workers' Compensation *CWCI Research Notes*: California Workers' Compensation Institute, Available at: http://www.cwci.org/research.html.

- What products are commonly furnished to workers' compensation patients? Are they safe and effective? When are they medically necessary and appropriate?

- How is payment determined under the Official Medical Fee Schedule (OMFS)?

- What tools do payors and employers have to ensure that the products are medically appropriate and payments are reasonable?

- Are other health programs experiencing comparable increases in the use of compound drugs? How do the tools and policies that they use compare to those used under workers' compensation?

- Are there policy shortcomings in the workers' compensation program that should be addressed and if so, how?

Findings and Recommendations

Medical Necessity

With respect to medical necessity issues, a potential statutory change would be to specify general coverage requirements for compound drugs and medical foods and other nutritional products. The provision for compound drugs could draw from the FDA policy guidance and the National Association of Boards of Pharmacy (NABP) Model Act (including, if determined appropriate, exclusion for physician-dispensed compounds). For example, the provision might require that the finished drug product:

- Include at least one drug substance (or active ingredient) that is the sole active ingredient in an FDA-approved drug. This would eliminate over-the-counter (OTC) compound drugs.

- Include only bulk ingredients that are components of FDA-approved drugs that have been made in an FDA-registered facility. This would allow compounding of bulk ingredients only if they are used in FDA-approved finished products and are manufactured in FDA-registered facilities (i.e., have an NDC code).

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- Is not a drug that was withdrawn or removed from the market for safety reasons.

- Is not a copy of a commercially available FDA-approved drug product.

- Include only drug substances that have been supported as safe and effective for the prescribed indication by the FDA-approval process or by adequate medical and scientific evidence in the medical literature. This would allow off-label usage when supported by medical evidence but would also clarify that a product is not covered unless there is evidence to support that it is medically appropriate. Prior authorization could be required when the active ingredient is not addressed in the Medical Treatment Utilization Schedule (MTUS).

- The MTUS should be updated and expanded through the rulemaking process to address compound drugs as a product class. The MTUS guidelines for chronic conditions were a major step forward in providing guidance on when compounded drugs are medically appropriate. Because they were not effective until July 2009, after CWCI analyses were conducted, it is too soon to know whether prescribing practices have changed. However, these guidelines are applicable to chronic conditions and could be construed as not applying to patients who have not been determined to have chronic pain, even if a recommendation on a specific active ingredient is relevant. In addition to addressing the evidence base supporting the efficacy of ingredients frequently used in compounding, the guidelines might consider whether FDA-approved drugs should be tried prior to prescribing the compound drug and whether restrictions are appropriate on consecutive dispensing of 72-hour supplies of compound drugs (assuming the practice

continues to be allowed. Similarly, the MTUS should address the medical appropriateness of medical foods. MTUS guidelines should not be necessary for co-packs if medical foods are addressed; instead, OMFS allowances for these products should be clarified.

Official Medical Fee Schedule Allowances

A review of sample bills and Official Medical Fee Schedule (OMFS) pricing policies indicate that there is an underlying problem with how bulk ingredients are priced; namely, the allowances in the Medi-Cal database are based on manufacturer-specific Average Wholesale Prices (AWPs) (self-reported "sticker" prices) for a single manufacturer. The OMFS is vulnerable to establishing excessive allowances as long as pricing relies on these AWPs reported by single manufacturer and does not take advantage of multi-source pricing. The excessive allowances create incentives to market compound drugs to the workers' compensation population. This issue could be addressed by using an approach that is similar to the pricing formula used to establish the federal upper limit on multi-source drugs provided under Medicaid. If a bulk ingredient used in compounding has three or more suppliers listed in active ingredients and dosage form, the unit price could be set at 150 percent of the unit price of the lowest-cost alternative. Clarification is also needed to address ingredients that are not included in the Medi-Cal database. For co-packs, consideration should be given to adopting the principle underlying the repackaged drug policy: base the allowance for the co-pack on the individual pricing for the individual medical food and the generic drug.

Physician Incentives

Physician-dispensing creates financial incentives that affect the use of compound drugs, medical foods, and co-packs. On this issue, compound drugs have a somewhat different status than FDA-approved drugs and medical foods. For example, the FDA's compliance guidance for pharmacy compounding lists compounding of drugs for resale as grounds for considering an enforcement action related to manufacturing drugs without FDA approval. Consistent with this policy, the NABP's Model Act provisions, *Good Compounding Practices Applicable to State-Licensed Pharmacies,* specifies that "pharmacists shall not offer compounded drug products to other state-licensed persons or commercial entities for subsequent resale, except in the course of professional practice for a practitioner to *administer* to an individual patient, in limited quantities."[65] The Model Act defines manufacturing (as opposed to compounding) to include producing a drug for resale by pharmacies, practitioners or other persons. California has chosen not to follow these provisions of the Model Act in the pharmacy code. Instead, the definition of pharmacy compounding includes the preparation of drugs "for distribution of not more than a 72-hour supply to the prescriber's patients, as estimated by the prescriber." Consideration should be given to conforming the pharmacy code to the Model Act provisions or conforming workers' compensation coverage to the Model Act provisions. Recognizing that patient convenience is involved in the dispensing of the initial supply, a reasonable workers' compensation-specific approach would be to cover the initial physician-dispensed supply but not refills.

The financial incentives for physician-dispensing of compound drugs could also be reduced significantly by limiting the amount payable under the OMFS to the amount that the provider paid for the products plus a reasonable mark-up. This would continue patient convenience associated with physician-dispensing but also would add administrative burden for providers and payors alike in processing the bills. Even if the policy were not applied to compound drugs, it should be considered for medical foods.

Financial incentives may also be involved in physician prescribing of pharmacy-dispensed compounded drug products. Labor Code Section 139.3 precludes a physician from referring patients for certain designated services (e.g., clinical laboratory and diagnostic imaging) if the physician or his immediate family has a financial interest with the entity that receives the referral. Adding pharmacy goods and services (including OTC drugs and nutritional products) to the list of designated services may provide more assurance that prescribed products are medically appropriate. Consideration should be given to adding pharmacy goods and services (including OTC drugs and nutritional products) to the list of designated services.

[65] National Association of Board of Pharmacy Model Act at: http://www.nabp.net/publications/model-act/ p.209.

California's workers' compensation experience with repackaged drugs suggests that "quick fixes" may address issues in the short-term but that the issues are likely to re-emerge in another fashion unless the underlying incentives are addressed. The use of repackaged drugs declined significantly when it was no longer profitable for physicians to prescribe them. However, fixing the payment policy on physician-dispensing of repackaged drugs has fueled the increased usage of compound drugs, medical foods, and co-packs. The benefits gained from making policy changes to ensure these products are medically appropriate and payments are reasonable are also likely to be temporary unless greater attention is given to improving the overall incentives through selective contracting with efficient providers and appropriately rewarding their performance.

Summary of Findings

- Clarifying the rules and removing inappropriate incentives should help assure that workers receive the drugs and other pharmaceuticals that are needed to "cure or relieve" their illness or injury.

- With respect to medical-necessity issues, general coverage requirements for compound drugs and medical foods, and other nutritional products are needed.

- Review of sample bills and OMFS pricing policies indicates that there is a problem with how bulk ingredients are priced.

- Physician-dispensing creates financial incentives that affect the use of compound drugs and other products results.

Conclusion

The preliminary data in the CHSWC report by RAND on compound drugs, medical foods, and co-packs show that some parties face significant financial incentives to promote the use of these products in questionable situations. There are multiple parties who are involved in delivering and paying for these products, each with financial interests at stake in how the products are used in California's workers' compensation program. Other health programs have adopted policies that provide more assurance that drugs are medically appropriate and payments are reasonable. As a result, they are not experiencing comparable issues related to use of these products.

The issues surrounding compound drugs, medical foods, and co-packs rest on the incentives created by uncertainties regarding whether the products are medically appropriate and payments are reasonable. Clarifying both topics through statutory and administrative changes would reduce the incentives. Given the volume of liens being filed for these products and the frictional and transaction costs that are being added to the system, initial changes in the Labor Code followed by rulemaking may be warranted. There are precedents in both medical necessity and fee schedule provisions for an approach that establishes policies in the Labor Code that are effective until the Administrative Director of the Division of Workers' Compensation (DWC) adopts policies through the rulemaking process. This approach quickly addresses a growing problem while recognizing that not all provisions are self-implementing and by providing flexibility to address evolving situations.

CHSWC recommendations in the findings include:

- With respect to medical necessity issues, a potential statutory change would be to specify general coverage requirements for compound drugs and medical foods and other nutritional products.

- The MTUS should be updated and expanded to address compound drugs as a product class. In addition to addressing the evidence base supporting the efficacy of ingredients frequently used in compounding, the guidelines should consider whether FDA-approved drugs should be tried prior to prescribing the compound drug. Also, the MTUS should address the medical appropriateness of medical foods.

- There is a problem with how bulk ingredients are priced. This issue could be addressed by using an approach that is similar to the pricing formula used to establish the federal upper limit on multi-source drugs provided under Medicaid.

- Financial incentives for physician-dispensing of compound drugs could also be reduced significantly by limiting the amount payable under the OMFS to the amount that the provider paid for the products plus a reasonable mark-up.

Status

AB 378 authored by Assembly Member Solorio amends sections 139.3, 139.31, and 5307.1 of the Labor Code, relating to workers' compensation. The bill was chaptered on October 7, 2011, and its provisions are as follows::

- This bill would add pharmacy goods, as defined, to the list of medical goods or services for which it is unlawful for a physician to refer a person under this provision, except in prescribed circumstances. By creating a new crime, this bill would impose a state-mandated local program.

- This bill would prohibit the maximum reasonable fees paid for pharmacy services and drugs from including specified reductions in the relevant Medi-Cal payment system.

- This bill would require any compounded drug product, as defined, to be billed by the compounding pharmacy or dispensing physician at the ingredient level, as prescribed, and in accordance with regulations adopted by the California State Board of Pharmacy. This bill would set specified maximum reimbursement for a dangerous drug, dangerous device, or other pharmacy goods, dispensed by a physician, and would define related terms.

- This bill would prohibit a provision concerning physician-dispensed pharmacy goods from being superseded by any provision of the official medical fee schedule adopted by the administrative director unless the official medical fee schedule provision is expressly applicable. This bill would also require the provision adopted by the administrative director to govern if a provision concerning physician-dispensed pharmacy goods is inconsistent with the prescribed Official Medical Fee Schedule.

- This bill would also delete obsolete provisions relating to the adoption of a medical fee schedule for patient facility fees for burn cases.

- This bill would incorporate additional changes in Section 5307.1 of the Labor Code proposed by Senate Bill 923 that would become operative only if Senate Bill 923 and this bill are both chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

- The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

- This bill would provide that no reimbursement is required by this act for a specified reason.

For further information …

"Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program: An Overview of the Issues." RAND, January 2011
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_UseofCompoundDrugsMedicalFoodsCo-Packs.pdf

SPECIAL REPORT: QUALITY-OF-CARE INDICATORS

Introduction

Research shows that the medical care provided in the United States may not be of high quality. Only 55 percent of medical care provided is consistent with recommendations based on published literature and the opinions of experts. For the most common conditions in workers' compensation, i.e., back, shoulder and knee problems, only 56 to 67 percent of the right care is provided. No one has looked systematically at the quality of care provided in workers' compensation. The study by RAND for the Commission on Health and Safety and Workers' Compensation (CHSWC) includes all settings, including workers' compensation settings.

Background

Improving the quality of medical care in workers' compensation settings would benefit both injured workers and employers. For injured workers, better care can improve recoveries and reduce temporary and permanent disability which would decrease economic losses. For employers, lack of recovery can create a need for medical care in the long run, and reducing temporary and permanent disability would decrease economic losses. One rigorous study, done in Spain and focusing on guidelines and appropriate activities for injured workers, indicates that better care: reduced time on temporary disability by 37 percent; reduced the number of temporarily disabled workers who became permanently disabled by 50 percent; and reduced medical and disability costs by 37 percent, a return of $11 on each one dollar invested.

To measure quality in workers' compensation settings, specific quality-of-care measures are needed. Measurable standards permit objective evaluations of practice and indicate the extent to which current practice meets standards, as well as ensure that results can be compared fairly among organizations or providers. Attributes of quality measure standards for care include that they are: relevant, scientifically sound, and feasible for measurement; described in detail so they can be applied in an objective manner; and supported by information that explains qualifying terms, time frames and patient eligibility for the different measures.

Quality-of-care measures are related to but different from medical treatment guidelines. Quality-of-care measures are quantitative tools that: indicate performance related to a specific process or outcome and measure the quality of medical care; and have language that provides specific criteria for which practices are "right" and "wrong." In terms of complexity, simplistic algorithms provide clear scoring instructions for a process that can be measured practically. Measures are used in accountability systems, as there are assigned penalties or rewards based on performance applied in an objective manner. In contrast, guidelines are sources of recommendation to be applied prudently based on clinical experience. They consolidate information to reduce gaps between scientific knowledge and clinical practice. They are flexible in that they acknowledge the "gray zone" of uncertain appropriateness. In addition, they acknowledge medical complexity and patient preferences.

Scope of the Study

The goal of the study was to demonstrate quality measurement in workers' compensation. The objectives were to: develop quality-of-care measures for carpal tunnel syndrome (CTS); pilot test the measure in workers' compensation provider and payor organizations; place measures and supporting tools in the public domain; and use the measures to assess quality of care for a larger population of patients.

Public-private partnerships made the study possible. Funding support was provided by the Commission and Zenith Insurance. The Commission also provided essential assistance in developing the project. Partners-in-kind included Kaiser Permanente Northern California Regional Occupational Health and the California State Compensation Insurance Fund (State Fund), which have been involved in pilot testing.

The research approach of the project was to develop quality measures for CTS and included the following steps: Step 1 -- a multidisciplinary research team developed draft measures from guidelines and literature; Step 2 -- a multidisciplinary panel of 11 national experts in CTS rated the measures for validity and feasibility; Step 3 -- the RAND/UCLA team created a tool that explains how the measures should be used; and Step 4 -- Kaiser Permanente Northern California Regional Occupational Health and California State Fund pilot tested the measures.

Seventy-seven (77) measures were developed: 31 measures address diagnosis and non-operative management of CTS including history and physical examination, medications, splints, activity modification and return-to-work planning; 6 measures address the use of electrodiagnostic tests; 18 measures are for indications for carpal tunnel surgery including when surgery is necessary and when it is inappropriate; and 22 measures address care before, during and after surgery.

In a Washington state study of CTS claims, half of the claims were initially filed for other conditions. In 20 percent of the claims, CTS was not diagnosed until more than three months after initiation of workers' compensation. The longer the delay until the CTS diagnosis, the longer the disability tended to be. One measure therefore specifically addresses delays in recognizing CTS symptoms. New symptoms characteristic of CTS should lead to suspicion: if a patient complains of any of the following symptoms highly characteristic of CTS – paresthesias, numbness, or tingling on the first to third fingers or palm -- then a suspicion of CTS should be documented in the medical record at the initial evaluation of those systems, because early diagnosis of CTS can lead to earlier intervention.

Many clinicians use the wrong examination techniques to check for CTS. Phalen's and Tinel's maneuvers, taught in medical residencies, are the wrong techniques. If the progress notes document that CTS is suspected, then the right technique should involve at least one of the following physical examination maneuvers that should be documented at the initial evaluation: testing for sensory abnormalities in median nerve distribution; testing for thenar muscle weakness; and examination for thenar muscle atrophy. In addition, splints are often positioned poorly, which actually worsens symptoms. The wrong technique is defined as use of splints that come out of the box in a position of 20-30 degrees of wrist extension; use of this type of wrist splint in extension worsens CTS. The right technique is for splints to be placed in a neutral position; if a patient with CTS is prescribed a splint, then the chart should document that the splint was positioned so that the wrist is neutral (neither extension >10 degrees or flexed).

Several measures address work-relatedness, activity and return-to-work planning. Measure titles include: new CTS diagnosis requires detailed occupational history; new CTS diagnosis requires assessment of occupational factors; new CTS diagnosis requires assessment of non-occupational factors; exacerbating activities should be identified when CTS limits functioning; rationale for work-association should be documented; patients diagnosed with CTS should be educated about the condition; exposures to vibration, force and repetition should be minimized; work-associated CTS symptoms require prompt follow-up; work status should be monitored when CTS appears work-associated; return to work after CTS-related disability requires follow-up assessment; and prolonged CTS-related disability should trigger evaluation.

In the study, the measures for electrodiagnostic tests, which are nerve conduction studies that measure conduction across the carpal tunnel nerve, appear to be the first in that field. One measure indicates that people should be tested when anyone who has work-associated CTS may be a candidate to undergo surgery. There are essential examination components to test for CTS, including measuring and correcting skin temperature. Interpreting findings should be based on criteria for calling a result consistent with CTS. Although electrodiagnostic test results are one important consideration in determining when surgery is appropriate, the severity and pattern of symptoms, as well physical examination findings, are more important. The decision to operate should not be only based on electrodiagnostic test results. Electrodiagnostic tests are helpful but not the main reason to operate, as there can be false positives, although the test can be helpful in confirming the impression of CTS.

Indications for surgery have two uses. First, there are quality measures to examine prior care. For example, if a patient has mild CTS present for up to 12 months and all of the following criteria are met – conservative therapy has not been attempted or has adequately resolved the patient's symptoms and the presentation is less than "high probability" and an electrodiagnostic test is positive for CTS – then the patient should not have undergone carpal tunnel surgery. The study also created an algorithm to determine appropriateness of future surgery which considers symptoms, examination findings, conservative therapy and electrodiagnostic tests. The algorithm could supplement the current American College of Occupational and Environmental Medicine (ACOEM) *Guidelines* in utilization review and help determine whether and when there should be surgery. A part of the algorithm looks at whether there are ongoing symptoms. The algorithm determines whether the surgery is inappropriate, optional or necessary. Prior studies that have developed similar algorithms have shown improved quality of life among people for whom surgery was consistent with recommendations.

Manuscripts Based on the Study

Four manuscripts have been published in peer-reviewed medical journals:

Karl J. Sandin, M.D., M.P.H.; Steven M. Asch, M.D., M.P.H.; Charles Jablecki, M.D.; David Kilmer, MD; Teryl K. Nuckols, M.D., M.S.H.S., and the Carpal Tunnel Quality Group. "Clinical Quality Measures for Electrodiagnosis in Suspected Carpal Tunnel Syndrome." *Muscle and Nerve*. 2010 Apr;41(4):444-52.
http://onlinelibrary.wiley.com/doi/10.1002/mus.21617/abstract (subscription required for full article)

Melinda Maggard, MD, MPH; Walter Chang, MD; Neil Harness, MD; Janak A. Parikh, MD; Steven M. Asch, MD, MPH; Kevin Chung, MD; Teryl K. Nuckols, MD, MSHS and the Carpal Tunnel Quality Group. "Indications for Performing Carpal Tunnel Surgery: Clinical Quality Measures*." Plastic Reconstructive Surgery.* 2010 Jul;126(1):169-79.
http://journals.lww.com/plasreconsurg/Abstract/2010/07000/Indications_for_Performing_Carpal_Tunnel_Surgery_.21.aspx (subscription required for full article). Correction item about a Table in the publication.
http://journals.lww.com/plasreconsurg/Fulltext/2011/02000/Correction__Indications_for_Performing_Carpal.107.aspx

Nuckols T, Harber P, Sandin K, Benner D, Weng H, Shaw R, Griffin A, Asch S; The Carpal Tunnel Quality Group. "Quality Measures for the Diagnosis and Non-Operative Management of Carpal Tunnel Syndrome in Occupational Settings." *Journal of Occupational Rehabilitation.* 2010 Aug 25.
http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3041902/

Teryl K. Nuckols, MD, MSHS; Melinda Maggard, MD, MPH; Neil Harness, MD; Walter Chang, MD; Kevin Chung, MD, MS; Steven M. Asch, MD, MPH and the Carpal Tunnel Quality Group. Clinical Quality Measures for Intra-Operative and Peri-Operative Management in Carpal Tunnel Surgery. Hand. 2011; 6(2): 119.
http://www.springerlink.com/content/t107542j82661571/ or
http://www.springerlink.com/content/t107542j82661571/fulltext.pdf

The researchers have also developed and pilot tested a comprehensive and detailed tool that enables quality of care to be assessed for people with carpal tunnel syndrome by reviewing their medical records. The tool explains how to identify the patients to which each measure applies and how to determine when care adheres to the measure, as well as other supporting information. A report containing the tool, the RAND/UCLA Quality-of-Care Measures for Carpal Tunnel Syndrome: Data Collection Tools, is posted online at:
www.dir.ca.gov/chswc/Reports/2011/CHSWC_QualityofCareMeasuresforCarpalTunnel_Tools_2011.pdf.
In addition to the tool, the report provides background information, describes study methods, and includes the algorithm for determining when surgery is necessary, optional, or inappropriate.

Conclusions

Observations from developing the tool and pilot testing the measures regarding requirements for use include the following:

- A complete record for prior care is important, so usually, medical records are needed. First, users must accurately identify patients with CTS; administrative (i.e., claims) databases are usually used, but they generally do not include the physicians' medical evaluation and management plans, for example.

- Current Procedural Terminology (CPT) and International Classification of Diseases, 9th Revision (ICD-9) codes should be used when possible.

- Second, assessing adherence to the measures requires a reasonably complete record of the care provided for CTS: the claims databases do not provide the necessary information; Doctor's First Report (DFS) and PR-2s may suffice if they are easily obtained and contain all information that is in the medical record, but usually, medical records are required.

- Third, staff with appropriate skill levels is needed; most measures can be rated by nurses and other providers particularly if they have a claims review background, but some measures addressing electrodiagnostic tests and how surgery is performed require physicians in those fields.

Providers could use these measures in their practices. The measures provide advantages for many workers' compensation payors that are interested in selecting high-quality providers for their medical networks. They are rigorously developed by physicians, based on the latest guidelines, and developed by national experts in the care of CTS. They are also adaptable, as providers can select the measures they consider important and choose how to apply them. In addition, they are easy to use on a trial basis, as no special technology or expertise is needed for most of the measures. Finally, they are inexpensive, as measures are free and start-up costs include training staff. These measures will become more useful if widely adopted, and ultimately, report cards could compare provider organizations. It would be feasible in the workers' compensation setting to reduce the burden on the utilization review process.

The results of the study lay the groundwork for a comprehensive study of quality for CTS in occupational settings. The U.S. Agency for Healthcare Research & Quality has awarded Dr. Nuckols a grant to develop projects and expertise addressing the relationship between quality and costs. The work on this project was instrumental in securing this grant. In addition, RAND and Kaiser Permanente Northern California Regional Occupational Health are partnering to do a study examining the quality of care among workers' compensation patients with CTS, as well as the relationship of quality care to workers' clinical outcomes and the costs to major stakeholders. The U.S. Agency for Healthcare Research & Quality is also funding this five-year study, which began on September 30, 2010 ("The Value of High Quality Medical Care for Work-Associated Carpal Tunnel Syndrome," grant number R01HS018982-01). At the same time, Kaiser Permanente will use the measures to develop an internal quality assurance program.

Conclusions based on the current study include that quality of care is important in workers' compensation settings and quality measures are needed. Low-quality care impedes recovery and increases cost to everybody. CTS is a good place to start. Provider organizations can use the CTS measures and tools developed by the study to monitor quality of care. For payors, it may be more feasible to encourage or require providers to monitor quality and report results back to the payors than to assess quality directly. However, payors could assure the appropriateness of future surgeries for CTS using the algorithm developed in the study.

SPECIAL REPORT: OCCUPATIONAL AND NON-OCCUPATIONAL INTEGRATED CARE

Introduction

Integration of group health and workers' compensation medical care is an alternative to two separate systems of medical care. Under integrated health care, the same individual physician or health provider group administers treatment for both occupational and non-occupational medical conditions and integrates payment for treatment under a single insurance policy. Integrating workers' compensation medical treatment with group health treatment offers employers the potential for significant savings and could help improve the quality of care and workers' overall access to health insurance.

Group health care and workers' compensation medical care are typically delivered through separate provider systems, often resulting in unnecessary, duplicative and potentially contra-indicated treatment. A lack of integration of group health care and workers' compensation medical systems creates major financial challenges for employers, especially those in industries with already high workers' compensation costs.

Background

The Commission on Health and Safety and Workers' Compensation (CHSWC) issued a working paper titled "Comparing the Costs of Delivering Medical Benefits under Group Health and Workers' Compensation — Could Integration Pay for Covering the Working Uninsured?" At its October 22, 2009 meeting, CHSWC voted to create an advisory group to discuss the findings of the issue paper on integrating workers' compensation medical and group health care. Subsequently, on February 25, 2010, CHSWC held a roundtable to discuss the issue paper in detail, get feedback from the advisory group, and examine the feasibility of adopting integrated care in California. The roundtable was composed of over 40 participants representing employers, labor, government agencies, medical providers, insurance companies, and attorneys.

Integration of Care Study

The integration of care study involves a partnership between CHSWC, the California HealthCare Foundation (CHCF) and the University of California (UC), Berkeley.[66,67]

One of the prerequisites for integrating occupational and non-occupational care is near universal health insurance coverage. The study argues that if occupational care and non-occupational care are integrated, the savings would be sufficient to finance a substantial fraction of the incremental cost of universal health coverage. Furthermore, the savings from integration can be obtained without reducing payments to medical providers, i.e., hospitals, doctors and pharmacies, and without raising costs to employers. This process can occur without restricting health care provided to patients and injured workers.

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[66] Frank Neuhauser, MPP, Institute for the Study of Social Insurance, University of California, Berkeley; Jasjeet Sekhon, Ph.D., Professor of Political Science, University of California, Berkeley; Mark Priven, FCAS, MAAA, Actuary, Principal, Bickmore Risk Services; Rena David, MBA, MPH, Healthcare Consultant; Nicola Wells, BS, University of California, Berkeley; Christine Baker, MA, Executive Officer, California Commission on Health and Safety and Workers' Compensation; Jon Stiles, Ph.D., UC DATA, University of California, Berkeley.

[67] The study involved assistance from the following organizations:
Workers' Compensation Insurance Rating Bureau (WCIRB)
Council on Compensation Insurance, Inc. (NCCI)
National Academy of Social Insurance (NASI)
California Department of Insurance (CDI)
National Association of Insurance Commissioners (NAIC)

The recent national healthcare reforms laid the groundwork on which states can begin to build integrated care systems.

Key Issues

Differences between workers' compensation and group health care

- Workers' compensation covers everyone from the first day they are on the job; there is no waiting period, and there are no eligibility requirements. In contrast, under group health care, approximately 80 percent of employees at employers that offer group health insurance are eligible for the program, and 20 percent are not eligible; the ineligible employees are often part-time, and even fewer employees are eligible for benefits from the first day they start their job.

- Employment-based group health care almost always involves shared premiums, co-pays, and deductibles. Workers' compensation is entirely paid by employers.

- Workers' compensation is "event-based"; it pays for all medical treatment for a condition, the onset of which occurred during the policy period, even if that care is delivered years in the future. In this respect, worker's compensation is similar to other types of property casualty insurance that have a medical liability component, like automobile and malpractice. Health insurance is "service-date-based" paying for all services delivered in the policy period regardless of the date of a condition's onset. Health insurance does not pay for any treatment after the policy period, even if a condition's onset occurred during the policy period.

- Workers' compensation is regulated at the state level, and there is almost no federal regulation. Within states, benefits are identical across employers and workers in the workers' compensation system.

- Group health care is regulated at the federal and state level. One can buy several different types of policies for group health care with different benefit levels and coverage restrictions.

- Because workers' compensation is regulated at the state level, reforms have to occur on a state-by-state basis even if some of the prerequisites are put in place at the national level by the federal government.

Prerequisites for Integration

- Universal coverage or near universal coverage for the working population: having universal coverage is a prerequisite because labor will require continuous medical coverage for workers injured on the job *even* if they are employed or moving to a different employer.

- De-coupling the liability of the employer for the medical portion of the workers' compensation coverage: medical treatment and the liability for the medical treatment should be treated exactly like a non-occupational medical condition. The liability for medical treatment related to a workers' compensation injury would not be linked to an employer as in the current system. The liability for treatment would rest with the health insurer covering the worker when treatment is delivered.

- The treatment and payment processes have to be integrated. Past pilot efforts at integration have kept the insurance products separate and have integrated only the treatment process. There should be only one medical insurance product with the integration of care, avoiding the situation where the health care provider is responsible for occupational and non-occupational care but gets paid from two different sources.

Savings from integration

- The study made two separate estimates: one that relied on data from California insurance rate filings by hundreds of individual insurers; and a second that relied on more aggregated national data from the National Academy of Social Insurance (NASI) and the National Council on Compensation Insurance (NCCI). The California data are detailed and drawn only from insurers' individual financial reports and rate filings. Administrative costs are reported by individual insurers. Loss costs are reported by individual insurers and aggregated by the California Workers' Compensation Insurance Rating Bureau (WCIRB).

- The administrative costs derived from NASI are derived from aggregate reporting by state workers' compensation agencies and insurance reporting services. NASI administrative cost estimates tend to be conservative because of the underlying assumptions used in the analyses. These estimates can be thought of as a check on California insurers' estimates that are more detailed but cover only a single state.

- For California insurers and NASI estimates, the cost under integration is very low in the initial year because employers have insured all the liabilities that occurred before the first year of integration. Insurers and employers only pay about 10 percent of the liabilities on injuries occurring under a policy during the first year of the policy. As the period covered by integration becomes longer, treatment for more injuries are included under the integrated benefit. On a national level, there is $52 billion savings in the first year. The savings would gradually decline to $43.4 billion dollars in the fifth year. Then, as medical inflation becomes the dominant driver, annual savings begin to increase, reaching $60 billion in the tenth year.

- Total national savings estimates over the first ten years would be between $497 billion (based on NASI data) and $560 billion (based on California insurer data). Savings for California alone would be about $10 billion in the first year and $100 billion for the ten years 2011 to 2020 inclusive.

- Key reasons for the savings are that it is expensive to deliver medical care separately for a single condition. This is very expensive initially and even more expensive over a life-time of separate treatment. Additionally, life-time medical costs are very difficult to predict, and insurers have to charge a "risk premium" for taking on a highly speculative liability. Health insurers are only estimating medical treatment costs over the next 12 months, a much less risky proposition. Workers' compensation cases can be impacted by court decisions, medical technology changes, medical inflation, and other factors, and even number 20 or more years after the inception of the policy.

Labor-Management Comments from Roundtable Participants

- A single payor system could make it easier for integration of care to work.

- There is a need to look at other systems that are more efficient in order to compete with the rest of the world.

- It is inaccurate to state that workers' compensation is entirely paid for by employers. When workers' compensation costs go up, it puts pressure on workers' wages. Therefore, it is not only the employers, but also the workers who are paying for workers' compensation.

- There are significant costs on loss adjustment expenses in workers' compensation. Part of the goal of the 2004 reforms was to lower the frictional costs in the workers' compensation system. This has not been addressed, and there are still considerable frictional costs. Even if the broader issues cannot be addressed, there is still a need to examine the potentially unnecessary administrative costs in the system.

- Cost savings identified by the study are substantial, and it is in the best interests of business and labor to examine and address the concept of integrated care. Some participants commented that state organizations such as the State Compensation Insurance Fund or CalPERS could run pilot programs since they are providing health care and workers' compensation.

Employer Comments from Roundtable Participants

- There is waste in the current workers' compensation system and issues are how to reduce duplication and costs in the workers' compensation and group health care.

- Employers are hesitant about the single payor or universal health care system. Additionally, it is difficult for them to understand how integrated care would mean that there would be no cost increases for small businesses, since some small businesses currently do not provide health care.

- Nothing is stopping an employer from working with its labor force to put together 24-hour care coverage. However, it is a complicated process. In the past, the 24-hour care model did not work for every employer of every size.

- Another issue was who would act as the gatekeeper on medical care so that occupational disease was getting the correct amount of care according to the treatment guidelines and fee schedules. A lot more gate-keeping had to take place in the 24-hour care model than people expected.

Summary of Roundtable Recommendations

- Focus on reducing administrative costs in the current system in the short-term.

- Continue to get data to see what the frictional costs are so that even when the two systems are not integrated, they are operating at maximum efficiency.

- Look at the group health system to see what can be done differently in workers' compensation. Certain reporting requirements, including duplicate reporting, especially for medical-only claims, may not be necessary and could be eliminated. The reporting requirements are a big portion of the costs and create an administrative burden on the system. In particular, the Doctors' First Report of Injury is very cumbersome and may be irrelevant in medical-only cases.

- Identify what will occur at the national level prior to implementing integration of care at the state level.

- Focus in the short-term on identifying and reducing unnecessary administrative costs in the workers' compensation system.

- Examine what works in health insurance and apply that to workers' compensation rather than implement a systemwide change of integration of care.

- Consider piloting the integration of care model in the public employment sector.

- Look at the example of New Zealand in delivering medical and indemnity.

- Ask the Massachusetts Rating Bureau if it has noticed any changes in claims activity.

- Examine how utilization review costs are defined in the Health and Safety Code and look at the Statement of Statutory Accounting Principles of health plans.

For further information …

"Comparing the costs of delivering medical benefits under group health and workers' compensation – Could Integration pay for covering the working uninsured?" (October 2009). www.dir.ca.gov/chswc/PublicCommentsandFeedback.html

SPECIAL REPORT: ASSISTING INJURED WORKERS AND IMPROVEMENTS IN IDENTIFYING ILLEGALLY UNINSURED EMPLOYERS

Introduction

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers and/or until the employer is identified and made to reimburse those expenses made by the fund. The State administers the fund, and all costs and expenses of the fund are paid by assessments to legally insured employers in California.

The workers' compensation community has expressed concern about several aspects of the program, ranging from the complex nature of bringing a claim to the fund to the complex directions provided to the public to the difficulty in identifying uninsured employers.

In response, the Commission on Health and Safety and Workers' Compensation (CHSWC) requested that Commission staff participate in addressing some of the emerging issues regarding uninsured employer program including:

- Access to benefits by injured workers of illegally uninsured employers.
- Instruction guides and information provided by Information & Assistance (I&A) Officers.
- Identification of uninsured employers.

The following is an update on the progress in addressing these issues.

Pilot I&A Enhanced Customer Service Initiative to Assist Injured Workers

Background to the I&A Enhanced Customer Service Initiative

The Division of Workers' Compensation (DWC) Information & Assistance (I&A) Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys, and other interested parties concerning rights, benefits and obligations under California's workers' compensation laws. The unit plays a major role in reducing litigation before the Workers' Compensation Appeals Board (WCAB) and is often the first DWC contact for injured workers.

The I&A Officer answers questions and assists injured workers, provides written materials, and holds meetings to resolve problems with claims. Most of the services are designed to help injured workers who do not have an attorney. There are 24 I&A offices in the State.

As discussed above, one helpful resource is the UEBTF which may provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. UEBTF is administered by the director of the California Department of Industrial Relations (DIR). Claims are adjusted for the DIR director by the UEBTF Claims Unit in DWC. UEBTF pursues reimbursement of expenditures from the responsible employers through all available avenues, including filing liens against their property. Litigation for UEBTF is conducted in the name of the director of the DIR by the Office of the Director Legal Unit.

Some cases that come through I&A offices become UEBTF claims. The procedures to follow in order to join UEBTF in a claim can pose problems for unrepresented injured workers. With UEBTF claims, while

DWC produces a Fact Sheet and Guides and I&A offices distribute and mail copies to injured workers who request them, the paperwork requirements can be complicated and confusing for injured workers who do not have an attorney. A customer service initiative was developed to test whether more assistance is needed or is productive in assisting injured workers.

CHSWC has published useful guides for injured workers, and it has reported on various barriers to the workers' compensation system for low-wage workers and other categories of workers with a view to improving access to the workers' compensation system for all injured workers. In particular, CHSWC has reported on UEBTF, including a review of the statutory provisions and DWC guidance materials that detail the required steps in filing a UEBTF claim. CHSWC has also been invited to and has participated in stakeholder meetings about the UEBTF claims process.

The I&A Enhanced Customer Service Initiative: A Joint Partnership

In collaboration with CHSWC, DWC initiated in late May 2009 a pilot-enhanced customer service initiative in one I&A office. In the pilot, the role of the I&A Officer was expanded to assisting injured workers by:

- Helping to name correctly the employer, possibly collecting several business names that the employer uses, and helping to verify insurance coverage information from the employer, using the correct legal name.

- If the employer is suspected to be uninsured, actions include: arranging for service of process to establish personal jurisdiction over the employer; assisting in legally joining the UEBTF and requesting benefits from the UEBTF; obtaining a WCAB hearing (filing Declaration of Readiness to Proceed, Application for Discretionary Payments); and reporting suspected fraud (suspected misdemeanor or felony crimes) to the Division of Labor Standards Enforcement (DLSE).

Once the unique demands of a UEBTF claim were completed, the I&A process reverted to normal customer service in the provision of information and assistance.

The expectation was that rededicated efforts to provide customer service in UEBTF cases would demonstrate practices that are productive in strengthening the workers' compensation system. The additional assistance provided by I&A Officers requires additional training, including additional investigative expertise that is already available within DIR.

This initiative began in the I&A office in Salinas, California, on June 1, 2009, and ended June 30, 2010. It was later expanded to the I&A office in Anaheim.

Results

Results indicated that a small percentage (6 percent) of the injured workers who came to the I&A office were unsure of the insurance status of their employer or believed that their employer was not insured.

With additional training, the I&A Officer was able to assist the injured worker in important ways. More often than not, the I&A Officer was successful in verifying that the employer was insured and was then able to point the injured worker towards the straight-forward claims process. This is an important service to direct only legitimate claims to the UEBTF.

In cases where the employer was found to be likely illegally uninsured, the I&A Officer was helpful in suggesting that the employer be joined during a hearing, thereby avoiding the complicated service of process requirement.

In cases where the employer was found to be likely illegally uninsured, the unrepresented injured worker actually had more success in obtaining representation by a lawyer, once the process of trying to track down the employer and its coverage information had already been completed.

The additional customer service can take up to 3.5 additional hours, but as there were relatively few truly uninsured injured workers identified in this small pilot, this may suggest time well spent.

CHSWC UEBTF Booklet

Injured workers, legal services organizations and agencies that investigate workers' compensation fraud have expressed a need for these workers to receive additional help and support in following the UEBTF claims steps described in the above Pilot I&A Enhanced Customer Service Initiative section.

DWC has produced basic materials on steps to take in a UEBTF case. Based on stakeholder input, further educational work has been needed to clarify and fully explain the procedural steps set forth in DWC materials with easy-to-understand terminology and examples.

Funding was provided for University of California (UC), Berkeley staff to assist CHSWC in developing a fully designed educational booklet based on legal (statutory) requirements, case law, and advisory input from members of the workers' compensation community.

This project was coordinated with DWC's project to streamline the UEBTF process and offer additional services to injured workers of uninsured employers and to pilot these services with the I&A office in Salinas.

The booklet, "If Your Employer is Illegally Uninsured: How to Apply for Workers' Compensation Benefits" was made available in June 2011 and is posted at
http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers.pdf.
Spanish version at http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers_Spanish.pdf

Labor Code Section 90.3 Data Matching, Targeting and Reporting Program

Background

A series of pilot studies were conducted in 1998 to identify illegally uninsured employers and bring them into compliance. Each pilot project targeted a specific group of employers. (See http://www.dir.ca.gov/chswc/uefintro.html.) The results of these pilot projects provided impetus to create Labor Code Section 90.3.

In 2002, Labor Code Section 90.3 (AB 749) created a program "for targeting employers in industries with the highest incidence of unlawfully uninsured employers" and specified multi-agency/multi-organization data sources to be used. The law also required annual reporting to the Legislature on the effectiveness of the program.

Due to a lack of enabling funding authority, the program was never initiated, and the previously mentioned pilot projects served as the only quantitative evidence of the effectiveness of multi-agency/multi-source data matching methodologies to detect uninsured employers.

In 2007, Senate Bill (SB) 869 amended Labor Code Section 90.3 to further specify and require a program that "systematically identifies unlawfully uninsured employers" and allowed for targeting methods, along with other methods such as random sampling. Labor Code Section 90.3 provided the needed enabling funding language and refined the type of annual reporting to the Legislature (and to the public via the Internet) on the effectiveness of the program. The reporting requirements help guide the type of program that needs to be conducted. For example, the terms "matching records" and "matched to records" are used in order to require specific statistics, methodologies and measureable results, and reported statistics should "permit analysis and estimation of the percentage of unlawfully uninsured employers that do not report to the Employment Development Department (EDD)."

The reporting requirements could be improved in order to guide implementation, but the report need "not be limited to" the specified results numbers listed in Labor Code Section 90.3(d)(1)-(8).

CHSWC is pleased that earlier results of CHSWC pilot studies informed the process to create the statute related to this matching program to identify illegally uninsured employers. CHSWC will now help ensure that the data matching program and the reporting of results become routine and effective at bringing illegally uninsured employers into compliance and/or fined when necessary.

In 2011, new data specifications were developed to include separate sampling of new employers, targeted employers and random employers. One planned change to the data matching program is to limit the employer samples to those with at least five employees. The earlier the approach of using employer lists from EDD and the Workers' Compensation Insurance Rating Bureau (WCIRB) that cover all employers produced too many false positives. It turns out that many of the employers initially identified as being uninsured are actually owner operators and thus exempt from coverage, so setting the bar at five employees or more is intended to better focus efforts on the truly uninsured.

First DIR Report on Labor Code 90.3 Uninsured Employer Identification Program

In 2009, the first report required under the amended Labor Code 90.3 was released by DIR. The report is available at http://www.dir.ca.gov/dlse/UUEEP-2008.pdf.

The *reported* results of the program yielded 123 citations issued per Labor Code Section 3722(a) for not being insured and 33 citations issued per Labor Code Section 3722(b) for being found to not be insured in the past. Of the $484,489 in workers' compensation penalties assessed, $151,783 in workers' compensation penalties were collected, and $76,000 in citations were administratively dismissed. The report concludes that the efforts have yielded positive results in DLSE's continued work in combating the underground economy and that DLSE will continue to refine the efficiency and effectiveness of this program for the benefit of both employees and employers.

Second DIR Report on Labor Code 90.3 Uninsured Employer Identification Program

In 2010, the second report required under the amended Labor Code 90.3 was released by DIR. The report is available at http://www.dir.ca.gov/dlse/UUEEP-2009.pdf

The reported results of the program yielded 62 citations issued per Labor Code Section 3722(a) for not being insured and 22 citations issued per Labor Code Section 3722(b) for being found to not be insured in the past. Of the $227,090 in workers' compensation penalties assessed, $57,583 in workers' compensation penalties were collected, and $43,000 in citations were administratively dismissed.

The report states that while the number of investigations was only 5 percent less than last year, the number of citations under Labor Code section 3722(a) were approximately 50 percent less, suggesting that the program is improving compliance. While it is not clearly evident from the information presented in the report that the reported statistics can be interpreted, especially to "suggest" that the lower numbers of citations in 2009 can be related to improving compliance, CHSWC does not have access to the data with which to review any steps or changes in the steps in the data matching, investigation and enforcement processes. The report concludes with the same statement from last year that DLSE will continue to refine the efficiency and effectiveness of this program for the benefit of both employees and employers.

Third DIR Report on Labor Code 90.3 Uninsured Employer Identification Program

In March 2011, the third report was released by DLSE. The report is available at
http://www.dir.ca.gov/dlse/2010unlawfullyuninsuredwc-3.24.11-FINALPOSTED.pdf

For the first time since the program became effective in 2008 per SB 869, four full quarters of payroll matching data were used, consisting of 2,000 randomly selected referrals. The reported results of the program yielded 85 citations issued per Labor Code Section 3722(a) for not being insured and 54

citations issued per Labor Code Section 3722(b) for being found to not be insured in the past. Of the $439,287 in workers' compensation penalties assessed, $92,287 in workers' compensation penalties were collected, and $29,250 in citations were administratively dismissed.

Industry, geographic and size characteristics of non-compliant employers are not reported as part of program statistics. Specific reasons for such a large variance between penalties assessed and collected are also lacking. CHSWC suggests that better selection of data to match and better collection of data for analysis and explanation (reporting) purposes would help improve this program in the future. As stated above, changes announced in 2011 represent a potential major improvement.

SPECIAL REPORT: OCCUPATIONAL SAFETY AND HEALTH

Evaluation of the Effectiveness of California's Injury and Illness Prevention Program and Compliance Officers' Inspections

Introduction

Details are scarce about the effectiveness of OSHA's injury and illness prevention program (IIPP) standard and whether some compliance officers are especially good at reducing workplace injury and illness rates.

The purpose of the study was to conduct research that evaluates the effectiveness of the IIPP standard at reducing injury and illness rates and compliance officers' inspections. The research can help to improve the ability of occupational health and safety agencies to prevent injuries and illnesses, potentially a significant number of injuries and illnesses.

Evaluation of the Effectiveness of California's Injury and Illness Prevention Program

Background

As part of the inspection process, inspectors review employers' compliance with required programs such as the Injury and Illness Prevention Program (IIPP). The requirement of the IIPP program is specified in Title 8 CCR Section 3203 of the General Industry Safety Orders which took effect in July 1991. The regulations required all employers in California to establish an IIPP. Having an IIPP is considered the first step toward creating a system for identifying, correcting and preventing workplace safety and health hazards. Section 3203 has been the most frequently cited standard in general industry in California ever since it was promulgated.

Other Labor Code sections and regulations address specific industrial safety and health hazards and prevention requirements by type of workplace, type of equipment, environmental contexts and industry sectors. The Division of Occupational Safety and Health (DOSH) enforces the laws on IIPPs and safety standards through various means, including inspections and citations. Data on occupational injuries and illnesses can be used to measure or test the impact of safety and health standards, including enforcement efforts.

Objective and Scope of the Study

The purpose of the study is to answer the following descriptive and causal questions. The descriptive questions are:

- Has compliance with specific IIPP provisions improved over the years?
- How does the number of IIPP violations cited vary with the type of establishment and type of inspection?

The questions that attempt to examine causal issues are the following:

- Did injury and fatality rates decline in California, relative to other states, after the implementation of the IIPP standard?
- Do workplaces that do not comply with the IIPP have worse injury, fatality, and loss performance than compliant firms?
- Did workplaces that had been cited for IIPP violations and which came into compliance improve their injury performance relative to other workplaces?

Data

The above research relied on the following sources of data: California Unemployment Insurance; California Workers' Compensation Information System (WCIS); OSHA Integrated Management Information System; and the Workers' Compensation Insurance Rating Bureau (WCIRB).

Findings

The study findings include:

- There is an important difference between inspections citing violations of Labor Code Section 3203(a), the requirement to have a written safety and health document, and inspections citing violations for its specific subsections, or those that require hazard surveys, accident investigations, and training. The former carry small penalties and are cited primarily in first-time inspections, mainly at quite small, non-union workplaces. The latter have larger penalties and are cited at larger sites, especially in the course of accident investigations, and are not concentrated in first-time inspections.

- Looking at trends over time, after a decline during the first two years of the IIPP, the number of violations per inspection has remained fairly constant for both types.

- The number of Labor Code Section 3203(a) violations in first-time inspections has not decreased over time. Thus, either due to lack of information or lack of deterrence, newly inspected establishments are no more likely to have written programs now than 20 years ago. On the other hand, once an establishment has been cited for an IIPP violation, the likelihood of finding another violation declines substantially.

- Examining changes in fatality rates to see whether California experienced any improvement relative to other states in the years after the IIPP took effect in 1991 did not indicate any improvement. Even if improvement had been found, it would have been unclear whether the improvement was due to the IIPP or to other factors.

- Employers who were cited for a violation of Labor Code Section 3203(a), the basic requirement to have a written IIPP document, actually had better performance (either Ex-mods or prior injury rates) than firms that had no IIPP violations. In contrast, employers who were cited for violations of the subsections of Labor Code Section 3203(a), especially the requirements to train employees and to investigate accidents, had worse performance than employers who were not cited for any IIPP violation or who were cited only for Labor Code Section 3203(a).

- A citation of subsection of LC 3203 (a) for failing to provide appropriate training was linked both to poorer performance prior to inspection and to improved performance after the inspection.

Further Analysis of the Injury and Illness Prevention Program

Another RAND study is in process, which will look at enforcement of the IIPP and its effects in industries that Cal/OSHA has designated as high-hazard. It builds on current work that has identified the average effects of IIPP enforcement in all of manufacturing and in other industries, including wholesale trade, health care, transportation and utilities.

Compliance Officers' Inspections

Background

The Cal/OSHA Program is responsible for enforcing California laws and regulations pertaining to workplace health and safety and for providing assistance to employers and workers about workplace safety and health issues.

The Cal/OSHA Enforcement Unit conducts inspections of California workplaces based on worker complaints, accident reports and high hazard industries' risks. There are 22 Cal/OSHA Enforcement Unit district offices located throughout the State of California. Inspections are conducted by Cal/OSHA safety engineers and industrial hygienists who respond to complaints, referrals and accidents, and also plan an inspection schedule in hazardous industries. There is no existing research on whether some compliance officers are more effective than others at reducing workplace injuries and illness rates. One earlier study found that health inspections were more effective than safety inspections in preventing injuries. This unexpected finding may reflect that health inspections involve more time on-site than safety inspections do and thus give the compliance officer more time to observe the workplace. Health inspections are conducted by industrial hygienists, who have more professional training. A study found that the number of violations cited was smaller for inexperienced compliance officers, although the effect was not statistically significant.

The most recent study of the impact of inspections on injury and illness rates, covering the years from 1999 through 2006 in Pennsylvania, estimated that the average effect in manufacturing was approximately a 20 percent reduction in the rate of lost-time injuries over the two years after the year of inspection. This reduction was seen, however, only when the inspection levied penalties, an outcome that generally accompanies citations for serious violations. A majority of the inspections did levy penalties.

Findings

The study of Cal-OSHA inspectors found that they varied considerably in their inspection practices. These practices included: the number of violations cited per inspection; the number of different standards that they cited; and whether an employee accompanied them during the inspection.

To some degree, the study found that these individual variations were associated with different practices among the district offices. Since inspectors often stay with the district office where they begin, they appear to be socialized in the practices of that office. If Cal/OSHA puts a high priority on uniform behavior among inspectors, it may need to increase the training that addresses these issues.

As found in a prior study, injury rates declined more when more experienced inspectors conducted inspections. However, no other characteristics that were clearly linked to better outcomes were found.

The most recent study of the impact of inspections on injury and illness rates, covering the years from 1999 through 2006 in Pennsylvania, estimated that the average effect in manufacturing was approximately a 20 percent reduction in the rate of lost-time injuries over the two years after the year of the inspection. This reduction was seen, however, only when the inspection levied penalties, an outcome that generally accompanies citations for serious violations. A majority of inspections did levy penalties.

Model Injury and Illness Prevention Program Training Program

Background

Injury and Illness Prevention Programs (IIPPs) are required in California workplaces and are a critical component of any health and safety program because they establish key procedures for protecting the health and safety of employees.

The Commission on Health and Safety and Workers' Compensation (CHSWC) has designed a model training program that assists employers and employees throughout California in their efforts to reduce work-related injuries and illnesses by effectively developing and implementing their IIPPs.

This program is especially timely given that federal OSHA is considering promulgating a federal IIPP standard modeled on Cal/OSHA's IIPP standard. Development and implementation of the proposed training program and IIPP materials would allow CHSWC to take a leadership role in creating a model that can be useful nationwide.

Description

The purpose of the study is to create a focused training program specifically aimed at creating effective IIPPs and targeting a range of industries in California. The program will draw on materials from two key Commission programs: the Worker Occupational Safety and Health Training Program (WOSHTEP); and the School Action for Safety and Health (SASH) program.

The first phase of the program will include:

- A one-day interactive training program targeting staff responsible for creating or implementing IIPPs.

- Adapted training materials, including a generic model IIPP guide and template and program tools including a factsheet on promoting employee involvement; a sample new employee safety orientation training outline and activities; sample accident investigation forms; and hazard-identification worksheets.

During the second phase of the project, the following activities will be implemented:

- Conducting at least two to three sessions of the training program. Recruitment will target a variety of industries in order to assess program applicability to a range of occupations and worksites. Based on results of these trainings, the generic one-day training program will be finalized.

- Developing a Roll-out Plan: an outreach and dissemination plan will be developed to support roll-out of the program in subsequent years. Depending on available funding, the program will eventually be made available statewide.

For further information about this project, see the “Projects and Studies” section of this report.

The Impact of Workers’ Compensation Experience Modification Rating (Ex-mod) and Firm Age on Safety Behavior and Risk

Introduction

At the request of the Commission on Health and Safety and Workers’ Compensation (CHSWC), Commission staff held a Health and Safety Research Advisory Committee meeting on November 19, 2007, in Oakland, to identify key health and safety areas where further research and study could help improve workplace health and safety in California. The Advisory Committee included stakeholders in the health, safety and workers’ compensation communities representing insured and self-insured employers, labor, health and safety researchers and state agencies.

One of the recommendations of the Health and Safety Research Advisory Committee was to rigorously identify the consequences of different:

- Safety policies and practices such as workers’ compensation experience rating.

- Workplace health and safety activities for different types of employers by size, age of firm, and industry.

In addition to the above recommendations, the Experience Rating Task Force, established in 2007 in response to concerns expressed by the California Insurance Commissioner, made recommendations regarding research on workers’ compensation experience modification rating (Ex-mod). The Task Force report suggested that research opportunities to “evaluate the effectiveness of experience rating as a safety incentive” should be undertaken “to the extent such research is likely to produce meaningful results relevant to potential future Rating Plan changes.”

In response to the above research recommendations, CHSWC issued a request for Proposal (RFP) and contracted with RAND for a study that is evaluating:

- The impact of workers' compensation Ex-mod on the safety behavior of small employers and medium-size and large employers.

- The safety risk of new firms versus older firms.

In addition, the study will examine workers' compensation experience specifically for apprentices. This calls for analysis of data from the Division of Apprenticeship Standards (DAS). The study will determine: if apprentices that fall in a low-wage class consistently have safer experience than the average for the class; whether employers deserve a discount on premium rates for apprentices to avoid subsidizing low-wage employers who do not hire apprentices; and whether apprentices are safer than similar workers who do not undergo the rigorous training, including safety training.

Safety effect of workers' compensation experience rating

Experience modification factors are meant to adjust employer's workers' compensation premium rates to reflect their underlying safety. Ex-mods are calculated by the Workers' Compensation Rating Bureau (WCIRB), and premium rates are set by insurers. Employers' premiums are a product of the premium rate times the Ex-mod. Employers with poor safety records receive Ex-mods greater than 1, while employers with good past experience receive Ex-mods less than 1.

As noted above, an Experience Rating Task Force was established in 2007 to examine how well the current Ex-mod methods used by the California WCIRB promote safety. There are at least two key areas where the understanding of the incentive effects of Ex-mod could be substantially improved.

Small employers. There are a large number of small employers just above and below the threshold premium for experience rating. Because they have few employees and few claims, the predictive value of Ex-mods for small employers is even lower than it is for large employers. On the other hand, WCIRB has noted, as have others, that small employers are on average less safe. Consequently, this may be a group of employers for whom Ex-mod incentives could have a substantial impact on safety. However, there is no research to support whether Ex-mods affect small employer behavior, and, consequently, it is not known whether the threshold for Ex-mods should be lowered (subjecting more employers to rating but increasing the concerns about credibility) or raised (reducing the number or employers and concerns about credibility).

Medium-size and large employers. Substantial efforts are made to limit the impact of past experience when calculating Ex-mods including: "ballast" is added to the numerator and denominator, losses are capped, etc. These limitations reflect concerns about the predictive value at the individual employer level and employer concerns about year-to-year variability, but they ignore the possibility that greater variability may increase safety incentives. Again, almost nothing is known about how employers respond to the incentive effects of experience modifiers, and hence, appropriate judgments cannot be made about how incentive effects should be weighted in designing the Ex-mod calculation. In the absence of knowledge about incentive effects (if any), approaches to Ex-mod calculation will only consider insurer under-writing concerns and not other policy objectives.

Safety Risk at New Firms versus Older Firms

The number of firms that are created and cease to exist each year in America is large. In 2005, with about 6.5 million firms, the nation witnessed the birth of 644,000 new firms and the exit of 566,000 existing ones. The new firms had 3.6 million employees by the end of the year, and the exiting firms had had 3.3 million at the end of the previous year.[68] In that year, and in most years, over 12 percent of the national births occurred in California.

[68] www.sba.gov/advo/research/dyn_b_d89-05.pdf

By themselves, the dynamics of firm creation and destruction have significant implications for occupational safety and health. For example, strategies that aim at changing organizational practices face limitations if organizations are constantly dying and being created. However, firm turnover is even more important if new firms present unusually high levels of injury and illness risk. This study will examine the trajectory of relative injury rates over several years for new firms in different industries. It is quite possible that any excess risk may persist over several years, which would magnify the importance of firm age as a risk factor.

There have not been studies that have looked specifically at firm age, but there are grounds for believing that new firms may be relatively unsafe. Their workers may be more likely to be inexperienced. Their managers may also be inexperienced and lack knowledge of the safety and health issues at their facilities. If these firms are relatively unsafe, then it may be especially worthwhile to consider interventions there that might be helpful.

Safety and Apprenticeship Training

Unions and employers in the building trades have long cooperated on programs to train new skilled workers under jointly managed apprenticeship programs. These programs are extensive (usually several years) and intensive (involving classroom and on-the-job instruction). During their training, apprentices are paid initially at a substantial discount of the collectively bargained wage of journeymen. As they gain experience and training, the apprentices' wages are increased to near that of the journeymen. When the training is complete, the apprentices become journeymen and receive the journeymen wages and benefits.

In California, most construct-specific class codes are "split" into two classes: one for high-wage workers (nearly all union members); and one for low-wage workers (dominated by non-union workers, but also including union apprentices).

CHSWC has identified two issues:

- Are apprentices that fall in the low-wage class consistently safer than the average for the class, and hence do union employers deserve a discount on premium rates for apprentices to avoid subsidizing non-union, low-wage employers?

- Are apprentices safer than similar workers who do not undergo the rigorous training, including safety training? Hence, even if the apprentices are similar in safety to all employees grouped into low-wage classes (including more experienced workers), do their employers deserve a discount because the investment in safety training makes these workers as a subset of the class distinctly less risky than similar workers (by age, gender, etc.) who do not receive the intensive safety training financed by labor and employers under joint apprenticeship programs?

Objective and Scope of the Study

The purpose of the study is to determine:

- Whether the application of and changes to workers' compensation Ex-mod have an effect on the safety experience of small, medium-size, and large employers in addition to its original purpose of addressing insurer underwriting concerns.

- Whether the application of and changes to workers' compensation Ex-mod to medium-size and large employers have an effect on their safety experience.

- If employers' performance now affects their premiums but overall premiums are declining, would employers pay more or less attention to how to decrease their injury losses?

- Policy recommendations on improving the current workers' compensation Ex-mod methodology.

- Whether new firms have a greater safety risk than older firms. The analysis will look at firms by payroll, size, and rating class.

- Policy recommendations on safety interventions if new firms are determined to be more unsafe than older firms.

- Whether apprentices that fall in the low-wage class are consistently safer than the average worker in the low-wage class and whether an estimate of the appropriate discount for union employers can be determined which reflects this difference and offsets the possible subsidy of low-wage employers.

Data

The researchers will use data from the WRCIRB and the California Division of Apprenticeship Standards (DAS) to conduct their analysis.

Occupational Safety and Health for Public Safety Employees: Assessing the Evidence and Implications for Public Policy

Background

The high rate of injury and disability sustained by vital public safety employees, particularly police and firefighters, is of great concern to the workers' compensation community. In October 2004, Assembly Members Juan Vargas and Rick Keene requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study of public sector injury prevention. In particular, they requested a comprehensive evaluation and recommendations on effective public safety employee injury and illness prevention measures.

In response to the above bi-partisan request, CHSWC contracted with RAND in September 2005 to conduct a study that will assist the Legislature in its goals to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured.

Objectives of the Study

The objective of this study, which was funded by both CHSWC and the National Institute for Occupational Safety and Health (NIOSH), was to aid in the design of effective safety interventions by characterizing the important safety and health risks faced by public safety personnel and how those risks differ from those faced by non-safety personnel. To accomplish this, researchers pursued the following research goals:

- Summarize the existing literature on the injury and fatality risks to public safety employees.

- Characterize the perceived risks and the efforts currently used by public safety departments to reduce those risks.

- Describe the differences in the rates of injury, disability, and other chronic health problems for workers in public safety occupations compared with workers in other occupations.

Findings and Recommendations

The findings of the study were grouped into four separate categories: (1) characterizing the central occupational health risks to different public safety occupations; (2) describing current efforts at improving safety and identifying areas that represent the most promising targets for reform; (3) comparing the self-reported health of public safety employees with that of workers in non-safety occupations; and (4) examining differences in work-related disability claim rates of public safety employees and non-safety employees by age.

The key findings and recommendations included:

- There is a need for better surveillance of injury data, particularly for injuries to law enforcement and emergency medical personnel.

- The design and targeting of safety and health promotion efforts could also be improved with better monitoring of the types of situations and causes of injury that lead to the most severe and disabling injuries.

- There is a need to reduce strains, sprains and musculoskeletal disorders among safety employees, which are by far the leading cause of nonfatal injuries.

- Training, increased information analysis and sharing of information, strong safety messages from department leadership, and improvements to protective equipment were areas identified as useful tools for improving safety of public safety employees.

Both firefighters and police officers become more susceptible to disability as they age. Policies designed to reduce the rate of disability retirement may be most effective if focused on either preventing injuries among older safety employees or taking steps to alleviate the impact of injuries on their ability to work.

For further Information ...

> "Occupational Safety and Health for Public Safety Employees: Assessing the Evidence and the Implications for Public Policy," RAND (2008)
> http://www.dir.ca.gov/CHSWC/Reports/CHSWC_PublicSafetyEmployeesReport2008.pdf

SPECIAL REPORT: SCHOOL ACTION FOR SAFETY AND HEALTH

Background

Per the mandate set forth in the Labor Code, the Commission on Health and Safety and Workers' Compensation (CHSWC) is to assist inner-city schools or any school or district in establishing effective occupational injury and illness prevention programs (IIPPs). Priority shall be given to schools or districts with high risk.

A significant number of school employees are injured on the job each year. In 2008, the incidence rate of occupational injuries and illnesses for California school employees was higher than for all other industries in California: 7.6 cases per 100 full-time employees as compared to 4.4 cases per 100 full-time employees. Common causes of injuries and illness for school employees include over-exertion, repetitive motions, slips and falls, vehicle collisions, and assaults. These injuries are often serious and involve lost work time, including days away from work or days of restricted activity or both. Work-related injuries and illnesses impact the school community, not only the injured employee, but also his or her family, co-workers, the districts, and the students.

School districts are frequently cited by Division of Occupational Safety and Health (Cal/OSHA) for occupational health and safety violations. The most common citation issued by the Cal/OSHA against schools was for not having a written Injury and Illness Prevention Plan (IIPP). Other common citations are for lack of chemical safety training under the Hazard Communication Standard, violation of the Asbestos Standards, and violation of sanitation standards. Between 2004 and 2008, California assessed school districts $273,000 in penalties for violations of Cal/OSHA standards.

School Action for Safety and Health (SASH) Program

CHSWC has established a schools safety and health model program, California's School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention practices and resources. The program includes training and resources to enable schools or school districts to develop or improve IIPPs and to make other health and safety improvements that will help protect school or school district employees from injuries and illnesses on the job. The target audience is composed of K-12 schools and school districts at high risk of occupational injury and illness, including, but not limited to, the Youth Authority overseen by the California Department of Corrections and Rehabilitation (CDCR).

The SASH program was developed to help:

- Help ensure that employees do not have to deal with the consequences of a work-related injury or illness.
- Prevent disruptions in the class routine so that students can continue to learn and be successful in school.
- Boost employee morale and productivity when they see problems addressed and injuries prevented.
- Reduce the expenses that often go along with an injury, including the costs or workers' compensation claims, hiring substitutes, and Cal/OSHA fines.

On June 27, 2008, CHSWC hosted a roundtable discussion that brought together representatives from schools and school districts, the Governor's Office of Homeland Security, labor, and school-related agencies and organizations in California. (See list of participants in the "Summary of June 27, 2008 Schools Injury and Illness Prevention Program Roundtable.") The objectives of the meeting were to

determine how best to structure and implement the model program, including a training program for schools or schools districts with the priority training going to schools or school districts with high incidence rates and a pilot with schools from around the State.

Subsequent Advisory Group meetings were held on June 30, 2009, and March 29, 2010, to provide feedback on the project.

Following a needs assessment conducted with Advisory Committee members and others to determine the types of training and resources to be provided by the SASH program, staff at the University of California (UC) Berkeley's Labor Occupational Health Program (LOHP) developed resource materials and a one-day training program as well as established a SASH Resource Center at LOHP.

The resource materials include schools-specific factsheets, checklists and other tools; occupation-specific tip sheets; an electronic IIPP template and accompanying guide; and an online resource guide for more information. All materials are provided on CHSWC's website. To date, LOHP has worked with Joint Powers Authorities serving school districts, county offices of education, unions, and school district staff to conduct numerous SASH training programs all over the state.

LOHP and CHSWC will continue to conduct the SASH training programs at county offices, disseminate materials and promote effective health and safety programs for school district employees. Further development of the model program would include: expanding partnerships with key constituents throughout the State; expanding the target population statewide; developing a network of expert trainers; ensuring that measures of accountability are applied; and institutionalizing the program by identifying continuing health and safety education opportunities for schools.

Program Components

The SASH Program is a statewide initiative to help school districts reduce the high rate of work-related injuries and illnesses among school employees offering:

- A free training program to help build the capacity of district-level health and safety coordinators to be resources to other employees and develop an IIPP to identify, prevent and eliminate hazards.
- Written materials that support injury and illness prevention activities.
- Problem-solving assistance provided in an ongoing manner by a statewide SASH resource center.

The free one-day training program has been designed for school district staff responsible for employee safety and health. These employees are typically from human resources/administration and/or the maintenance and operations departments. Training is provided by University of California trainers and held in convenient locations so participants do not have to travel far to attend.

Participants learn valuable skills in how to:

- Identify and solve safety problems.
- Prepare written IIPPs.
- Involve other employees in carrying out prevention activities.

Once participants complete the training, they become “SASH Coordinators” for their district and receive a certificate from the Commission on Health and Safety and Workers’ Compensation and the University of California.

SASH materials are free and designed to help school employees identify and address health and safety issues in the school environment. Materials include:

- An online template for writing an IIPP, with an accompanying Guidebook.
- Factsheets on hazards commonly found in schools, including:
    - Overview of the SASH Program
    - Underlying Causes of Injury and Illness
    - Job Hazards in Schools; Investigating Job Hazards
    - Controlling Hazards
    - Prioritizing Health and Safety Problems
    - Addressing Ergonomic Hazards
    - Preparing for Emergencies at School
    - Basics of Cal/OSHA
    - Key Cal/OSHA Standards that Apply to Schools
    - Elements of an Effective Workers' Compensation Program
    - Health and Safety Committees
- Checklists and other tools to help identify problems, investigate and learn from accidents, and keep track of safety activities. Tools include:
    - Inspection Checklist
    - Incident/Accident/Near Miss Investigation Report
    - Hazard Correction Record
    - Employee Training Record
- Tip sheets for employees on hazards and solutions for their particular occupation, including:
    - Teachers and teaching aides
    - Maintenance staff
    - Groundskeepers
    - Food service employees
    - Custodians
    - Administrative and office staff
    - Bus drivers
- A poster for school employees promoting their involvement in safety activities.
- An online Resource Guide that provides additional school-related materials on particular hazards/issues and a list of agencies and organizations.

The SASH Resource Center is located in the University of California (UC), Berkeley Labor Occupational Health Program (LOHP). In collaboration with UCLA's Labor Occupational Safety and Health (LOSH) Program, the Resource Center is available to help school districts find additional information and obtain assistance after the trainings.

Accomplishments

In addition to the materials above, training classes have been offered and will continue to be offered statewide. To date, 31 one-day SASH training classes have been conducted for 594 attendees from 226 school districts in 32 counties with school district and county office of education staff, including two pilot trainings. The trainings have been very well received. Some of the attendees have assisted in setting up additional trainings in other areas. Different training options are being explored and implemented. One new format for course delivery, including a longer training with the option of video conferencing in from

remote sites, which will allow for two-way conferencing and participation in activities, was held with the Mendocino County Office of Education.

Follow-up activities after attending a SASH class include sending attendees a class roster so attendees can stay in touch and use each other as resources and sending out a newsletter. Two-page SASH newsletters for SASH Coordinators (SASH training attendees) have been prepared and distributed through email, with a fourth newsletter planned for dissemination. The newsletters include the answers to common questions asked during training sessions, as well as other relevant information.

National SASH Program – Promoting School Employee Injury and Illness Prevention Programs

The objective of the National Institute for Occupational Safety and Health (NIOSH)-funded project, Promoting School Employee Injury and Illness Prevention Programs, is to evaluate the effectiveness of the California SASH program in order to develop a model national program targeting school districts and other educational entities in other states. As part of National SASH, the degree to which SASH trainees are equipped with the skills and resources they need to apply what they have learned in the SASH training will be evaluated. This is being accomplished through an electronic survey sent to all SASH trainees three months after participants have attended a SASH training. Follow-up telephone interviews will also be conducted with a smaller number of SASH trainees. Analysis of the data collected and entered into an Access database will result in concrete recommendations for improving the SASH program and implementing similar programs across the nation.

Partnerships

The following organizations were involved in shaping the SASH Program activities and materials:

- California Association of School Business Officials (CASBO)
- California Department of Education
- California Federation of Teachers (CFT)
- California School Employees Association (CSEA)
- California Teachers Association (CTA)
- Contra Costa County Schools Insurance Group
- Kennan & Associates
- North Bay Schools Insurance Authority
- San Diego County Schools Risk Management JPA
- Schools Insurance Authority

For further information …

"Summary of June 27, 2008 Schools Injury and Illness Prevention Program Roundtable" (December 2008).
http://www.dir.ca.gov/chswc/Reports/CHSWC_SummarySchoolsInjuryIllnessPreventionProgramRoundtable.pdf

School Action for Safety and Health (SASH) Program Information and Resource Center
http://www.dir.ca.gov/chswc/SASH/index.htm

SASH Brochure
http://www.dir.ca.gov/chswc/SASH/Publications/SASH_brochure.pdf

SASH Flyer
http://www.dir.ca.gov/chswc/SASH/Publications/SASH_Flier.pdf

Injury and Illness Prevention Program Template
http://www.dir.ca.gov/chswc/SASH/index.htm

SASH Factsheets, Tools, Tip Sheets, Resource List, Worksheets, and IIPP Guide and Template.
http://www.dir.ca.gov/chswc/SASH/index.htm
SASH Online Resource Guide
http://www.lohp.org/docs/projects/sash/sashonlineresourceguideweb.pdf

SASH Poster
http://www.dir.ca.gov/chswc/SASH/Publications/SASH_Poster.pdf

Model Injury and Illness Prevention Program Training Program

Background

Injury and Illness Prevention Programs (IIPPs) are required in California workplaces and are a critical component of any health and safety program because they establish key procedures for protecting the health and safety of employees.

The Commission on Health and Safety and Workers' Compensation (CHSWC) has designed a model training program, School Action for Safety and Health (SASH), which assists employers and employees throughout California in their efforts to reduce work-related injuries and illnesses by effectively developing and implementing their IIPPs.

This program is especially timely given that federal OSHA is considering promulgating a federal IIPP standard modeled on Cal/OSHA's IIPP standard. Development and implementation of the proposed training program and IIPP materials would allow the CHSWC to take a leadership role in creating a model that can be useful nationwide.

Description

The purpose of the study is to create a focused training program specifically aimed at creating effective IIPPs and targeting a range of industries in California. The program will draw on materials from two key Commission programs: the Worker Occupational Safety and Health Training Program (WOSHTEP); and SASH.

The first phase of the program will include:

- A one-day interactive training program targeting staff responsible for creating or implementing IIPPs.

- Adapted training materials, including a generic model IIPP guide and template and program tools including a factsheet on promoting employee involvement; a sample new employee safety orientation training outline and activities; sample accident investigation forms; and hazard identification worksheets.

During the second phase of the project, the following activities will be implemented:

- Conducting at least two to three sessions of the training program. Recruitment will target a variety of industries in order to assess program applicability to a range of occupations and worksites. Based on results of these trainings, the generic one-day training program will be finalized.

- Developing a Roll-out Plan: an outreach and dissemination plan will be developed to support roll-out of the program in subsequent years. Depending on available funding, the program will eventually be made available statewide.

For further information about this project, see the "Projects and Studies" section of this report.

SPECIAL REPORT: LIENS

Background

An ongoing problem for the Division of Workers' Compensation (DWC) is the backlog of lien claims filed at Workers' Compensation Appeals Board (WCAB) offices. Most liens are for medical treatment and medical-legal expenses. Liens are also filed to obtain reimbursement for other expenses.

In 1997, the Commission on Health and Safety and Workers' Compensation (CHSWC) convened several roundtable meetings on the WCAB lien backlog that was delaying the processing of cases filed by injured workers in many WCAB district offices. Commission staff also visited DWC district offices and found that in many instances, liens for payments made over ten years ago were being filed on workers' compensation cases. In other instances, liens on the same case were not being heard at the same time, leading to costly notification and scheduling, churning of cases, and delays in resolution.

After an extensive study of the lien claim backlog in some WCAB district offices and several lien resolution roundtable sessions attended by interested members of the workers' compensation community, CHSWC recommended that statutory limitations be placed on the filing of lien claims. Assembly Bill (AB) 749 signed in 2002 made the following changes with respect to liens:

- Labor Code Section 4903.5 provides that no liens for medical or medical-legal expenses may be filed more than six months after a final decision on the merits of the injured worker's claim, five years after the injury, or one year from the date the services were provided, whichever is later.

- An exception is made in the case of health care providers and other entities that provided medical benefits on a nonindustrial basis. They may file a lien claim within six months after they know that an industrial injury is being claimed.

In 2003, Senate Bill (SB) 228 added Labor Code Section 4903.05, requiring a $100 filing fee for each medical lien filed beginning in 2004, with exceptions for certain publicly funded programs. Effective July 1, 2006, budget trailer bill language in AB 1806 repealed the lien filing fee and added Section 4903.6 to deter the filing of premature and potentially unnecessary liens at DWC district offices.

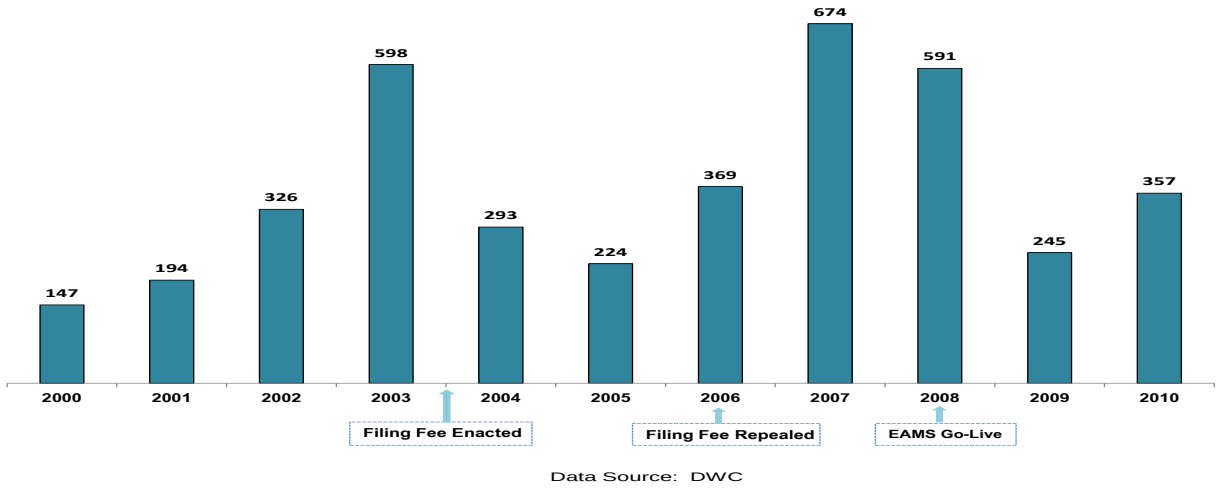
Current Status of Liens

The volume of liens in the California workers' compensation system creates a heavy burden on the State's administrative system, interfering with injured workers' access to the courts and imposing substantial costs on employers.

As the chart below indicates, from 2000 to 2003, the rate of lien filing grew steadily to about 600.000 filings per year in 2003. Then the enactment of a $100 filing fee for medical liens in September 2003 produced a one-time spike in filings immediately before it took effect, followed by a sustained reduction in the number of liens filed per year. Between 2003 and 2005, total lien filings decreased by 63 percent and numbered 224,000.

The filing fee was repealed effective July 12, 2006, and the monthly filings immediately doubled. Nearly 700,000 liens were filed in 2007, and the filings were on pace to exceed 800,000 for 2008 until the Electronic Adjudication Management System (EAMS) was implemented in August 2008. EAMS introduced new multi-page forms and required specific computer and other equipment skills from filers. The number of liens filed in 2009 fell sharply by 64 percent from its 2007 peak after the introduction of EAMS. However, the number is growing as people become more familiar with the new filing system. In 2010, the number of liens filed increased by 46 percent from 2009. Based on the rate of growth of filings in 2011 thus far, it is projected that over 480,000 liens are expected to be filed in 2011.

Figure 136: Number of Liens Filed, 2000-2010



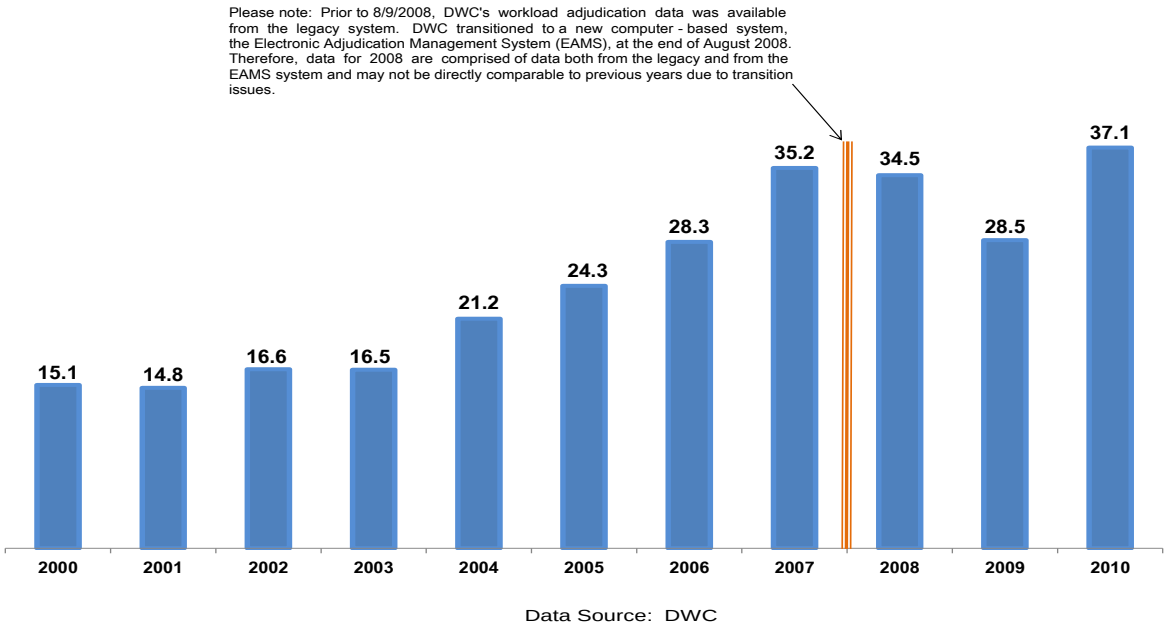
Analysis based on electronic liens data provided by DWC and samples drawn from paper lien files at five high-volume District Offices indicate that 62 percent of those liens are for medical issues.[69] These may include medical-legal, medical treatment on denied claims and on accepted claims where the doctor or the treatment was not authorized, and billing disputes over items such as outpatient costs. Medical liens account for 80 percent of the dollars in dispute. Copy services, which are treated as a distinct lien type, account for 17 percent of the liens but only 2 percent of the dollars in dispute. Interpreters account for 7 percent of the liens and 1 percent of the dollars in dispute.

The number of lien decisions regarding liens filed on WCAB cases has also grown. The number of lien decisions increased by 133 percent between 2000 and 2007, resulting in an expenditure of DWC staff resources on the resolution of those liens. Paralleling the pattern of liens filed, the number of lien decisions decreased in 2009 from its peak in 2007 after the introduction of EAMS, and then quickly recovered increasing by 30 percent from 2009 to 2010.

The volume of liens creates an environment where overbilling, underpayment, and all manner of bad faith conduct can thrive. Filing, processing, and adjudicating liens place an enormous burden on the already strained workers' compensation courts and an administrative burden on the parties. California employers and insurers are spending roughly $200 million per year on loss adjustment expenses to handle medical lien claims. Courts are seeing backlogs both in processing the liens into the system and getting the disputes resolved which take away time from dealing with the claims of injured workers.

[69] CHSWC Liens Report, January 5, 2011. http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReport.pdf

Figure 137: DWC Lien Decisions, 2000-2010



Lien Report

The CHSWC Lien Report (January 2011) characterizes the lien problem so that policymakers can target proposed solutions and quantifies the problem so that the effects of such proposals can be estimated. The report is based on information furnished by DWC about the number of liens filed over time and on three sources of data about individual liens:

- A list of all 37,965 liens filed electronically from 9/22/08 through 1/25/2010.
- Samples drawn from paper liens filed at five high-volume District Offices.
- A survey of incoming liens reported by participating claims administrators.

Key findings include:

- Approximately 450,000 liens are expected in 2011.[70]
- The volume of filings is sensitive to procedural changes such as the adoption or repeal of a $100 filing fee and the adoption of new filing procedures.
- Medical treatment liens account for more than 60 percent of the liens filed and 80 percent of the dollars in dispute.
- $1.5 billion per year are claimed in medical lien disputes (after adjusting for amended liens).
- One-third of medical liens involve disputes over the application of the Official Medical Fee Schedule (OMFS).

[70] Based on the most recent data provided on liens processed as of 6/27/2011, over 480,000 liens are expected to be filed in 2011.

- Authorization for treatment was in dispute in seven out of ten medical liens surveyed.
- Reasons treatment was not authorized were:
    - 37 percent providers not authorized to treat (mostly out-of-network).
    - 7 percent denied claims.
    - 6 percent medical necessity of treatment rejected by utilization review.
    - 1 percent contested body parts.
    - 20 percent authorization status unknown or not stated.
- Medical provider networks (MPNs) largely avoid lien disputes arising from in-network providers. Where MPNs exist, the largest share of medical liens arises from out-of-network providers.
- Up to 30 percent of medical liens are prematurely submitted before the time has elapsed for the claims administrator to pay or object to the provider's bill. Ten percent of medical liens are submitted on the date the service is provided.
- Nearly one-quarter of medical liens are filed more than two years after the last date of services for which payment is claimed, including 6 percent which are filed five or more years after the last date of services.
- A small percentage of medical liens are filed for services that extended for more than a year by providers who were not authorized to treat, according to claims administrators.

Key recommendations include:

- Consider reinstating the $100 filing fee on medical liens to discourage frivolous claims and disputes.
- Adopt explicit fee schedules wherever gaps or ambiguities foster frequent disputes.
- Establish an administrative system for fee schedule dispute resolution, with limited judicial review.
- Adjudicate medical treatment authorization disputes expeditiously.
- Amend existing statute and regulation to effectively deter premature lien filings.
- Enact a statute of limitations requiring that medical liens be filed with the WCAB within a fixed time from the date a medical bill is contested, but in no event later than 18 months from the date of service. (See report for a full set of recommendations regarding statute of limitations.)
- Require lien filers to accurately identify themselves and their relationship to the original owner of the alleged debt and to provide documentation of that relationship upon demand.
- Require accurate representations of facts in claims filed for liens.

For further information…

"Report on Liens" (CHSWC, 2011) for a complete description**.**
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReport.pdf

SPECIAL REPORT: EVALUATING THE QME PROCESS

Background

The delivery of workers' compensation benefits ordinarily depends on medical findings, and medical findings are often disputed. The California Legislature has placed the Qualified Medical Evaluator, or QME, at the core of California's occupational and injury dispute resolution system. Physicians are certified as QMEs after passing a test and meeting requirements spelled out in regulations. These requirements are intended to assure that a QME has the expertise to address the issues that will be presented to the QME. The current process is the result of a series of reforms over the past 15 years, reforms that were meant to deliver medical-legal evaluations expeditiously and equitably for both parties. A study by the Commission on Health and Safety and Workers' Compensation (CHSWC), "Evaluating the QME Process: Is it Equitable and Efficient?," examines how well the QME process is operating in fulfillment of those important goals.

Study Methodology

Frank Neuhauser, of the University of California (UC), Berkeley, has studied the QME system by using extensive electronic administrative data made available by the Division of Workers' Compensation (DWC) Medical Unit and Disability Evaluation Unit (DEU) supplemented with samples of paper records. The study covers the period from January 2005 through June 2010. This period includes the 2003-2004 reforms which introduced utilization and treatment guidelines, a new permanent disability rating schedule based on the American Medical Association (AMA) *Guides*, and changes to the process that parties in represented cases can select QMEs.

The study and report describe the criteria for measuring success of the system, and the basic analytic approach to obtaining the outcome measures is discussed. Descriptive data on the dispute process and overall trends are presented, and data on the assignments of QMEs are discussed. The time frame for the different dispute resolution steps requiring QME evaluations and the consistency and fairness of the QME process as it pertains to disability ratings are described. The final section discusses the implications of the findings.

Research Results

Key results of the study include:

- The number of providers registered as QMEs declined by about 45 percent between 2005 and 2010, but this decline was nearly the same as the decline in disabling injuries. The decline in registered QMEs likely did not lead to scheduling problems and delays.

- There was a dramatic spike in the number of panel-QME requests starting in late 2007 and ending in early 2009. This spike likely is the cause of most complaints about difficulty and delay in obtaining QME appointments.

- The spike was not caused by an increase in requests for medical-legal evaluations related to permanent disability (PD), which remained constant over this period. Most likely, the spike was a result of disputes over medical treatment and the use of QMEs to resolve these disputes. The *Sandhagen* decision[71] clarified the path for medical treatment disputes and substantially reduced the use of QMEs in these cases.

[71] The *Sandhagen* decision requires insurers and employers to use utilization review, not the QME process, to reject requests for medical treatment. The high court's decision clarified a long-standing ambiguity after passage of Senate Bill (SB) 228 in 2003, which required workers' compensation carriers to institute utilization review programs.

- The perception of delays in the QME process is likely partially the result of this temporary spike in panel requests that has since resolved.

- Remaining problems in scheduling QMEs are the result of mismatches in the demand and supply of specific specialties. Orthopedic specialists account for only 25 percent of registered QMEs, but an orthopedic specialty is requested 45 to 65 percent of the time. While this ratio has remained stable, it does suggest that efforts should be made to expand the pool of orthopedists willing to participate as QMEs.

- Other specialties with potential for delays are pain specialists and hand specialists (usually orthopedists) who are underrepresented, like orthopedists, relative to the number of requests. Pain specialists are also in an area where requests have been increasing dramatically over the past several years.

- Chiropractors and acupuncturists are heavily over-represented in QME registrations relative to the fraction of requests for these providers.

- Psychologists and psychiatrists are somewhat over-represented in registrations, but there may be an increasing problem with scheduling these specialists. Their evaluations typically require more face-to-face time, and the number of requests for psychological specialists has increased dramatically since 2005, currently representing over 12.5 percent of all panel-QME requests.

By assigning panel QMEs randomly, the reforms hoped to reduce the incentive of QMEs to favor the party that was selecting them for the evaluation. Reputation was thought to lead parties to select QMEs that perceived medical-legal issues in a way that favored the party's case. Any feedback loop, it was feared, could lead to increasingly disparate reports for similar cases.

The system for assigning QMEs to panels has resulted in a distribution of assignments and ratings that stakeholders may find inequitable across parties and inconsistent with the objectives of the reforms. Panels are assigned by identifying QMEs with registered addresses near an injured worker's residence and selecting randomly from those within a prescribed radius. QMEs can increase their probability of assignment by registering at more locations and, to a lesser extent, registering under more specialties. A small number of QMEs have registered at a very large number of addresses, dominating assignments. Most of these QMEs are assisted in scheduling and possibly developing locations by a small number of facilitating services:

- 63 percent of QMEs are registered at only one location. These QMEs are assigned to 23 percent of panels.

- 3.9 percent of QMEs are registered at 11 or more addresses. This small number of QMEs conducts nearly 40 percent of all evaluations, mainly because the large number of locations makes them much more likely to be assigned.

This distribution of assignments is not necessarily problematic. A select group of high-volume QMEs may be very skilled and may execute the assignments quickly and assign ratings in a consistent and equitable manner. However, the evidence in this report supports a different conclusion. The study examined the ratings of 31 very high-volume QMEs who accounted for 10 percent of the reports rated by DEU. There were no advantages in terms of the time from assignment to DEU rating.

Additional study findings include that:

- The ratings assigned to reports by these very high-volume QMEs were, on average, substantially and significantly lower than the ratings assigned to the reports of all other QMEs.

- The ratings were 7 percent to 19 percent lower on high-volume QME reports.

- This tendency towards conservative evaluation was not limited to QME evaluations; reports by high-volume QMEs were rated 10 percent to 21 percent lower than similar reports rated by DEU when the high-volume QMES were acting as Agreed Medical Evaluators (AMEs) or writing reports as primary treating physicians (PTPs).

- The conservative tendency also predates the current AMA *Guides*-based schedule. On average, high-volume QMEs write reports that result in ratings substantially lower than other QMEs on both the 1997 and 2005 schedules.

- The conservative tendency of very high-volume QMEs is consistent across the group; only 2 of the 31 QMEs wrote reports that resulted in higher-than-average ratings. Virtually all of the others were conservative and nearly always statistically significantly for all types of reports (QME, AME, and PTP) for which they wrote a large enough number of reports to evaluate.

Comments and Recommendations

The results of this study suggest some potential changes to the system to improve both timeliness and equity. First, overall, the number of QMEs has tracked the number of disabling injuries. Any general problems with delays that the system experienced were likely resolved by the *Sandhagen* decision and other changes to the application of utilization and treatment guidelines. Ongoing problems are likely generated more narrowly by a mismatch in the supply of and demand for specific specialties:

- DWC could conduct outreach efforts to specific specialties (orthopedic, pain, and psych, for example) to increase the registration of these providers.

- DWC could also modify the Official Medical-Legal Fee Schedule to increase reimbursement for underrepresented specialties relative to overrepresented specialties.

- The opportunity cost for orthopedists and similar specialties is almost surely higher than for less specialized providers like chiropractors and acupuncturists or even family practice physicians. Reimbursing at different rates would reflect the same public policy decisions as moving to a Resource-Based Relative Value Scale (RBRVS) for treatment reimbursement.

- If stakeholders perceive the increasing concentration of QME assignments among a small number of very high-volume providers as inconsistent with legislative intent and/or public policy, DWC could place restrictions on the number of locations at which any QME can register.

- Limiting the concentration of reports among a small number of high-volume QMEs could also increase the willingness of more providers to participate as QMEs. The concentration of assignments among a few QMEs means fewer assignments for the large number of remaining providers. This may explain why CHSWC has heard a number of concerns about QMEs dropping out due to too few assignments, despite the reasonably stable relationship between the number of panel requests and the number of QMEs.

For further information …

"Evaluating the QME Process: Is it Equitable and Efficient?"
http://www.dir.ca.gov/chswc/Reports/2010/QMEstudy.pdf

A Review of Disability Evaluation Delays and Supplemental QME Reports, June 2010

Background

Delays in summary ratings of Qualified Medical Examiner (QME) reports are a concern to many stakeholders. The Commission on Health and Safety and Workers' Compensation (CHSWC) staff were requested to examine this issue. The delay is a problem because it prevents the parties from closing the claim and it fosters dissatisfaction on all sides. The problems are compounded when there is a deficiency in the report which requires clarification or correction by the QME, but the claims administrator is not allowed to request a supplemental report until the Disability Evaluation Unit (DEU) has issued the rating.

Research Approach

Frank Neuhauser, of the University of California (UC), Berkeley, analyzed a database of all summary ratings and consultative ratings issued in a 16-month period from September 2008 through December 2009. Summary ratings are issued on QME reports in unrepresented cases. Consultative ratings are issued in represented cases. The analysis excluded formal ratings, which are issued in response to rating instructions from a workers' compensation judge in connection with a case that has gone to trial. DEU data contain the date the report was received by DEU and the date the rating was issued by DEU. The CHSWC report "A Review of Disability Evaluation Delays and Supplemental QME Reports" summarizes the amount of time parties waited for a DEU rating.

Research Results

Across the 16 months of ratings examined, the ratings were prepared an average of 104 days after DEU received the medical-legal reports. The analysis demonstrated the difference in waiting time for attorney-represented cases (consultative ratings) and unrepresented cases (summary ratings). Across the 16-month period, the average was 129 days for cases without attorneys and 84 days for cases with attorneys.

Month-by-month figures were also calculated for the mean and the median, for both consultative ratings and summary ratings. The patterns refute complaints that the delays have been growing longer. After growing longer in the first six months of 2009, the delays generally grew shorter in the second six months. By December 2009, every parameter except the mean time to rating for unrepresented cases had improved over December 2008. The mean time to rating for unrepresented cases stood at 119 days in December 2009.

One explanation for the shorter times for rating in represented cases is walk-in ratings, which are offered almost exclusively to attorney-represented cases. DEU also gives priority to ratings in cases that are set for a type of settlement conference called a Rating MSC. These almost exclusively apply to attorney-involved cases. These two factors are believed to account for most of the difference in turnaround times for represented cases compared to unrepresented cases.

Embargo on Supplemental Report Requests

The regulation that prevents obtaining a supplemental report to correct or clarify the initial QME report is found in 8 California Code of Regulations, Section 36(e) and it is reprinted in the study report. This regulation, effective February 17, 2009, reflects an effort to equalize the power of the claims administrator and the unrepresented injured worker. An underlying concern is that claims administrators sometimes improperly influence a QME's conclusions without the worker having the knowledge or resources to resist those tactics.

Comments and Recommendations

Labor Code Section 4061(e) requires that the summary rating be issued within 20 days of receipt of the QME report. CHSWC does not anticipate that the Division of Workers' Compensation (DWC) will consistently meet the statutory timeline in the foreseeable future. The balance of interests reflected in Rule

36(e) might be appropriate if ratings were issued within three weeks, but may not be appropriate when ratings take an average of four months.

CHSWC suggests that continuing examination of the rule and its consequences might lead to a solution that accomplishes the stated purposes of Rule 36(e) without significantly adding to the excessive time already required for resolving unrepresented workers' claims.

For further information …

> "A Review of Disability Evaluation Delays and Supplemental QME Reports" (2010).
> http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_DEUDelaysandSupplementalQMEReports.pdf

SPECIAL REPORT: ELECTRONIC ADJUDICATION MANAGEMENT SYSTEM (EAMS) NEEDS ASSESSMENT STUDY

Introduction

The Division of Workers' Compensation (DWC) and Workers' Compensation Appeals Board (WCAB) monitor the administration of workers' compensation claims and provide administrative and judicial services to assist in resolving disputes that arise in connection with claims.

DWC procured an Electronic Adjudication Management System (EAMS) to be designed, developed and implemented by Deloitte Consulting. EAMS went "live" in August 2008. As of 2011, in several critical areas, EAMS had either not fulfilled the needs it was designed to meet or had created new problems for users and other stakeholders.

On February 7, 2011, Assembly Insurance Committee Chairman, Jose Solorio requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct an assessment to address the following questions:

- What are EAMS' significant shortcomings?
- Can these shortcomings be corrected, and if so, at what future cost?
- Are other changes in the work processes of the DWC necessary to adapt to the limitations of EAMS?

CHSWC contracted with Renee Taylor Consulting, Inc., (RTC) to conduct the assessment. The Needs Assessment Report describes the findings of an independent review in order to assess the gaps between the original requirements for EAMS and the system's demonstrated capabilities, and provides forward recommendations for closing those gaps. This report was prepared using stakeholder interviews, document review and findings analysis, and a gap assessment.

Positive Feedback About EAMS

Users interviewed cited many benefits of EAMS; for example, judges and commissioners lauded the ability to view case information online, and presiding judges cited the viewing of caseloads to help manage office and regional task allocation as advantages. In addition, EAMS has alleviated file storage shortages, reduced the volume of shipments of physical files, and enabled multiple users to review a file concurrently. Commissioners appreciate the ability offered by EAMS to establish appeals cases, instead of going through DWC. Users appreciate being able to view the documents and to verify their receipt in FileNet, as one user commented: "FileNet has become helpful in that we can view documents as long as they've been scanned in, sometimes in a matter of hours, but at least within a day. This is very helpful."

Among external users, E-filers expressed much more satisfaction in using EAMS than did optical character recognition (OCR) filers. E-filers reported significantly fewer problems than those using OCR scanning. While users vary in readiness to adopt new technology, e-filers reported a short learning curve in making the switch.

The ability for external parties to access information and get hearing dates online is seen as a clear advantage, and more system users are seeking online access to EAMS. Electronic data interchange and/or electronic document filing is seen as the way of the future, and users await further enhancements so that they can share in the benefits of EAMS. The public search engine available as of December 2010 for queries on cases is highly appreciated. There is also growing interest in JetFiling as a data upload solution.

External users mainly feel that training has been appropriate and timely and appreciate the regular webinars. Internal users sought more training for all types of users. Praise was offered for the support given

by Department of Industrial Relations (DIR) Information Systems (IS) staff on data migration issues and problems, and most users felt a clear sense of commitment by DWC and technical staff in the face of challenges to maintaining EAMS during the current state budget and staffing crisis.

Summary of EAMS Shortcomings

A summary of EAMS shortcomings includes the following.

- Logon access to EAMS has not been made widely available, due to the licensing models of the vendor providing EAMS underlying case management functionality.

- In addition, other external parties have chosen to forego access to EAMS since those with logons are required to use e-filing for all the documents they enter in a case. The efficiencies achievable by electronic filing (e-filing) of documents are possible only with logon access to EAMS.

- Those without access to EAMS rely on DWC clerical staff to scan documents into the system for them, but in over half the DWC offices, scanning backlogs are significant, with typical delays of weeks, not days. Scanning has been known to cause delays in case proceedings due to staff shortages and the need to resolve problems in OCR, which has been exacerbated by inexpensive equipment being used in district offices. As online access to EAMS has been limited, the time-saving and labor-saving improvements envisioned by everyone by e-filing documents in a unified manner have been unrealizable to date.

- Cúram case management software, though customized by programmers at least 40 percent in terms of screen design, still does not support certain intrinsic needs for workers' compensation case adjudication. The most pressing example of this is the need to assess multiple injuries for an individual. Error-checking routines are inadequate to catch and prevent user errors in data entry; for example, a worker's injury date can predate his/her birth date. Templates are missing that would aid in preparing many common orders and other documents. Tasks for judges set by the system are often meaningless and can be overlooked even when important. DIR technical staff shortages have prevented many improvements from being implemented to date.

- User error is rife, particularly in the scanning process. Documents for scanning are frequently improperly prepared by external firms, even after they have attended the training provided. Stringent rules on document acceptability are necessary due to the inexpensive scanning equipment used in DWC offices.

- FileNet (EAMS online document management software) is experienced as slow and cumbersome to use and has no automatic facility for logically organizing documents in EAMS consistently or across other EAMS screens. While scanned documents could be properly labeled and dated to be more organized for viewing, DWC clerks who process scanned submissions make frequent errors, especially in entering document names and dates of receipt. As a result, many judges find it difficult to assemble the information necessary for successful case management. To mitigate the lack of user access to e-filing, OCR scanning was retained, and new bulk filing of key forms is being instituted by DIR's Office of Information Services (OIS). However, technicians supporting EAMS have been redirected to develop the new approach, called JetFiling, and have been taken away from improving core EAMS system functions. Change requests to improve the system have been put on hold, even where urgently needed to address critical issues and major irritants.

Summary of Recommendations

EAMS provides value to many stakeholders, especially e-filers, whose method of document entry into the system is what EAMS was originally designed to support. The problems EAMS has experienced are typical of large system implementation efforts; they can be addressed with additional resources, improved scanners, and increased training. Improvements needed to correct flaws in the short-term include

addressing the staffing and licensing issues which constrain EAMS from reaching its potential and its user community.

Specific actions can be taken to address the gaps in usability experienced by EAMS stakeholders, as detailed in Section 8 of the full report, and as shown below in the brief summary of recommendations to the problems experienced with EAMS:

- Restore user groups to serve at a strategic partnership level.
- Increase stakeholder role in requirements analysis/best practice research.
- Re-scope the EAMS architecture based on value analysis.
- Increase access to training and supporting documentation.
- Improve technical support responsiveness to user issues.
- Upgrade DWC scanners to address errors and backlogs.
- Centralize scanning at key regional locations.
- Upgrade and/or further customize Cúram to add functionality.
- Consider other commercial off-the-shelf (COTS) solutions for case management functions.
- Consider alternatives to FileNet.
- Expand E-Filing access to EAMS.
- Expand electronic data interchange options for EAMS.
- Increase staffing to better support EAMS.

The recommendations identified as the highest priorities are: restore user groups to serve at a strategic partnership level; increase stakeholder role in requirements-best practice research; re-scope the EAMS architecture based on value analysis; increase access to training and supporting documentation; improve technical support responsiveness to user issues; and increase staffing to better support EAMS.

For further information …

"EAMS' Needs Assessment" (2011).
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_EAMS_AssessmentReport.pdf

"Public Comments on EAMS Information Technology Needs Assessment Report of June 29, 2011"
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_EAMS_AssessmentReport_publicReport.pdf.

PROJECTS AND STUDIES

Introduction

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

CHSWC studies are conducted by staff and independent researchers under contract with the State of California. Advisory Committees are composed of interested members of the workers' compensation community and the public who 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 1990s 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 health and safety and workers' compensation community.

This report contains synopses of current and recently completed projects and studies followed by an overview of all CHSWC projects and studies. These projects are categorized as follows:

I. Permanent Disability, Temporary Disability, Benefits and Other
II. Return to Work
III. Return to Work and Disability Management
IV. Medical Care
V. Worker's Compensation Reforms
VI. Administrative Efficiency
VII. Fraud
VIII. Insurance Industry
IX. Information for Workers and Employers
X. Occupational Safety and Health

SYNOPSES OF CURRENT CHSWC PROJECTS AND STUDIES

PERMANENT DISABILITY, TEMPORARY DISABILITY, BENEFITS AND OTHER

Permanent Disability

This section starts with a discussion of the comprehensive evaluation of permanent disability (PD) by the Commission on Health and Safety and Worker's Compensation (CHSWC) and continues with descriptions of CHSWC's other ongoing studies.

Background

The most extensive and potentially far-reaching effort undertaken by CHSWC is the ongoing study of workers' compensation PD in California. The ongoing CHSWC evaluation incorporates public discussions with studies by RAND and other independent research organizations. The CHSWC evaluation studies deal with major policy issues regarding the way that California workers are compensated for PD incurred on the job.

The determination of PD is one of the most challenging tasks of the workers' compensation system. The manner in which California rates and compensates injured workers for permanent partial disability (PPD or simply PD) affects the adequacy of injured workers' benefits, the ability of injured workers to return to gainful employment, the likelihood of litigation, the efficient operation of the Division of Workers' Compensation (DWC) adjudication system, and the cost of the workers' compensation system to employers. In addition to the direct costs to employers for PD benefits, there are indirect costs generated as a consequence of the method of determining PD.

CHSWC's PD project was originally conceived as having two phases. The focus of the first phase was to measure the long-term earnings losses and other outcomes for workers with PD claims. The focus of the second phase was intended to refine these measures and, at the same time, provide policymakers with suggestions for reforms intended to improve outcomes for injured workers at reasonable cost to employers. The second phase was nearing completion in 2004 when it was overtaken by a crisis in California workers' compensation that precipitated wholesale changes to the method of evaluating and compensating permanent disabilities. The project has become an ongoing effort to evaluate the effects of changes in the system and provide continuing information to policymakers contemplating further changes.

Permanent Disability

Initial Wage Loss Study

The initial report from the CHSWC study of PD, "Compensating Permanent Workplace Injuries: A Study of the California System," examines earnings losses and the replacement of earnings losses for workers with PPD claims at insured firms in California in 1991-92. The main findings of this report include:

- PPD claimants experienced large and sustained earnings losses over the five years following injury. These losses amounted to approximately 40 percent of the earnings these workers would have made if injury had not occurred.
- Workers' compensation benefits replaced only 40 percent of pre-tax earnings losses and only 50 percent of after-tax earnings losses.
- Losses are largely driven by lower employment rates among PPD claimants over the years following injury.
- Earnings losses and disability ratings are not closely related, particularly for low-rated claims. Replacement rates, the fraction of losses that are compensated by benefits, were lowest for the lowest-rated claims.

Status: Completed.

For further information …

"Compensating Permanent Workplace Injuries: A Study of the California System," RAND (1998).
http://www.dir.ca.gov/chswc/Reports/2009/PD_1998.pdf
"Findings and Recommendations on California's Permanent Partial Disability System-Executive Summary," RAND (1997).
http://www.dir.ca.gov/CHSWC/Reports/PPDFindingsAndRecommendations.pdf

Policy Advisory Committee

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

Goals Established by the CHSWC Permanent Disability Policy Advisory Committee

- Decrease in an efficient way the 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 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 on 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, as the study lacked data on employees of self-insured employers and data beyond the 1991-1993 period.

The Permanent Disability Policy Advisory Committee urged CHSWC to study those issues further, and CHSWC voted to continue the comprehensive evaluation of workers' compensation PD. Continuation of the evaluation of PD includes the following projects.

Enhancement of the Wage Loss Study to Include Self-Insureds

Stakeholders objected to the 1998 report, "Compensating Permanent Workplace Injuries: A Study of the California System," because they believed that self-insured employers, which account for one-third of claims in California (an estimate that CHSWC in 2008 has revised to 30 percent, including self-insured employers and the State), would have better outcomes for PPD claimants. Stakeholders felt that since self-insured employers are larger and higher-paying firms and since they directly bear the full cost of their workers' compensation claims, they would likely have more programs to encourage return to work (RTW) and a more motivated workforce.

Private Self-Insureds

The report entitled "Permanent Disability at Private, Self-Insured Firms" was released in April 2001. This report includes an unprecedented data-collection effort on PD claims at self-insured firms in California. The findings of this report include:

- Better RTW at self-insured firms led to a lower proportion of earnings lost by PPD claimants. During the five years after injury, self-insured claimants lost a total of 23 percent of both pre- and post-tax earnings, compared to the insured claimants' proportional losses of about 32 percent.

- Since workers at self-insured firms have higher wages, they are more likely to have weekly wages that exceed the maximum temporary disability (TD) payment. Therefore, workers' compensation benefits replaced a smaller fraction of losses at self-insured firms. Workers at these self-insured

firms experienced lower five-year wage-replacement rates (48 percent) than workers at insured firms (53 percent).

- At both insured and self-insured firms, replacement rates were very low for workers with the lowest indemnity claims. At the self-insured and insured firms, claimants with total indemnity falling below the 20th percentile had 14 percent and 11 percent of their lost earnings replaced by benefits, respectively.

- PPD claimants with high pre-injury earnings and high indemnity claims experienced large dollar losses that were not compensated by benefits.

Status: Completed.

For further information …

CHSWC Report: "Permanent Disability at Private Self-Insured Firms," RAND (2001).
http://www.dir.ca.gov/CHSWC/Reports/PD-Study.pdf

Permanent Disability – Phase 2

Legislation Based on Permanent Disability Interim Report

The multi-year study of PD was nearing its conclusion when a crisis in the worker's compensation system precipitated a series of reforms affecting the four major types of benefits: medical treatment; TD; PD; and vocational rehabilitation. The PD reform was enacted by Senate Bill (SB) 899 in 2004. The amended Labor Code Section 4660 called for a revision of the PD rating schedule (PDRS) with explicit reference to an interim report from the nearly completed study. The final report was published in 2005, containing a thorough review of PD compensation, including the underlying rationale for PD compensation, the measurement of wage loss, and the measurement of how well the California system was meeting its goals.

The final report observed that the California PDRS had come to be regarded as costly, inequitable, inconsistent, and prone to disputes. Workers who sustained similar earnings losses for different types of injuries received different amounts of compensation. The CHSWC "Permanent Disability Study" by RAND consisted of a detailed analysis of the PDRS in order to provide empirical findings that could guide a revision that would be consistent with the economic losses experienced by permanently disabled workers. The study empirically identified the components of the schedule that contribute to inconsistency and made recommendations to reduce them. By the time the final report was published, parts of its recommendations had already been enacted into law.

The CHSWC study by RAND recommended:

- Basing PD ratings on a more objective method of evaluation, such as the American Medical Association *Guides to the Evaluation of Permanent Impairment*, fifth edition (AMA *Guides*).

- Adjusting PD ratings to ensure that ratings were proportional to wage losses across different types of injury.

Status: Completed.

For further information …

"Evaluation of California's Permanent Disability Rating Schedule: Interim Report," RAND (2003).
http://www.dir.ca.gov/CHSWC/Reports/PermanentDisabilityRatingSchedule-InterimReport.pdf
"An Evaluation of California's Permanent Disability Rating System," RAND (2005).
http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System.pdf

Legislative Changes and Administrative Implementation

With the enactment of SB 899 in 2004, the Governor and the Legislature intended to enact a PD rating system that would promote "consistency, uniformity, and objectivity."[72] The legislation carried out recommendations that emerged from CHSWC studies and included other changes as well. SB 899 made changes to:

- The goal of the rating schedule, giving consideration to diminished future earning capacity in place of consideration to diminished ability to compete in an open labor market (Section 4660(a)), as well as promoting consistency, uniformity and objectivity (Section 4660(d)).

- The criteria for medical evaluations, using the AMA *Guides* in place of the often subjective criteria traditionally used in California (Section 4660(b) (1)).

- The adjustment factors to be included in the Schedule for Rating Permanent Disabilities, specifying that diminished future earning capacity be a numeric formula based on average long-term loss of income according to empirical studies (Section 4660(b)(2)).

- The apportionment of disability between industrial injuries and other causes when a disability is caused by the combination of two or more injuries or diseases (Sections 4663 and 4664).

- The number of weeks of PD benefits payable for each percentage point of permanent partial disability (PPD), reducing payments by up to 15 weeks on all awards of less than 70 percent PPD (Section 4658(d)(1)).

- The dollar amount of weekly PD benefits depending on whether the employer offers to continue to employ the permanently disabled worker, if the employer has 50 or more employees (Section 4658(d)(2) and (d)(3)).

Implementation of SB 899 required the Administrative Director (AD) of the Division of Workers' Compensation (DWC) to adopt a revised PDRS. At the request of the AD, RAND prepared a separate report which quantified the ratio of average PD ratings to average proportional earnings losses for each of 23 injury categories in the RAND data. The AD adapted those ratios in the development of the new PDRS effective January 1, 2005.

For further information …

"Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899," RAND (2004).
http://www.rand.org/pubs/working_papers/2004/RAND_WR214.pdf
Schedule for Rating Permanent Disabilities, State of California (2005).
http://www.dir.ca.gov/dwc/PDR.pdf

[72] Labor Code Section 4660(d).

Permanent Disability Rating Schedule Analysis

The Legislature requested that CHSWC report on the impact of the change in the PDRS, as well as how the schedule could now be amended in compliance with Labor Code Section 4660(b)(2), which requires the use of findings from the RAND report and other available empirical studies of diminished future earning capacity.

In response to this legislative request, CHSWC developed a paper that evaluated the impact of the changes in the PDRS using data from the Disability Evaluation Unit (DEU) that did not exist when the latest reform was adopted.

Findings

- At the time the 2005 schedule was adopted, adequate empirical studies did not exist to permit accurate calculation of the relationship between impairments evaluated according to the AMA *Guides* and diminished future earning capacity.

- The 2005 schedule reduced the average PD rating (rated percentage of disability) in rated cases by about 43 percent for unrepresented cases and by about 40 percent for represented cases.

- The legislative and administrative changes reduced PD compensation by about two-thirds, with about half of that reduction attributable to lower ratings under the 2005 PDRS compared to the previous rating schedule.

- Revisions of the schedule can be formulated immediately and revised periodically. (See CHSWC study "Permanent Disability Rating Schedule Analysis.")

The CHSWC "Permanent Disability" report provides a methodology for updating the PDRS to obtain more consistent ratings for all types of injuries. The report recommends a new mathematic formula using administrative data from DWC and the latest available wage loss data to make all ratings calculations consistent. The ratings are then entered into the existing system to calculate the level of benefits. An important recommendation in the report is that periodic revision to the rating schedule be adopted such that any future trends in medical impairments and earnings losses can be detected and incorporated in the formula.

The report also suggests that, beyond using a consistent methodology, overall levels of ratings and compensation should be considered a separate public policy issue. The report acknowledges that issues of benefit adequacy and affordability are issues for policymakers to debate. Subsequent unpublished work has suggested that the goal of equity across types of injuries can be achieved through amendments to the PDRS as contemplated in the CHSWC report, but the goal of benefit adequacy may require a combination of legislative action and amendments to the PDRS.

Status: Completed. CHSWC voted on February 9, 2006, to approve and release the report "Permanent Disability Rating Schedule Analysis."

For further information …

"Permanent Disability Rating Schedule Analysis" (February 23, 2006).
http://www.dir.ca.gov/chswc and http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-_2006.pdf

Return-to-Work Study Reveals Diminished Replacement Rate

CHSWC arranged for RAND to examine how return-to-work rates had been affected by the reforms of 2003 and 2004. The 2003 reforms included repeal of the vocational rehabilitation benefit and adoption of medical treatment guidelines. The 2004 reforms included changes to PD rating, limitation of TD duration,

and other changes. Incidental to this study, RAND examined the percentage of wage losses over the five-year period after injury that was replaced by indemnity benefits (TD and PD combined).

The study found that return-to-work rates had, indeed, improved, although it was difficult to tie the improvement to the effects of the 2003 and 2004 reforms. Return-to-work rates actually began to improve before the reforms occurred. The notable finding with regard to PD compensation, however, was that the average replacement rates had gone down as a consequence of the reforms. The replacement rate (the average percentage of lost wages replaced by TD and PD benefits) had been holding near 50 percent since 2000, but it began to drop in 2004, and by the second quarter of 2006, it was down to 37 percent. Without the improvement in return-to-work rates which began in 2002, the replacement rate would have been about 32 percent.

Although the purpose of the report was to examine changes in return-to-work, it offers insight into the impact of the changes in PD rating and compensation, so the report bears mention in this summary of PD projects and studies.

Status: Completed 2010, final publication 2011.

For further information …

"Workers' Compensation Reform and Return to Work: The California Experience."
http://www.dir.ca.gov/chswc/Reports/2010/WCReformandReturntoWork.pdf

Continuing Review

CHSWC continues to evaluate the patterns of ratings, using data provided by the Disability Evaluation Unit (DEU) and analysis by the University of California (UC), Berkeley. CHSWC continues to examine data on wage losses of workers with permanent disabilities, with data and analysis provided by RAND. Incomplete results indicate that any changes to PD rating and compensation may need to involve more than just changes to the multipliers that are used in the PDRS. Legislative changes to the compensation may be required. The analysis further calls into question the empirical justification for the existing structure, in which the compensation rises geometrically as ratings increase. Data suggest that the relationship between average ratings and average proportional earnings losses is more nearly a straight line than a geometric curve. Modeling done by UC Berkeley enables policymakers to weigh the impacts of changes in the compensation structure that may be considered. A project began in 2011 to evaluate the adequacy and efficiency of the PD system in conjunction with the medical care delivery system.

PERMANENT DISABILITY

APPORTIONMENT

Understanding the Effect of Senate Bill 899 on the Law of Apportionment

Background

Apportionment is the process in which an overall permanent disability (PD) that was caused at least in part by an industrial injury is separated into the components that are and are not compensable results of that injury. Senate Bill (SB) 899, signed into law on April 19, 2005, profoundly changed the law of apportionment. Decades of interpretation of the old law of apportionment are called into question, with some principles still being applicable and others being reversed. The Commission on Health and Safety and Workers' Compensation (CHSWC) report provides information on the effect of Senate Bill (SB) 899 on the prior law of apportionment, how apportionment is likely to be affected by the American Medical Association *Guides to the Evaluation of Permanent Impairment*, fifth edition (AMA *Guides),* and what the key issues are that remain to be resolved. A summary of the report follows.

Repeal of Pre-existing Disease and Previous Permanent Disability or Impairment Language

SB 899 repealed Labor Code Section 4663 which provided that if a pre-existing disease were aggravated by a compensable injury, compensation was allowed only for the portion of the disability due to the aggravation reasonably attributed to the injury. SB 899 also repealed Labor Code Section 4750 which provided that an employee "suffering from a previous PD or physical impairment" could not receive compensation for a subsequent injury in excess of the compensation allowed for the subsequent injury "when considered by itself and not in conjunction with or in relation to the previous disability or impairment" and that the employer was not liable "for the combined disability, but only for that portion due to the later injury as though no prior disability or impairment had existed."

Apportionment by Causation

To replace the repealed sections, SB 899 re-enacted Section 4663 in an extensively revised form and added a new Section 4664. The revised Section 4663 provides that "apportionment of permanent disability shall be based on causation." Apportionment is determined by the approximate percentage of the PD caused by the direct result of the industrial injury and by the approximate percentage of the PD caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. A PD evaluation is not considered complete unless it includes an apportionment determination. Labor Code Section 4664(a) was added to emphasize that the employer is only liable for the percentage of PD "directly caused" by the injury. The repealed sections do not appear inconsistent with the new sections, but the case law interpreting the repealed sections considerably limited their application.

The problem faced by members of the workers' compensation community is how the authors of this legislation intended permanent disabilities to be apportioned under the new law. The final Senate floor analysis says only that it was intended to "replace present law on apportionment with the statement that apportionment of permanent disability is based on causation." It is clear, however, that the announced purpose of SB 899 was to reduce the cost of providing workers' compensation.

Status, At its April 27, 2007 meeting, CHSWC approved the release of the draft report on apportionment for public comment. At its August 9, 2007 meeting, the Commission received a verbal update on a key judicial interpretation. The report requires updating to reflect subsequent several judicial interpretations.

BENEFITS

Disability Evaluation and Medical Treatment in the California Workers' Compensation System

Introduction

On April 19, 2004, former California Governor Arnold Schwarzenegger signed into law Senate Bill (SB) 899, a sweeping bill which dramatically overhauled the state's workers' compensation system. Many of the changes focused on the system for evaluating the severity of a disability for workers' compensation claimants with a permanent partial disability (PPD). Prior to SB 899, California used a unique rating system, the California Permanent Disability Rating System (PDRS), which was the subject of considerable controversy. Critics argued that the PDRS was inaccurate and unfair and promoted disputes, making it an important factor in the costliness of the system.

Much of the criticism that was leveled against the PDRS was supported by empirical work conducted on behalf of the Commission on Health and Safety and Workers' Compensation (CHSWC) by the RAND Corporation (Reville et al., 2002; Reville, Seabury and Neuhauser, 2003; Reville et al., 2005). The RAND studies found that while the PDRS performed adequately in terms of ranking individual disabilities based on severity for a given injury type, it did a poor job of evaluating the severity of injuries across different types of injuries. Two central conclusions were drawn from this analysis. First, proportional earnings losses for the higher-rated cases are larger for every type of impairment. That is, the PDRS identified more severe impairments on average within a given body part. It is also apparent, however, that there were clear disparities between the losses of different impairments that were given similar ratings by the PDRS.

The SB 899 reforms relating to the evaluation of permanent disability augmented some already stringent reforms to medical treatment in the system. While the reforms did lead to a decline in the overall cost of workers' compensation in the State, with a more than 40 percent reduction in premiums between 2004 and 2006, many controversies remain. In particular, there are complaints that the systems for evaluating disability and providing medical treatment are inefficient, inconsistent and fraught with error. CHSWC issued a Request for Proposal (RFP) to conduct this disability evaluation study, and the contract was awarded to RAND. The study commenced in December 2010.

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Description

The purpose of the CHSWC/RAND Disability Evaluation and Medical Treatment in the California Workers' Compensation System study is to answer important questions about the disability rating system in California: how effectively it targets benefits to disabled workers; and whether the system imposes barriers to early return to work and better outcomes for employers and disabled workers.

The study will conduct research on disability ratings and worker outcomes in order to assess the accuracy and consistency of disability ratings in California. Recent court decisions that allow for the rebuttal of the rating schedule that have affected system performance will also be discussed. Additionally, this study will identify potential practices and policies that would improve both the quality and efficiency of the medical care provided under the California's workers' compensation system and increase the efficiency of medical benefit administration.

Objectives of the Study

The objectives of the study are to:

- Conduct research on permanent disability ratings and worker outcomes in order to assess the accuracy and consistency of permanent disability ratings in California including the following:
    - Evaluate how accurately the rating system established in the 2005 Schedule for Rating Permanent Disabilities (incorporated by reference in California Code of Regulations, title 8, section 9805 (the "rating system")) predicts the economic consequences of disability for injured workers.
    - Analyze if the rating system is both consistent and fair and if there is a relationship between economic outcomes comparable across injuries to different parts of the body.
    - Evaluate if future earnings capacity (FEC) adjustments currently in place in the rating system accurately predict the relationship between losses and permanent disability ratings across different parts of the body.
    - Determine if the medical-legal process introduces inconsistencies in the application of the PDRS and if so, whether such inconsistencies affect the relationship between permanent disability ratings and economic outcomes.
    - Assess broadly the adequacy, equity and efficiency of workers' compensation benefits provided to injured and disabled workers in California.
- Evaluate and identify potential practices and policies that would improve both the quality and efficiency of the medical care provided under California's workers' compensation system and increase the efficiency of medical benefit administration including the following:
    - Evaluate if medical treatment in California's workers' compensation system conforms to external best practices for providing high-quality, affordable care. If not, can these external best practices be adapted and applied to the treatment of injured workers in California?
    - Compare differences in treatment intensity, cost and outcomes for care provided through medical provider networks (MPNs) to out-of-network care to evaluate the impact of MPNs on employer costs, injured worker outcomes and other measures of effectiveness.
    - Compare the administration of medical benefits between insurers and self-insured employers (public and private).
    - Identify and evaluate administrative and legislative modifications which would improve the delivery of medical treatment in the California workers' compensation system.

Status: In process.

BENEFITS

Qualified Medical Evaluator

Background

The delivery of workers' compensation benefits ordinarily depends on medical findings, and medical findings are often disputed. The California Legislature has placed the Qualified Medical Evaluator, or QME, at the core of California's occupational and injury dispute resolution system. Medical providers are certified as QMEs after passing a test and meeting requirements spelled out in regulations. These requirements are intended to assure that a QME has the expertise to address the issues that will be presented to the QME. The current process is the result of a series of reforms over the past 15 years, reforms that were meant to deliver medical-legal evaluations expeditiously and equitably for both parties. The study and report "Evaluating the QME Process: Is it Equitable and Efficient?" by the Commission on Health and Safety and Workers' Compensation (CHSWC) examine how well the process is operating in fulfillment of those important goals.

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Description

Frank Neuhauser of the University of California (UC), Berkeley, assisted with the Commission's study of the QME system. The study uses extensive electronic administrative data made available by the Division of Workers' Compensation (DWC) Medical Unit and Disability Evaluation Unit (DEU) supplemented with samples of paper records. The study covers the period from January 2005 through June 2010. The period includes the 2003-2004 reforms which introduced utilization and treatment guidelines, a new permanent disability rating schedule based on the American Medical Association (AMA) Guides, and changes to the way parties in represented cases selected QMEs.

The study describes the criteria for measuring success of the system, and the basic analytic approach to obtaining the outcome measures is discussed. Descriptive data on the dispute process and overall trends are presented as well as data on the assignments of QMEs. The time frame for the different dispute resolution steps requiring QME evaluations and the consistency and fairness of the QME process as it pertains to disability ratings are described. The final section of the study discusses the findings.

Objectives

The objectives of this project are to:

- Examine the fairness of the QME process and whether QME evaluations, over all, are consistent in their measurement.
- Assess the QME process to determine if there is a balance between the supply of QMEs and the demand for QME evaluations.
- Analyze the reasons for the spike in QME requests.
- Discuss the timeliness of the QME process.

Findings

The study findings include:

- The number of providers registered as QMEs declined by about 45 percent between 2005 and 2010, but this decline was nearly the same as the decline in disabling injuries. The decline in registered QMEs likely did not lead to scheduling problems and delays.

- There was a dramatic spike in the number of panel QME requests starting in late 2007 and ending in early 2009. This spike is likely the cause of most complaints about difficulty and delay in obtaining QME appointments. The spike was not caused by an increase in requests for medical-legal evaluations related to permanent disability (PD), which remained constant over this period. Most likely, the spike was a result of disputes over medical treatment and the use of QMEs to resolve these disputes. The *Sandhagen* decision clarified the path for medical treatment disputes and substantially reduced the use of QMEs in these cases.

- The perception of delays in the QME process is probably partially the result of this temporary spike in panel requests that has since resolved.

- Remaining problems in scheduling QMEs are the result of mismatches in the demand and supply of specific specialties. Orthopedic specialists account for only 25 percent of registered QMEs, but an orthopedic specialty is requested 45-65 percent of the time. While this ratio has remained stable, it does suggest that efforts should be made to expand the pool of orthopedists willing to participate as QMEs.

- Other specialties with potential for delays are pain specialists and hand specialists who are underrepresented, like orthopedists, relative to the number of requests. Pain specialists are also in an area where requests have been increasing dramatically over the past several years.

- Chiropractors and acupuncturists are heavily overrepresented in QME registrations relative to the fraction of requests for these providers.

- Psychologists and psychiatrists are somewhat overrepresented in registrations, but there may be an increasing problem with scheduling these specialists. Their evaluations typically require more face-to-face time, and the number of requests for psychiatric specialists has increased dramatically since 2005, currently representing over 12.5 percent of all panel QME requests.

- According to this QME study, a small number of QMEs have registered at a very large number of addresses, dominating assignments. Most of these QMEs are assisted in scheduling and possibly developing locations by a small number of facilitating services. The study indicates that:

    - 63 percent of QMEs are registered at only one location. These QMEs are assigned to 23 percent of the panels.

    - 3.9 percent of QMEs are registered at 11 or more addresses. The small number of QMEs conducts nearly 40 percent of all evaluations, mainly because the large number of locations makes them much more likely to be assigned.

- A select group of high-volume QMEs may be very skilled and may execute the assignments quickly and assign ratings in a consistent and equitable manner. However, the evidence in this report supports a different conclusion. The study examined the ratings of 31 very high-volume QMEs who accounted for 10 percent of the reports rated by DEU. There were no advantages in terms of the time from assignment to DEU rating. However:

    - The ratings assigned to reports by these very high-volume QMEs were, on average, substantially and significantly lower than the ratings assigned to the reports of all other QMEs.

    - The ratings were 7 percent to 19 percent lower on high-volume QME reports.

- This tendency towards conservative evaluation was not limited to QME evaluations; reports by high-volume QMEs were rated 10 percent to 21 percent lower than similar reports rated by DEU when the high-volume QMEs were acting as Agreed Medical Evaluators (AMEs) or writing reports as primary treating physicians (PTPs).

- The conservative tendency also predates the current AMA *Guides*-based schedule. On average, high-volume QMEs write reports that result in ratings substantially lower than other QMEs on both the 1997 and 2005 schedules.

- The conservative tendency of very high-volume QMEs is consistent across the group; only 2 of the 31 QMEs wrote reports that resulted in higher-than-average ratings. Virtually all of the others were conservative and nearly always statistically significant for all types of reports (QME, AME and Primary Treating Physician (PTP)) for which they wrote a large enough number of reports to evaluate.

Status: Completed.

For further information …

"Evaluating the QME Process: Is it Equitable and Efficient?" (September 2010.)
http://www.dir.ca.gov/chswc/Reports/2010/QMEstudy.pdf

BENEFITS

Piloting Electronic Linkage Between Social Security and Disability Insurance and Workers' Compensation Disability Benefits

Background

At a recent National Academy of Social Insurance (NASI)/Social Security Administration (SSA) conference in Washington, D.C., participants identified coordinating workers' compensation and Social Security Disability Insurance (SSDI) payments as a major issue. The lack of coordination often mistakenly reduces workers' benefits and sometimes causes SSA to over-pay compensation. What limited coordination does exist is labor-intensive and expensive to administer. SSA, insurers, self-insured employers and state agencies coordinate the hundreds of thousands of claims, benefits and numerous benefit changes by telephone and letter communications.

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The paper-driven coordination is the product of decades-old systems with very dispersed benefit information and no standard electronic formats for claims data. With the introduction of electronic systems, and particularly standard Electronic Data Interchange (EDI)-formatted reporting to state agencies on all claims, the groundwork is in place to transition this process to a simple, inexpensive, and accurate benefit-coordination system.

The main challenge is to overcome the inertia inherent in decades-old systems and the concerns of all participants with transitioning to an entirely new approach. California is ideally situated to pilot this transition, work out the issues, and act as a model for other states to follow in interacting with SSA. California has a centralized data system, the Workers' Compensation Information System (WCIS), which is large enough to motivate SSA to join as a partner, and most if not all major national insurers are represented among California-registered insurance entities. In addition, California is one of only five states which also needs to coordinate non-occupational disability benefits, State Disability Insurance (SDI), with SSDI benefits.

Electronic data interchange would improve benefit delivery to workers while substantially reducing costs to employers, the California Division of Workers' Compensation (DWC), the Employment Development Department (EDD), and SSA. It is likely that SSA would be willing to put resources into the project to defray any initial costs of setting up the pilot project in California.

Description

The initial step of the pilot would be a workshop jointly sponsored by the Commission on Health and Safety and Workers' Compensation (CHSWC), SSA, DWC and SDI covering:

- Current California experience with electronic data coordination with SSA.
- SSA's minimum data requirements.
- California's minimum data requirements.
- Translation of the minimum requirements into International Association of Industrial Accident Boards and Commission (IAIABC)-EDI data elements.
- Mechanics of standard electronic data coordination.
- Confidentiality and other legal issues.

- Advantages to California and SSA.

Prior to the workshop, the University of California (UC), Berkeley, would interview the key participants about anticipated issues and, in conjunction with CHSWC, prepare background on each discussion point. The background will be distributed ahead of the workshop.

The next step will be to create a roadmap for piloting electronic interchange using California as the test state. This roadmap will include:

- Draft data requirements.
- Suggested working group on technical aspects of the electronic interchange.
- Suggested working group on legal issues and interagency agreements.
- Suggested working group on any necessary budget change proposals.
- Draft timeline for each step.
- Estimated cost and offsetting funding sources.
- Draft estimate of cost savings and impacts on benefit delivery accuracy.

CHSWC and UC Berkeley will work with each agency to develop each document and issue above.

The third step will be that the workshop members will reconvene along with technical, legal and agency decision-makers to finalize technical and legal issues and timelines.

If the working group is successful in planning and committing to piloting integration in California, CHSWC and UC Berkeley will create:

- Detailed timelines.
- Detailed work plans.
- Necessary documentation.
- Tracking of progress and reporting regularly to all involved agencies.

Status: *O*ngoing.

BENEFITS

Review of Disability Evaluation Delays and Supplemental QME Reports, July 2010

Background

Delays in summary ratings of Qualified Medical Examiner (QME) reports are a concern to many stakeholders, and Commission on Health and Safety and Workers' Compensation (CHSWC) staff was asked to examine this issue. Delays are a problem because they prevent the parties from closing the claim, and they foster dissatisfaction on all sides. The problems are compounded when there is a deficiency in the report which requires clarification or correction by the QME but the claims administrator is not allowed to request a supplemental report until the Disability Evaluation Unit (DEU) has issued the rating.

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Description

The CHSWC analysis used a database of all summary ratings and consultative ratings issued in a 16-month period from September 2008 through December 2009. The CHSWC report summarized the length of time parties waited for a DEU rating.

Findings

Across the 16 months of ratings examined, the ratings were prepared an average of 104 days after DEU received the medical-legal reports. The analysis demonstrated the difference in waiting time for attorney-represented cases (consultative ratings) and unrepresented cases (summary ratings). Across the 16-month period, the average was 129 days for cases without attorneys and 84 days for cases with attorneys. Month-by-month figures were also calculated for the mean and the median for both consultative and summary ratings. The patterns refute complaints that the delays have been growing longer. After growing longer in the first six months of 2009, the delays generally grew shorter in the second six months. By December 2009, every parameter except the mean time to rating for unrepresented cases had improved over December 2008. The mean time to rating for unrepresented cases stood at 119 days in December 2009.

Comments and Recommendations

Required timelines in Labor Code Section 4061(e) and 8 California Code of Regulations, Section 36(e) are discussed in the CHSWC report "A Review of Disability Evaluation Delays and Supplemental QME Reports," along with a description of the concern that claims administrators sometimes improperly influence a QME's conclusions without the worker having the knowledge or resources to resist those tactics.

CHSWC recommends continuing examination of this issue.

Status: Completed.

For further Information …

"A Review of Disability Evaluation Delays and Supplemental QME Reports"
http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_DEUDelaysandSupplementalQMEReports.pdf

BENEFITS

Class Action Suits in Worker's Compensation

Background

Under Labor Code Section 5806, a party may file a certified copy of an award of the appeals board with a superior court clerk, who shall enter judgment in conformity with the award. Section 5806 thus allows a party to convert an award into a judgment upon which the party may then collect. With a judgment, a party may obtain a writ of execution to cause property to be sold to satisfy the judgment, for example.

On behalf of a class of California applicants' attorneys who had been awarded fees for representing injured workers, six related class actions were filed in civil court to recover interest on the fees. The trial court dismissed the class actions on the ground that they lacked jurisdiction to entertain claims for unpaid interest where the Workers' Compensation Appeals Board (WCAB) did not expressly order the payment of interest in its attorney fee awards. The trial court's judgment was affirmed by the Court of Appeal (*Koszdin v. State Comp. Ins. Fund* (2010) 186 Cal. App. 4th 480).

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The issue presented to the Commission on Health and Safety and Workers' Compensation (CHSWC) is as follows: should the WCAB provide a forum for resolving groups of disputes as class actions in cases where it is inefficient to resolve the disputes individually to avoid parties having to file class actions in civil court?

Description

To fully understand the legal issues involved, more time doing legal research (statutes and case law) and analysis is required. The area of class actions is complex. The California Codes provide for four separate types of class actions. As a result, there are two separate treatises devoted solely to this topic. Furthermore, implementing changes may require legislation and possibly increased demands on workers' compensation judges and WCAB but, at the same time, may reduce costs of civil litigation.

At the August 19, 2010 Commission meeting, the Commission voted to proceed to develop an issue paper and analysis of alternatives.

Status: In process.

OTHER

System Monitoring

Introduction

The Commission on Health and Safety and Workers' Compensation (CHSWC) is required by Labor Code Section 77 to issue an annual report on the state of the workers' compensation system, including recommendations for administrative or legislative modifications which would improve the operation of the system. Additional areas may be important to monitor on a regular basis. As indicated by a report entitled "Medical Care Provided California's Injured Workers: An Overview of the Issues" (RAND, June 2007), the State of California lacks a comprehensive performance monitoring system that supplies actionable information on a routine basis.

At the Commission's August 19, 2010 meeting Commissioner McNally requested that CHSWC staff review what additional information could be included in the workers' compensation oversight monitoring.

Description

CHSWC staff met with a number of employers and others to determine where additional information was needed to monitor the system. The goal was to identify key indicators to evaluate how well the system is doing for injured workers and employers.

One of the recommendations was to create an ongoing report of promptness of first payment comparing insured and private self-insured and public self-insured without identifying individual participants. At the system monitoring group's request, CHSWC requested data from the Division of Workers' Compensation (DWC) about the promptness of first payment, as well as requested that the data be broken down by market sector and whether or not the claims were administered by a third-party administrator. Since the Workers' Compensation Information System (WCIS) database does not break out the self-insureds by private and public self-insured, CHSWC broke out this data by matching federal employer identification numbers (FEINs) from the Office of Self Insurance Plans (OSIP) with WCIS FEIN data. Subsequently, DWC ran the timeliness of payment report by market segment.

CHSWC held a meeting on March 16, 2011, with employers to review the findings of the timeliness of payment report.

Preliminary Findings included:

- Overall, insureds and the State of California are timelier in paying claims than private and public self-insureds.
- The TPA-administered private self-insureds were timelier in paying claims than the self-administered private and public self-insureds as well as TPA-administered insureds and public self-insureds.

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DIR Office of Information Services

Next Steps

- Compare information from the DWC Audit Unit on the timeliness of payment with the current report that was run by DWC to test the validity of data.

- Select employers will compare their internal data on timeliness of payments to the timeliness of payment report results run by DWC.

Status: In process.

RETURN TO WORK

Workers' Compensation Reform and Return to Work: The California Experience

Introduction

The effectiveness of a workers' compensation system can be assessed by two important measures: adequacy and affordability. Adequacy reflects the extent to which indemnity benefits compensate an appropriate amount of workers' earnings losses from workplace injury. Affordability reflects the extent to which workers' compensation benefits, including the delivery costs, affect the cost to employers. In California and in many other states, compensation for injured workers with permanent partial disabilities has been the most expensive portion of the indemnity benefits and the most controversial part of the system. The poor adequacy and poor affordability of the California permanent partial disability (PPD) system were both key factors in the multiple reform efforts to workers' compensation in California in the early 1900s. According to the Commission on Health and Safety and Workers' Compensation (CHSWC) study by RAND, "Workers Compensation Reform and Return to Work: the California Experience," the system could achieve improvements in both adequacy and affordability by improving return to work of permanently disabled workers.

Project Team

RAND

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Description

The study reviews the role of public policy in promoting return to work and discusses how public policy can be used to improve outcomes for injured workers and employers. Policy efforts are classified into three broad approaches: medical management; incentive-based; and accommodation-based. Medical management approaches attempt to improve return to work by improving the quality and timely receipt of medical care or by improved coordination and communication with medical providers. Some reforms that target this approach involve the assignment of control of provider choice or direct regulation of care through utilization review or treatment guidelines. Incentive-based approaches use financial rewards or punishments to influence the behavior of employers of the workers themselves, often by manipulating disability benefits based on return-to-work status. Finally, accommodation-based methods alter the requirements of the job, either the schedule, the tasks required or the physical environment, in order to make it easier for a disabled worker to perform the necessary tasks. Some states adopt subsidies for accommodations in order to improve employment for disabled workers. Over the past ten years, California has adopted reforms that affect all of these.

To evaluate the return-to-work rates of injured and disabled workers after the reforms, the study analyzed data on workers' compensation claims for workers who were injured from 2000-2007 reported to the Workers' Compensation Insurance Rating Bureau (WCIRB) and Division of Workers' Compensation (DWC) Disability Evaluation Unit (DEU. These data were linked to quarterly earnings data from the Employment Development Department (EDD). The study matched injured workers to uninjured "control" workers to estimate the change in post-injury outcomes that are attributable to the injury.

Objectives

The objectives of this study are to:

- Examine public policies within and outside the workers' compensation system and their influence on return to work as well as the changes in these policies in the past ten years in California.

- Analyze the change in the rates of return to work of injured and disabled workers in California in the past ten years.

- Examine the impact of reforms to the workers' compensation system on the adequacy of benefits for injured and disabled workers and whether the changes in benefit adequacy have been influenced by changes in return to work.

Findings

The study findings include:

- Return-to-work outcomes improved considerably for injuries that occurred from 2002-2005. Moreover, the biggest gains were experienced by workers with the most severe injuries. The study noted gains in overall employment and in employment for at-injury employers. Overall, the improvements in return to work represent a significant gain for disabled workers.

- Results do not pinpoint why return to work improved so much. The study's findings indicate that return to work was improving even before Senate Bill (SB) 899 reforms were adopted. Workers injured in 2003 and 2004 were not eligible for the tiered benefit, so that is unlikely to be a driving factor behind the observed trend. The timing of the trend suggests that changes to the Fair Employment and Housing Act (FEHA) or the adoption of medical treatment guidelines could have an effect.

- Adequacy of benefits has fallen since the reforms. Indemnity benefits fell dramatically with most of the decline was experienced by workers with permanent disabilities. The reforms also appear to have led to a decline in the fraction of workers that receive permanent disability benefits. The gain in return to work offset some of the decline but not all. This suggests that an increase in benefits is necessary to return replacement rates to their previous levels or to improve them.

- There is some evidence of increasing disability ratings over time, which could offset some of the decline.

- More work is needed to understand the following: trends in return to work; explorations or other methods to improve return to work; role of the medical treatment reforms; greater exploration of the potential gains from further integration of the occupational and non-occupational systems that affect return to work of disabled workers; and the overlap between California FEHA and the Americans with Disabilities Act (ADA).

Status: Completed.

For further Information …

"Workers' Compensation Reform and Return to Work: The California Experience" (November 2010).
http://www.dir.ca.gov/chswc/Reports/2010/WCReformandReturntoWork.pdf

RETURN TO WORK

How Effective Are Employer Return-to-Work Programs?

Background

Employers often adopt programs that are designed to improve return to work (RTW) of injured employees in order to manage their workers' compensation costs. Policymakers may wish to encourage increased emphasis on RTW by employers as a means to improve outcomes for injured workers and curb system costs; however, much is still unknown about the effectiveness of employer RTW initiatives.

Project Team

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CHSWC Staff

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Description

The Commission on Health and Safety and Workers' Compensation study by RAND examines the effectiveness of employer-based RTW programs adopted by a sample of large, private, self-insured employers in California. The study combines data on duration of time out of work for workers' compensation claimants with information on employer RTW programs from a survey of 40 large, private self-insured California employers to estimate the impact of the programs on time out of work. The data include detailed information about the formal programs and practices used to lower the duration of work-injury absences, including information such as the frequency of use of various modifications and accommodations.

Objectives

The objectives of this project were to:

- Examine the effectiveness of employer-based RTW programs.
- Provide information on the most effective RTW practices of California employers. This information is intended to assist employers and employees to determine which RTW practices may be applicable to their needs.
- Help policymakers evaluate the merits of employer-based initiatives as a tool for improving RTW.

Findings

The study findings include:

- Employer-based RTW programs led to a significant reduction in the duration of injury absences:
    - Workers in an RTW program return approximately 1.4 times sooner compared to workers injured at a firm without a program. This corresponds to a three to four-week reduction in the median-injury duration of injury-related absences.
- Much of the impact of RTW programs appears to be driven by a large improvement in RTW for workers who experience more severe, permanently disabling injuries.
- RTW programs have a much bigger impact on male workers, likely due to higher injury rates and more dangerous jobs.

Employer-based RTW programs are cost-effective when adopted by large, self-insured firms, but it is

unclear if RTW initiatives would provide a cost-effective means of improving employment outcomes for disabled workers at small or medium-sized firms.

Status: Completed.

For further Information …

"How Effective are Employer Return to Work Programs?" March 2010

. http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_RANDRTW.pdf

RETURN TO WORK AND DISABIILTY MANAGEMENT

International Forum on Disability Management 2010: *Collaborating for Success*

Background

As part of its commitment to disability management, the Commission on Health and Safety and Workers' Compensation (CHSWC) and the Department of Industrial Relations (DIR) collaborated with the International Association of Industrial Accident Boards and Commissions (IAIABC) to host the International Forum on Disability Management (IFDM) 2010: *Collaborating for Success*, in Los Angeles, on September 20th through 22nd. The Forum was devoted to multinational dialogue on disability management. Held every two years since 2002, IFDM is the only global conference dedicated to in-depth discussion of problems, trends and best practices in disability management. A major goal of IFDM is to bring key policymakers into the discussion and be an agent of change.

Description

IFDM 2010 brought together over 400 attendees, representing over 33 countries across the world, from the health, safety and workers' compensation communities.

The purpose of IFDM 2010 was to bring together policymakers, such as legislators and heads of the executive branches, dynamic leaders in labor, business and insurance, and experts in disability management, including people mastering personal disability. Representatives of organizations with an interest in disability issues and a commitment to more effective systems for overcoming barriers to the rehabilitation and full integration of workers with disabilities in gainful employment participated in presentations, discussions and workshops.

The goals of the conference included:

- Highlight how disability management benefits workers, businesses and society.
- Offer convincing evidence that disability management processes are being widely adopted and are successfully helping disabled individuals find and maintain gainful employment.
- Identify public policy and institutional changes that countries and policymakers can feasibly use to manage disability in their workforce.
- Highlight success stories for large, medium-size and small employers in disability management, including prevention and stay-at-work and return-to-work programs.
- Acquaint participants with leading international experts on disability management through presentations and informal networking.
- Share best practices for gaining stakeholder cooperation and achieving measurable gains in disability management.

Advisory Committee

Christine Baker, Chair
CHSWC

Gregory Krohm
IAIABC

John C. Duncan
DIR

Carrie Bibens
Clinical, Vocational, Medical Quality Assurance, Unum

Elyce Biddle
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Susanne Bruyére
Cornell University, Industrial Labor Relations School

Nick Buys
Learning and Teaching, Griffith University, Australia

Marcia Carruthers
Disability Management Employer Coalition

Brenda Croucher
Assoc. of Workers' Compensation Boards of Canada

Lex Frieden
Baylor School of Medicine

Joyce Gravelle
National Institute for Disability Management & Research (NIDMAR)

Henry Harder
Health Sciences Programs, College of Arts, Social and Health Sciences, University of Northern British Columbia

Nikola Lafrenz
Federal Ministry of Labour and Social Affairs, Germany

- Provide a forum for sharing different models of government safety net programs and incentives.

- Identify disability management performance metrics, data gathering, analysis, interpretation, reporting and dissemination that lead to better disability management among employers and regulatory agencies.

Key topics included:

- Advancing Awareness and Support for Effective Disability Management Outcomes and Best Practices
- Building Political Consensus to Advance Policy on Disability Management
- Partnerships in Disability Management
- Integration into the Workforce
- Vocational Rehabilitation
- Addressing Specific Problems During Medical Treatment
- The Importance of Coordination Among Stakeholders in the Return-to-Work Process
- An Overview of Government Programs in Disability Management
- Employer Best Practices
- How Medical Providers Can Improve Outcomes in Disability Management
- Measuring Disability Management: Quantitative and Qualitative Analysis
- Employer Success Studies
- Utilizing Research and Analysis to Evaluate Government Programs
- Examining the Competencies of Disability Management Practitioners
- A Comprehensive Societal Disability Management Strategy
- Integrating Young Adults with Disabilities into the Workforce
- Engaging Stakeholders; Government Programs
- Linking Health, Wellness and Productivity
- New Resources for Your Disability Management Toolkit
- Demographics
- Mental Health, Challenges in Return to Work
- Integration of Care
- Prevention: The Most Effective Disability Management Strategy
- New Paradigms in Disability Management
- Fostering Labor and Management Collaboration in Formulating Return-to-Work Policies
- Job Retention and Return to Work in the Context of the UNCRPD
- Next Steps in Moving Disability Management Forward

Status: Completed.

Advisory Committee

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California Work Incentives Initiative World Institute on Disability

Sean McNally
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Tom Rankin
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CHSWC Staff

IAIABC Staff

IFDM 2012

The Royal Society of Medicine in the United Kingdom will host the 2012 International Forum on Disability Management (IFDM) in London, England, September 10-12, 2012, on the tenth anniversary of the conference. The Royal Society of Medicine, together with Unum and a national/international advisory committee, will organize the conference. For further details, please visit the IFDM 2012 website at: http://ifdm2012.rsm.ac.uk/.

For further information …

International Forum on Disability Management (IFDM) 2010
www.ifdm2010.org
International Forum on Disability Management (IFDM) 2012
http://ifdm2012.rsm.ac.uk/
Commission on Health and Safety and Workers' Compensation
www.dir.ca.gov/chswc
International Association of Industrial Accident Boards and Commissions
www.iaiabc.org

RETURN TO WORK AND DISABIILTY MANAGEMENT

California Consortium to Promote Stay at Work/Return to Work

Background

In June 2007, the Commission on Health and Safety and Workers' Compensation (CHSWC) participated in a Stay at Work (SAW)-Return to Work (RTW) Northern California Summit "Preventing Needless Work Disability by Helping People Stay Employed." The American College of Occupational and Environmental Medicine (ACOEM) guideline of the same title (advocating effective SAW-RTW processes) was featured and launched breakout discussions focusing on specific recommendations of the guideline among employer, labor, insurer and medical provider stakeholders, and other interested participants. (See http://www.acoem.org/guidelines.aspx?id=566.)

From 2008 through 2010, CHSWC has participated in the California Consortium to Promote SAW/RTW (http://www.CASAWRTW.org). This voluntary, multi-disciplinary group of stakeholders was created to continue the initial work of the Summit. CHSWC supports the following disability management definition and goals/objectives of the California Consortium to promote SAW/RTW.

Disability Management

- Disability management, featuring strategies for preventing needless work disability, is an issue of high priority in the United States and the global economy. These strategies comprise some of the most effective means of reducing costs to employers while improving the health and productivity of their workforces.

- Disability management involves key stakeholders concerned with the human and fiscal challenges of work disability: employers of all sizes, both public and private; workers; health care providers; risk managers; labor unions; jurisdictional and local government agencies; the insurance industry; policymakers; and the public. These and other stakeholders are active in the health and safety and workers' compensation communities of California, as well as in the workplace, labor and disability insurance arena beyond the statutory boundaries defining workers' compensation (occupational injury and illness.)

Goals/Objectives of the California Consortium to promote SAW/RTW:

Vision

"The Vision of the California Consortium to Promote SAW-RTW is to establish in the minds of employers, employees, health care providers, carriers and policymakers the salutary effects of productive employment and the relationship of ongoing employment to health maintenance, disability prevention and accommodation."

Mission

"The California Consortium to Promote SAW-RTW will provide resources and strategies for interested stakeholders to ensure that more California employees stay at and/or return to work."

Project Team

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Director, DIR

CHSWC Staff

Irina Nemirovsky

Selma Meyerowitz

CA Consortium Participants (partial listing)

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Safeway

Robert Clarke
Stanford University

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Carol Morodomi
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Anne Searcy
The Zenith

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Ongoing Objectives of the California Consortium

- Promote discussion of the health benefits of productive employment and the relationship of sustained employment to disability prevention and (fulfillment of) statutory requirements for the interactive process for reasonable accommodation under state and federal laws.

- Discuss incentives for large, medium-size and small employers and for workers to develop and implement effective disability management, including prevention, SAW and RTW programs.

- Assist stakeholders by identifying available resources and service providers in order to help large, medium-size and small employers, health care providers, and labor representatives implement and manage prevention, SAW, RTW and temporary transitional work programs.

- Share effective practices for gaining stakeholder engagement and cooperation as well as for demonstrating measurable fiscal value to stakeholders through disability management.

- Optimize decision-making for the development and implementation of disability management programs through the provision of accessible, evidence-based data and information.

- Determine and implement disability management performance metrics, data-gathering, analysis, interpretation, reporting and dissemination that both demonstrate and continuously improve quality in effective disability management.

In May 2011, members of the Consortium identified six areas for strategic focus:

- Disseminating information through the Consortium's website and use of social media.

- Using data to manage work disability.

- Focusing on change management systems in promoting work disability prevention.

- Promoting SAW-RTW for California's aging workforce.

- Promoting multi-stakeholder communications in preventing needless work disability, including featuring an employer-employee checklist.

- Engaging California healthcare providers in preventing needless work disability.

In addition, the Consortium is developing an "SAW-RTW Needs Checklist" in response to a request in May 2011 from the Department of Industrial Relations (DIR) Director for recommendations on SAW-RTW.

Status: Ongoing.

For further information …

California Consortium to Promote Stay-at-Work (SAW)/Return-to-Work (RTW)
http://www.CASAWRTW.org

MEDICAL CARE

Coordination Between Healthcare Reform and Workers' Compensation

Background

There will be policy implications for workers' compensation as a result of the requirements of the new healthcare laws in the United States. The Commission on Health and Safety and Workers' Compensation (CHSWC) study on coordination between healthcare reform and workers' compensation will look at areas where workers' compensation and healthcare overlap and/or should or should not overlap.

The CHSWC study will focus on: (1) where there are important interactions between the two systems; (2) where an effort led by the CHSWC could have a substantial impact on California and national implementation efforts; and (3) where ideas might be attractive to funding partners.

Project Team

Christine Baker
Director, DIR

D. Lachlan Taylor
Acting Executive Officer, CHSWC

Key areas thought to be important to the coordination of workers' compensation and the changes relating to implementation of the healthcare reform legislation include:

- *Cost effectiveness of medical treatment regimes*

  Healthcare reform legislation explicitly sets aside funding for studies about cost-effectiveness of medical treatment. A challenge is that outcome measures in health care are often limited. Either the types of measures are limited or nonexistent or the data have to be collected on a case-by-case basis, and the resulting number of observations is too limited to study many issues. Workers' compensation has outcome measures, particularly length of disability, earnings loss, return to work, and residual permanent impairment, which are not available in any other system and answer broader questions about the secondary economic effects of treatment regimes. This makes workers' compensation ideal for large-scale studies of treatment strategies. A RAND project with Kaiser plans to employ some of these measures to evaluate the effectiveness of quality measures. This is one of many opportunities that can lead to important advances in medical treatment and be attractive to funders.

- *Third-party liability for treatment costs*

  Healthcare reform envisions substantial efforts to develop portable electronic medical records that coordinate all of a person's medical care and medical history. At least one implication is the potential for disputes and/or recoveries by one payor from another. Most specifically, property-casualty insurers, e.g., workers' compensation insurers, because they have responsibility for treatment for the life of the claim, will be subject to increased recovery efforts. These recovery efforts can be retroactive, potentially happening years after an injury. Anticipating and studying these issues could reduce friction and potentially develop efficient solutions that reduce cost for all parties.

- *Changing employer responsibility for employment-based health insurance*

  The interaction of employment-based health insurance and the shifting of claims between occupational and non-occupational reporting is poorly understood. The expansion of health insurance availability and the unknown impact of reform on employment-based health insurance make understanding the direction of cross-subsidy between these systems important for workers' compensation insurers, health insurers, workers, and employers.

- *Impact of occupational conditions on state and federal budgets*

  Healthcare reform involves a substantial increase in the role of government programs in delivering or subsidizing the delivery of healthcare treatment, particularly for the key group with expanded coverage, the working poor. Consequently, understanding the cost shifting between occupational and non-occupational medical systems will become much more important to federal, state, and local government budgets. This is an area of research that could have important fiscal consequences and could also suggest solutions that would streamline delivery and improve efficiency.

- *Piloting an integrated occupational and non-occupational medical treatment database*

  One complicated but potentially valuable project would be to pilot an effort to link at least some occupational and non-occupational treatment histories for a set of workers. This would involve linking Workers' Compensation Information System (WCIS) medical treatment data to one or more health insurers and possibly Medicare/MediCal databases. There could be many issues with implementing an integrated research database, and these issues would need to be resolved to achieve other efforts. Attempting this initially with several employers with broad-based health benefits, reasonably stable insurer-employer relationships and stable workforces, for example, state agencies or the University of California or California State University systems, would be the best initial step.

Status: In process.

For further information …

"Summary of Occupational and Non-Occupational Integrated Care Roundtables" (2008).
http://www.dir.ca.gov/chswc/Reports/SummaryOandNO_ICR2008.pdf
"Integrating Group Health and Workers' Compensation Medical Care Factsheet" (2008).
http://www.dir.ca.gov/chswc/Reports/CHSWC_IntegrationofCareFactsheet.pdf
"Comparing the Costs of Delivering Medical Benefits Under Group Health and Workers' Compensation: Could Integration Pay for Covering the Working Uninsured?" (October 2009).
http://www.dir.ca.gov/chswc/Reports/2009/Medical_Overhead_Cost_Comparision_2009.pdf

MEDICAL CARE

Medical Care Provided Under California's Workers' Compensation Program: Effects of the Reforms and Additional Opportunities to Improve the Quality and Efficiency of Care

Background

California's workers' compensation system was at the center of intense debate and legislative activity during the period leading up to reforms in 2003 and 2004. High rates of growth in medical care expenditures resulted in a series of reform efforts to control medical-treatment expenses for injured workers and to improve program efficiency. The Commission on Health and Safety and Workers' Compensation (CHSWC) asked RAND to examine the impact that such policy changes could have on the medical care provided to injured workers. This CHSWC study by RAND focused on policies and incentives in the post-reform period that affected the use and costs of care and recommended policy changes that would improve the quality and efficiency of care.

Project Team

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Description

The purpose of this study was to analyze the effects that the reforms had on access to medically appropriate care and efficiency of service delivery. The Medical Access study also recommends additional changes that might increase both quality and efficiency of care in California's workers' compensation system.

The study focused on the following:

- What has been the reform provisions' impact on overall medical expenditures and on the use and payments for major types of services? Would additional policy changes improve the quality or efficiency of care, reduce administrative burden, or improve program oversight?

- What has been the experience to date with medical provider networks (MPNs)? Should additional policy changes be considered to improve the performance of MPNs?

- What has been the reform provisions' impact on medical cost-containment expenses and selected activities, i.e., utilization review (UR) and resolving medical-necessity disputes? Would additional policy changes increase administrative efficiency?

- Is it feasible to use the Workers' Compensation Information System (WCIS) to establish an ongoing system for monitoring access to medically appropriate care? What are its limitations, and how might they be addressed?

Recommendations

The main recommendations of the study are as follows:

- *Create Incentives for Providing Medically Appropriate Care Efficiently*. Implementing a resource-based fee schedule that provides for regular updates and equitable payment levels can improve medical treatment. Other incentives include: creating non-monetary incentives for providing medically appropriate care; reducing unnecessary expenditures for inpatient hospital care by eliminating the duplicate payment for spinal hardware as well as the inflationary impact of coding improvement; and reducing unnecessary expenditure for ambulatory surgery by reducing the OMFS multiplier for procedures performed in freestanding ambulatory surgery centers. Incentives for inappropriate prescribing practices can be reduced by curtailing in-office physician-dispensing and implementing a pharmacy benefit network provisions.

- *Increase Accountability for Performance.* The following revisions in the Labor Code should increase accountability: revising the MPN certification process to place accountability for meeting MPN standards on the entity contracting with the physician network; strengthening DWC authorities so they can provide intermediate sanctions for failure to comply with MPN requirements, as well as providing penalties for the failure of a claim administrator to comply with the data reporting requirements. The Labor Code should be modified to remove payors and MPNs from the definition of individually identifiable data so that performance on key measures can be publicly available.

- *Facilitate Monitoring and Oversight.* The Division of Workers' Compensation (DWC) could be provided with more flexibility to add needed data elements to medical data reporting; for example, revise WCIS reporting requirements to require a unique identifier for each MPN. Additionally medical cost-containment expenses should be required to be reported by category of cost (e.g., bill review, network leasing, UR, case management). Information should be compiled on the types of medical services that are subject to UR denials and expedited hearings. Lastly, ongoing monitoring of system performance should be expanded.

- *Increase Administrative Efficiency.* Efficiency in the administration of medical benefits could be increased by using an external medical review organization to review medical-necessity determinations. A separate dispute resolution process for medical-necessity determinations also creates a mechanism to monitor the quality of payor decisions and to identify areas in which expansions or revisions in the Medical Treatment Utilization Schedule (MTUS) are needed. Efficiency can also be increased by exploring best practices of other workers' compensation programs and health programs in carrying out medical cost-containment activities.

Status: Completed.

For further information …

Medical Care Provided Under California's Workers' Compensation Program (RAND, 2011). http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_MedicalCareReformsandOpps_2011.pdf
Inpatient Hospital Services: An Update on Services Provided Under California's Workers' Compensation Program Report, RAND. http://www.dir.ca.gov/chswc/Reports/CHSWC_InpatientHospitalServices.pdf
Facility Services for Ambulatory Surgery, RAND, 2009. http://www.dir.ca.gov/chswc/Reports/2009/FacilityServicesforAmbulatorySurgery.pdf
Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program: An Overview of the Issues, RAND, January 2011. http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_UseofCompoundDrugsMedicalFoodsCo-Packs.pdf
"Regulatory Actions that Could Reduce Unnecessary Medical Expenses Under California's Workers' Compensation Program," RAND (July 2009). http://www.dir.ca.gov/chswc/Reports/.

MEDICAL CARE

Quality-of-Care Indicators: A Demonstration Project

Ensuring that workers receive high-quality medical care would benefit both workers and employers. Better medical care would enable workers to make faster and more complete recoveries and would reduce time off work which drives economic losses for injured workers. From the employers' perspective, a lack of a recovery can create a need for more medical care over time, thereby increasing medical costs. Reducing temporary disability (TD) and permanent disability (PD) would decrease economic losses for employees.

The Commission on Health and Safety and Workers' Compensation (CHSWC) demonstration project by RAND, the "Quality of Medical Care in Workers' Compensation: Developing General Indicators for Carpal Tunnel Syndrome," attempts to suggest a mechanism for monitoring and improving the quality of care provided to injured workers.

Project Team

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Description

A recent landmark study by RAND found that across all health care settings, adults in the U.S. receive only about half of the care recommended by published literature and experts. Researchers also found that quality-of-care problems are pervasive for back and joint injuries, for which a third to half of U.S. patients do not receive appropriate care. The poor-quality care generally provided for back and joint injuries suggests that many injured workers probably also do not receive the appropriate care.

The goal of the project was to demonstrate quality measurement in a workers' compensation setting and involved four objectives:

- Develop quality-of-care measures for carpal tunnel syndrome (CTS).
- Pilot test the measure in workers' compensation provider and payor organizations.
- Place measures and supporting tools in the public domain.
- Use the measures to assess quality of care for a larger population of patients.

Conclusions

Conclusions based on the study include that:

- Quality of care is important in workers' compensation settings, and quality measures are needed.
- Provider organizations can use the CTS measures and tools developed by the study to monitor quality of care.
- Payors could assess the appropriateness of future surgeries for CTS using the algorithm developed in the study.

Status: Completed. Results of the study were presented at the April 30, 2009 Commission meeting; a report was released in July 2011, and published medical papers are listed below:

For further information …

Four manuscripts have been published in peer-reviewed medical journals:

Karl J. Sandin, M.D., M.P.H.; Steven M. Asch, M.D., M.P.H.; Charles Jablecki, M.D.; David Kilmer, MD; Teryl K. Nuckols, M.D., M.S.H.S., and the Carpal Tunnel Quality Group. "Clinical Quality Measures for Electrodiagnosis in Suspected Carpal Tunnel Syndrome." *Muscle and Nerve*. 2010 Apr;41(4):444-52. http://onlinelibrary.wiley.com/doi/10.1002/mus.21617/abstract (subscription required for full article)

Melinda Maggard, MD, MPH; Walter Chang, MD; Neil Harness, MD; Janak A. Parikh, MD; Steven M. Asch, MD, MPH; Kevin Chung, MD; Teryl K. Nuckols, MD, MSHS and the Carpal Tunnel Quality Group. "Indications for Performing Carpal Tunnel Surgery: Clinical Quality Measures*." Plastic Reconstructive Surgery.* 2010 Jul;126(1):169-79. http://journals.lww.com/plasreconsurg/Abstract/2010/07000/Indications_for_Performing_Carpal_Tunnel_Surgery_.21.aspx (subscription required for full article)Correction item about a Table in the publication: http://journals.lww.com/plasreconsurg/Fulltext/2011/02000/Correction__Indications_for_Performing_Carpal.107.aspx

Nuckols T, Harber P, Sandin K, Benner D, Weng H, Shaw R, Griffin A, Asch S; The Carpal Tunnel Quality Group. "Quality Measures for the Diagnosis and Non-Operative Management of Carpal Tunnel Syndrome in Occupational Settings." *Journal of Occupational Rehabilitation.* 2010 Aug 25. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3041902/

Teryl K. Nuckols, MD, MSHS; Melinda Maggard, MD, MPH; Neil Harness, MD; Walter Chang, MD; Kevin Chung, MD, MS; Steven M. Asch, MD, MPH and the Carpal Tunnel Quality Group. Clinical Quality Measures for Intra-Operative and Peri-Operative Management in Carpal Tunnel Surgery. Hand. 2011; 6(2): 119. http://www.springerlink.com/content/t107542j82661571/ or http://www.springerlink.com/content/t107542j82661571/fulltext.pdf

The researchers have also developed and pilot tested a comprehensive and detailed tool that enables quality of care to be assessed for people with carpal tunnel syndrome by reviewing their medical records. The tool explains how to identify the patients to which each measure applies and how to determine when care adheres to the measure, as well as other supporting information. A report containing the tool, the "RAND/UCLA Quality-of-Care Measures for Carpal Tunnel Syndrome: Data Collection Tools," is posted online at: www.dir.ca.gov/chswc/Reports/2011/CHSWC_QualityofCareMeasuresforCarpalTunnel_Tools_2011.pdf. In addition to the tool, the report provides background information, describes study methods, and includes the algorithm for determining when surgery is necessary, optional, or inappropriate.

MEDICAL CARE

Occupational and Non-Occupational Integrated Care

Background

Group health costs have been rising much more quickly than inflation and wages. Costs have been rising even more quickly for treatment of occupational injuries in the California's workers' compensation system. This creates major financial challenges for employers, especially those in industries with already high workers' compensation costs. Furthermore, group health care and workers' compensation medical care are typically delivered through separate provider systems, resulting in unnecessary, duplicative and contraindicated treatment, and inefficient administration.

Integration of group health and workers' compensation medical care is an alternative to two separate systems of medical care. Under integrated health care, the same individual physician or health provider group administers treatment for both occupational and non-occupational medical conditions and integrates payment for treatment under a single insurance policy. Integrating workers' compensation medical treatment with group health treatment offers employers the potential for significant savings and could help improve the quality of care and workers' overall access to health insurance.

Integration of Care Pilot Program

The Commission on Health and Safety and Workers' Compensation (CHSWC) has partnered with the California HealthCare Foundation (CHCF) and the University of California (UC), Berkeley, to examine the feasibility of integrated care in California. To conduct a pilot project, partnerships between CHSWC, CHCF, UC Berkeley, DMS Facility Services, and the Service Employees International Union (SEIU) Local 1877 were established. The pilot is part of a carve-out agreement and uses Kaiser Permanente for delivery of both workers' compensation medical care and group health benefits. The goal of the pilot is to identify areas of administrative savings and ways to reduce litigation. Savings are expected in medical utilization, indemnity costs, and administration. Medical services are expected to be delivered with fewer delays and disputes, enabling injured employees to recover more fully and return to work sooner.

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Evaluating the Potential for Savings Under Integration: Study of Cost Savings

CHSWC has issued a working paper titled "Comparing the Costs of Delivering Medical Benefits Under Group Health and Workers' Compensation — Could Integration Pay for Covering the Working Uninsured?" At its October 22, 2009 meeting, CHSWC voted to create an advisory group to discuss the findings of the issue paper on integrating workers' compensation medical and group health care. Subsequently, on February 25, 2010, CHSWC held a roundtable to discuss the issue paper in detail, get feedback from the advisory group, and examine the feasibility of adopting integrated care in California. The roundtable was composed of over 40 participants representing employers, labor, government agencies, medical providers, insurance companies, and attorneys.

Study Findings

Study findings indicate that total national savings estimates over the first ten years would be between $490 billion, based on National Academy of Social Insurance (NASI) data, and $560 billion, based on California insurer data. Savings for California alone would be about $10 billion in the first year and $100 billion for the ten years 2011 to 2020 inclusive.

Key reasons for the savings are that it is expensive to deliver medical care separately for a single condition. This is very expensive initially and even more expensive over a life-time of separate treatment. Additionally, life-time medical costs are very difficult to predict, and insurers have to charge a "risk premium" for taking on a highly speculative liability. Health insurers are only estimating medical treatment costs over the next 12 months, a much less risky proposition.

Status: Ongoing.

For further information …

"Comparing the Costs of Delivering Medical Benefits Under Group Health and Workers' Compensation – Could Integration Pay for Covering the Working Uninsured?" (October 2009). www.dir.ca.gov/chswc/PublicCommentsandFeedback.html

"Summary of Occupational and Non-Occupational Integrated Care Roundtables," December 2008. http://www.dir.ca.gov/chswc/Reports/SummaryOandNO_ICR2008.pdf

"Integrating Group Health and Workers' Compensation Medical Care," Factsheet 2008. http://www.dir.ca.gov/chswc/Reports/CHSWC_IntegrationofCareFactsheet.pdf

Roundtable Participants

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Milestone MMA

Kathleen Bissell
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Robin Nagel
Kaiser Permanente, (Via Telephone)

Russell Novak
American Insurance Association

Bernyce Peplowski
Zenith Insurance (Invited)

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Kaiser Permanente

Mark Sektnan
Association of California Insurance Companies

Ginny Snyder
Bickmore Risk Services and Consulting

Linda Stutzman
Disability Management Insights

Steve Suchil
American Insurance Association

Alex Swedlow
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Safety Health Center

Mark Webb
Employers Direct

Angie Wei
Commissioner, Commission on Health and Safety and Workers' Compensation

WORKERS' COMPENSATION REFORMS

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 for employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission on Health and Safety and Workers' Compensation (CHSWC) initiated a project to determine the impact of the workers' compensation reform legislation on workers' compensation medical-legal evaluations. CHSWC contracted with the University of California (UC), Berkeley to carry out this study.

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Description

The study analysis is 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. WCIRB data summarize accident claim activity, including such measures and elements as disability rating, including a disability rating after apportionment if it was applied, the types of providers, fee schedule types, cost of medical-legal evaluations, zip codes to facilitate regional analysis, and whether the case was settled and, if so, the method of settlement employed.

Findings

The study determined that a substantial decline in total medical-legal costs occurred since 1990s. The changes in total medical-legal costs for insurers result from shifts in its three components: total number of permanent partial disability (PPD) claims; average number of medical-legal evaluations per claim; and average cost of a medical-legal evaluation. From 1990 to 2004, the substantial decline in total medical-legal costs for insurers was the result of significant decreases in all three components of the cost structure. Beginning in 2004, when the average cost of medical-legal evaluations started increasing, the source of savings could be attributed to a decline in PPD claim frequency and to a reduction in the number of evaluations performed per claim.

A significant increase in average cost of a medical-legal evaluation between 2004 and 2008 accident years could be attributed to:

- Increases in the average cost being driven by claims in the Southern California region where medical-legal evaluations have always been substantially more expensive.
- Changes in the mix of codes under which the evaluations were billed to include a higher share of the most complex and expensive evaluations and lesser share of the least expensive type.
- Increases in both the frequency and number of psychiatric evaluations per claim that are nearly always billed under the ML-104 code that is the most expensive.

Status: The medical-legal study was initiated in 1995 and is ongoing.

For further information …

See "Medical-Legal Expenses" in "System Costs and Benefits Overview" section of this report.

ADMINISTRATIVE EFFICIENCY

Electronic Adjudication Management System Study

Introduction

At the request of the Honorable Jose Solario, Chair, Assembly Insurance Committee, the Commission on Health and Safety and Workers' Compensation (CHSWC) conducted an assessment of the Division of Workers' Compensation (DWC) Electronic Adjudication Management System (EAMS). CHSWC contracted with Renee Taylor Consulting, Inc., to do an independent needs assessment.

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Description

The needs assessment determined the extent that complaints about the system are justified and what will be or can be done to address them. Successes were acknowledged where appropriate.

The needs assessment provides an objective evaluation of how well EAMS is meeting the needs of the workers' compensation system. It looks at whether there are any significant shortcomings and whether the shortcomings can be corrected, and if so, at what further cost. It also assesses whether there are changes in the work processes of the Division necessary to adapt to the limitations of EAMS.

Recommendations of the needs assessment include:

- Restore user groups to serve at a strategic partnership level.
- Increase stakeholder role in requirements analysis/best practice research.
- Re-scope the EAMS architecture based on value analysis.
- Increase access to training and supporting documentation.
- Improve technical support responsiveness to user issues.
- Upgrade DWC scanners to address errors and backlogs.
- Centralize scanning at key regional locations.
- Upgrade and/or further customize Cúram to add functionality.
- Consider other COTS solutions for case management functions.
- Consider alternatives to FileNet.
- Expand E-Filing access to EAMS.
- Expand electronic data interchange options for EAMS.
- Increase staffing to better support EAMS.

The recommendations identified as the highest priorities are: restore user groups to serve at a strategic partnership level; increase stakeholder role in requirements-best practice research; re-scope the EAMS

architecture based on value analysis; increase access to training and supporting documentation; improve technical support responsiveness to user issues; and increase staffing to better support EAMS.

Status: Completed.

For further information …

"EAMS' Needs Assessment" (2011).
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_EAMS_AssessmentReport.pdf
"Public Comments on EAMS Information Technology Needs Assessment Report of June 29, 2011."
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_EAMS_AssessmentReport_publicReport.pdf

FRAUD

Anti-Fraud Studies and Activities and Related Projects to Assist Injured Workers

This section describes the findings from Commission on Health and Safety and Workers' Compensation (CHSWC) studies on fraud and fraud measurements.

Background

Over the past several years, the Commission has focused on anti-fraud studies to quantify and identify areas of system cost losses and system cost shifting. Partnerships with the Department of Insurance (CDI) and others have created an ongoing agenda to combat fraud through measurement and identification of types of fraud in the system.

The objectives of the fraud studies were to:

- Determine the extent of workers' compensation medical overpayments and underpayments of all types, including suspected fraud, waste, abuse, and billing and processing errors, in order to allocate the appropriate level of resources to detect and evaluate suspected medical provider fraud in California. This study was carried out jointly by Fraud Assessment Commission (FAC) and CHSWC. (See "List of Projects and Studies" in this report.)

- Estimate the percent or number of uninsured employers.

- Identify uninsured employers operating in the underground or "gray" economy.

- Determine under-reporting of injuries.

- Determine misreporting of payroll and estimate the degree of premium avoidance by insured employers.

- Estimate the degree of misreporting of split class codes, when lower-wage worker payrolls are reported as higher-wage ones in order to take advantage of the lower premiums in the higher-wage class codes. (See "List of Projects and Studies" in this report.)

Some of the studies created findings which became initiatives or projects to improve the delivery of services and assist injured workers who may be potential unsuspecting victims of fraud or simply vulnerable to the intricacies of the benefit delivery system when procedures are not properly followed by employers or the injured workers themselves.

Studies described below include project summaries of these offshoot initiatives. While some reports are completed, the focus on anti-fraud efforts is ongoing:

FRAUD

Underreporting of Injuries: "Reporting of Workers' Compensation Injuries in California: How Many are Missed?"

Background

Underreporting of occupational injuries and illnesses may occur in response to increases in premium costs. Such underreporting is often proposed as a partial explanation for the continuing decline in occupational incidence rates. The Commission on Health and Safety and Workers' Compensation (CHSWC) contracted with Boston University to conduct this injury-reporting study, using a large sample of Workers' Compensation Information System (WCIS) data and Bureau of Labor Statistics (BLS) data and applying a capture-recapture analysis methodology.

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Objectives

The purpose of the study was to:

- Describe the proportion of injuries and illnesses that are underreported and the demographic, work and employer characteristics of underreported injuries and illnesses.
- Describe the nature of non-reported injuries/illnesses and the reasons for non-reporting.
- Provide improved estimates of incidence and underreporting for all cases involving more than three days off work or permanent partial disability.

Findings

- The most conservative estimate of reporting of workplace injuries in California suggests that 21 percent to 25 percent of lost-time injuries go unreported to WCIS. A less conservative estimate of underreporting implies that 40 percent of lost-time injuries went unreported.
- Reasonable alternate scenarios allow for the likelihood that reporting an injury to BLS increases the likelihood that it will be reported to WCIS. Under these circumstances, researchers estimate that only about two-thirds of injuries are reported to WCIS. This incomplete reporting places California in the middle of the seven states researchers studied.
- There appears to have been an increase in reporting from injuries occurring in 2003 to injuries occurring between July 2004 and June 2005. This suggests that the 2004 reforms probably did not lead to a decline in the reporting of injuries to WCIS. Researchers do not know whether this increase is a random fluctuation or a stable change.
- From a policy perspective, benefit payment is at least as important as injury reporting. Researchers do not know how many workers receive benefits for injuries that go unreported to WCIS. It seems likely that benefits have been paid but not reported in many cases; however, evidence about this is inadequate to support an estimate.
- Injured workers with unreported injuries may be eligible for workers' compensation benefits but receive none. In this case, the unpaid workers' compensation benefits pose a burden to the injured workers and their families, health insurance programs, and public and private disability programs.

Recommendation

- Improve WCIS reporting.

Status: Completed.

For further information, including additional recommendations …

"Reporting Workers' Compensation Injuries in California: How Many are Missed?" (August 2008). http://www.dir.ca.gov/chswc/Reports/ReportingWorkersCompensationInjuriesinCalifornia2008August.pdf

FRAUD

Premium Avoidance by Insured Employers

Background

In the absence of auditing or accountability, an employer seeking to minimize insurance costs has incentives to misreport payroll for different types of employees. If employers do misreport payroll, it would be expected to be more prevalent during periods when costs are high. Consequently, employers would report less payroll as workers' compensation costs as a percentage of payroll increase. The Commission on Health and Safety and Workers' Compensation (CHSWC) contracted with University of California (UC), Berkeley, to estimate the magnitude of misreported payroll in the system.

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Objectives

The purpose of the study is to determine the extent of underreporting by:

- Examining the reporting behavior of employers' reported payroll for premium calculation compared to actual payroll.
- Comparing any underreporting to premium rates in order to determine possible trends and relationships in underreporting/misreporting.
- Describing reporting behaviors in low-risk, low-premium classes and high-risk, high-premium classes at different premium rate levels in history.

Findings

From 1997 to 2005, the most recent data available at publication, there was substantial underreporting of premium by employers. Underreporting ranges from a low of 4 percent in 1997, when rates were substantially lower, to an excess of 10 to 12 percent in 2003-2004, when rates were several times higher than in 1997. This amounts to about $15 billion of underreported payroll in 1997 and up to $68 billion in payroll in 2003 (and $61 billion in 2004).

Between $15 and $68 billion of payroll annually is underreported over this period for employers that should be insured for workers' compensation insurance. This includes the underground economy and underreporting by employers that do have insurance. The result is that premium rates are likely to be unfairly high for honest employers who probably face rates three to ten times higher in the high-risk class codes than they would face under full reporting. Underreporting also affects the competitiveness of honest employers. There are only limited incentives for insurers to accurately monitor underreporting, and underreporting is probably offset by the higher premium rates that are observed.

Status: Completed.

For further information, including suggested next steps …

"Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? What is the Impact on Honest Employers?" (August 2007 and January 2009).
http://www.dir.ca.gov/chswc/Reports/Fraud_in_WC_payroll_Report_Aug_14_2007.pdf
(August 2007)
http://www.dir.ca.gov/chswc/Reports/2011/Final_Report_FAC_Premium_Avoidance.pdf
(January 2009)

FRAUD

Uninsured Employers Operating in the Underground or "Gray" Economy

Background

An unknown fraction of employers operate partially or entirely outside the standard economy, going uncovered for workers' compensation insurance as well as committing other wage and tax violations. Honest employers, workers, state social programs, the state general fund, and the federal government all suffer the consequences of fraudulent underground activity. Despite the important and extensive impact the underground economy has on honest employers and their workers, there are almost no useful estimates of the extent of the underground economy, the amount of premium and taxes avoided, or the differential impact on employers by industry. The main reason for this lack of information is that by operating underground, these employers remain outside most mechanisms used to track and measure economic activity.

Underground or "gray" economy employers may represent a major fraction of the uninsured employer population. Often, these employers are only identified when a worker files a claim with the Uninsured Employers Benefit Trust Fund (UEBTF).[73]

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Objectives

The purpose of the study is to:

- Examine the impact of the enforcement mechanisms already in place to deter underground activity.
- Estimate the impact of enforcement mechanisms (sweeps, fines, etc.) on reported employment, reported payroll and related taxes, workers' compensation coverage, and worker safety.
- Examine the incentives related to fines and penalties imposed during enforcement.
- Propose how enforcement procedures could increase compliance.
- Propose how enforcement procedures could measure the underground economy and support progress towards better compliance.

The main approach of the study is to:

- Identify the population of all employers, industries and geographic areas subject to enforcement sweeps and other systematic enforcement efforts.
- Identify comparable groups of employers by industry and geography, but not affected by the specific, systematic enforcement.
- Compare the affected employers with the comparison not-affected employers and measure the change, if any, in the compliance with:
    - Workers' compensation coverage.

[73] UEBTF is also still commonly called the Uninsured Employers Fund (UEF).

- Payroll reporting.
- Tax payments.
- Other labor and wage regulations.

In addition, the study will:

- Compare various types of enforcement (industry-based, geography-based, community-state partnerships, etc.) and evaluate which approaches are most cost-effective.

- Develop recommendations on refining enforcement and penalty-assessment strategies.

Status: In process.

Fraud Studies - Related Initiatives: Uninsured Employers Benefits Trust Fund Project – Information and Assistance (I&A) Officer Customer Service Project, UEBTF Handbook, and Labor Code 90.3 Data Matching

Background

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. Fraudulent misreporting or illegally uninsured employers shift costs to other payors inside and outside of the workers' compensation system.

Description

UEBTF is administered by the director of the Department of Industrial Relations (DIR). Funding comes from assessments on all insured and self-insured employers annually, from fines and penalties imposed on illegally uninsured employers when they get caught, and from recoveries from illegally uninsured employers when UEBTF has paid benefits and is able to obtain reimbursement from responsible employers.

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Concerns have been raised about UEBTF from both employers and workers. Law-abiding employers are concerned about cost shifting to the UEBTF by illegally uninsured employers. Workers are concerned about the difficulties in obtaining benefits from UEBTF.

Findings

Past findings include:

- Identifying and locating uninsured employers along with proper enforcement would reduce the costs to stakeholders in the workers' compensation system.

- The surest way to reduce the long-term cost of UEBTF is to reduce the prevalence of illegally uninsured employers. In a Commission on Health and Safety and Workers' Compensation (CHSWC) 1998 study on illegally uninsured employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured.

- Labor Code Section 90.3 provided for a program to identify illegally uninsured employers through targeting and data matching. Due to lack of resources, this program was never implemented. In 2007, Senate Bill (SB) 869 was signed into law and set forth administrative funding as well as mandatory reporting on the program's performance.

- There is a lack of knowledge of UEBTF and civil procedure in the workers' compensation community.

- Unrepresented applicants lack easy access to UEBTF. Of some 1,800 claims filed during the 2007-2008 fiscal year, only 4 or 5 were filed by unrepresented applicants according to UEBTF.

Injured workers will probably continue to require attorneys if they wish to pursue any of the additional remedies available against illegally uninsured employers.

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

- Medical providers incur increased losses on liens while waiting to get paid.

- UEBTF does not get involved early enough in the claims.

- According to UEBTF, it learns of a claim on an average of ten months after the injury.

- Frequently, the claim is not promptly pursued by the injured worker because the employer pays bills directly for a while.

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

Recommendations

Past recommendations include:

- Publicize and enforce the workers' compensation coverage requirement.

- Provide workers' compensation coverage information.

- Improve methods to help workers access benefits from UEBTF.

- Encourage reporting of suspected illegally uninsured employers.

- Protect and improve UEBTF.

- Further educate the workers' compensation community.

Recent Initiatives and Outcomes

As a result of these past findings, CHSWC has worked with DIR and stakeholders to address emerging issues:

- In collaboration with CHSWC, the Division of Workers' Compensation (DWC) initiated in late May 2009 a pilot enhanced-customer service initiative in one Information & Assistance (I&A) Office to assist unrepresented injured workers in properly identifying employers and serving papers. The pilot ended in June 2010 with positive results.

- CHSWC has funded the development of a UEBTF booklet in simple language for use by uninsured workers, which is being translated into Spanish. The booklet, "If Your Employer is Illegally Uninsured: How to Apply for Workers' Compensation Benefits," was made available in June 2011 and is posted at http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers.pdf. The Spanish version is posted at: http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers_Spanish.pdf.

- Progress is being made in following the requirements of Labor Code Section 90.3, as evidenced by the release of the annual reports required by Labor Code Section 90.3 in 2009, 2010 and 2011

by the Division of Labor Standards Enforcement (DLSE). In 2011, new data specifications were developed to include separate sampling of new employers, targeted employers, and random employers.

Status: In process.

For further information …

"CHSWC Background Paper: Uninsured Employer Benefits Trust Fund" (April 2007).
http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf
"2009 Annual Report of the Unlawfully Uninsured Employer Enforcement Program, Labor Code Section 90.3(d)."
http://www.dir.ca.gov/dlse/UUEEP-2009.pdf
"2008 Annual Report of the Unlawfully Uninsured Employer Enforcement Program, Labor Code Section 90.3(d)."
http://www.dir.ca.gov/dlse/UUEEP-2008.pdf
Division of Labor Standards Enforcement Reports.
http://www.dir.ca.gov/dlse/DLSEReports.htm.

INSURANCE INDUSTRY

Insolvent Insurers

Background

Since insurance rates were partially deregulated in 1995, the California workers' compensation system has been very volatile. For reasons that go beyond price deregulation, there have been dramatic swings in workers' compensation prices and insurer underwriting profits, and a substantial number of insurers, including some of the largest market participants, have failed.

Pursuant to Senate Bill (SB) 316, which was signed into law in 2007, the Commission on Health and Safety and Workers' Compensation (CHSWC) conducted the CHSWC/RAND/Navigant Consulting study and report, "California's Volatile Workers' Compensation Insurance Market: Problems and Recommendations for Change." This study identifies and examines factors that contributed to increased market volatility and the large number of insolvencies following price deregulation. It also examines the regulatory system for overseeing the workers' compensation market and how the California Department of Insurance (CDI) responded to the market turmoil that followed the move to open rating. Based on the findings, recommendations were made that aim to reduce the volatility of the market and the frequency of insolvencies while realizing the benefits of a competitive market.

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Description

The purpose of this report is to identify the different factors that contributed to increased market volatility and the large number of insolvencies following price deregulation and to suggest policy changes to reduce the severity of these problems in the future. Findings and recommendations are based on information obtained through interviews with a wide range of interested parties, detailed examination of eight insurers groups that became insolvent and eight insurance groups that survived, a review of previous studies, and an analysis of data from the Workers' Compensation Insurance Rating Bureau (WCIRB) and CDI on the overall market.

Findings

Several key factors contributed to the insolvencies and volatility over the past 15 years: inaccurate projections of claim costs; pricing below expected costs; reinsurance contracts that gave insurers and reinsurers insufficient stake in the profitability of the policies they wrote; managing general agents who had little financial interest in the ultimately profitability of policies; under-reserving by insurers; and insurer surplus and capital that were inadequate to provide a cushion against adverse events.

There are four broad themes that run through the 29 policy recommendations: improve predictability; enhance transparency of the system; better align incentives of major players; and improve California CDI oversight.

Status: Completed.

For further information …

"California's Volatile Workers' Compensation Insurance Market: Problems and Recommendations for Change," RAND, December 2009.
http://www.dir.ca.gov/chswc/Reports/2009/InsolvencyReport.pdf

INSURANCE INDUSTRY

Self Insurance Groups

Background

Self insurance groups (SIGs) in the private sector are a comparatively new phenomenon in California. Private sector employers in California must secure the payment of their workers' compensation obligations either by obtaining workers' compensation insurance or by obtaining from the State a certificate of consent to self-insure. Since the early years of the workers' compensation system, individual employers with sufficient financial capacity have been able to obtain the State's consent to self-insure. Public entities have also been permitted to self-insure for decades, either individually or in groups called joint powers authorities (JPAs). Private group self insurance, however, was not authorized by statute until 1993, and the first private sector SIG in California was approved effective January 1, 2002.

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By the end of 2007, SIGs reported over $5.2 billion in covered payroll, nearly 6 percent of the total payroll covered by all private sector self-insurance. There were 28 active SIGs in California as of February 2009, ranging from groups of 3 members up to a group of 743 members. One SIG reported over $1.1 billion in covered payroll. In 2007, SIGs paid an aggregate of $21,610,856 in indemnity benefits and $28,786,674 in medical benefits.[74] This growth has taken place under a statutory framework that added only a few words to the statutes governing individually self-insured employers and under regulations that were likewise based largely on the regulations that were designed for individually self-insured employers.

Description

Both the market for group self insurance and the regulatory oversight of group self insurance are now undergoing a first stage of maturation. Some SIGs are closing or undergoing changes as their business models prove to be poorly suited to the current economic climate. An extensive overhaul of the regulations was adopted effective March 2, 2009, after more than three years of work by the Department of Industrial Relations (DIR) and its Office of Self Insurance Plans (OSIP). At the same time, other states with longer histories have provided examples of what can go wrong when SIGs are not adequately regulated and supervised.

In the context of these changes, and mindful of the widely publicized failure of several large self insurance trusts in the state of New York, Assembly Member Joe Coto, Chair of the California Assembly Insurance Committee, requested on October 6, 2008, that the Commission on Health and Safety and Workers' Compensation (CHSWC) analyze the statutory and regulatory oversight of workers' compensation self insurance groups and make recommendations to ensure the viability of these programs.

Findings

The CHSWC study found that self insurance groups have the potential to serve the interests of California employers and employees by promptly providing workers' compensation benefits to injured workers at reasonable cost while enabling and encouraging employers to improve safety and provide the earliest appropriate return to work for injured employees.

Self insurance groups also have the potential to drive up costs and disrupt the delivery of benefits when poorly managed. At the least, the members or former members of an underfunded group may be exposed to unexpected costs to make up for the shortage. At the worst, responsibility for payment of a failed

[74] Sources: Office of Self Insurance Plans website and e-mail correspondence 1/8/2009.

group's obligations may be shifted to employers who were not connected with the failed group, and benefits to injured workers may be interrupted and delayed during the collapse of the group.

The purpose of the CHSWC "Report on Self Insurance Groups" was to review what legislation or oversight might be needed to preserve group self insurance as an option for eligible employers and to assure that the risks are held to a reasonable minimum. California already has regulations designed to protect against the most obvious risks of financial failure and default by self insurance groups. This report recommends additional steps for improved solvency, security and oversight.

Status: Completed.

For further information …

"Report on Self Insurance Groups" (December 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_SIGReport.pdf

INFORMATION FOR WORKERS AND EMPLOYERS

Return-to-Work/FEHA/ADA Handbook and Factsheet

Background

Return to work after an injury or illness is important for employers and workers and their families in the State of California. Efforts need to be made to reduce litigation, reduce friction, and provide information to employers, particularly small employers who have the most difficult time complying with requirements regarding return to work. Improved information for all system participants about the requirements of the Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA) will be critical to efforts to improve return to work in California.

Return to work is a key issue for the Department of Industrial Relations (DIR) Division of Workers' Compensation (DWC) and the Commission on Health and Safety and Workers' Compensation (CHSWC), as well as for employers and the public sector. For employers, return to work is a complicated area for human resources and workers' compensation professionals. In the public sector, it is challenging to identify how benefits are delivered and coordinated in cases involving job accommodations, as well as how these issues relate to conditions in the economy.

Description

Several stakeholders have requested information to help workers and employers meet their responsibilities under FEHA and ADA. In 2010, the director of DIR requested that CHSWC work with the Department of Fair Employment and Housing (DFEH) and partner with DWC on a new handbook on return to work, FEHA and ADA. The Commission voted at its November 6, 2008 meeting to proceed with this project and convened the Return-to-Work/FEHA/ADA Advisory Group on December 9, 2008. This was a multi-agency effort to improve return to work and improve information for workers and employers in order to reduce confusion and litigation.

The Advisory Group emphasized that there is a need for a new and better approach to return to work especially with an aging workforce and the economy shedding jobs. Public policy is emphasizing that employers bring people back to work. The system in place now has to be reformed to be an affirmative approach, rather than the defensive posture created by the workers' compensation system, with FEHA as the umbrella.

Recommendations for a new Return-to-Work/FEHA/ADA Handbook and next steps included:

- Provide an informational piece that explains to employers, employees, clinicians and other interested parties how various benefits interact with one another.
- Present best practices for bringing an injured employee back to work, including FEHA and workers' compensation and workers' compensation and human resources, and how to make them compatible with the required interactive process.

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- Emphasize the economic necessity of keeping Californians working safely and productively, and emphasize the importance of being proactive and not waiting until there is an investigation in process, and the importance of having a timely, cordial, well-documented engagement with the employee.

- Clarify roles and responsibilities: employers have the privilege and duty to define the essential functions for all jobs; employers have the right to ask for medical information; employees have the duty to bring relevant information to the table to protect their own health and productivity; and clinicians have the responsibility to comment on capacity, or what the patient can safely do between now and the next visit, and they should not define accommodations but should have information about work requirements.

- Provide a tool kit including: common timeframes, common vocabulary, and common requirements for the different processes; a model interactive process; sample notifications; and a list of available resources.

- Develop strategies for dissemination, particularly co-branding with other organizations serving small businesses such as: Small Business California; Chambers of Commerce; local and state agencies; joint powers authorities (JPAs); and others. These organizations would promote the handbook and facilitate translation into multiple languages.

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Handbook and Factsheet

Handbook: Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California

CHSWC worked with DFEH and partnered with DWC on a new handbook on return to work, FEHA and ADA, *Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California,* prepared by CHSWC and the University of California (UC), Berkeley, in collaboration with DFEH and DWC.

The handbook, which was available beginning in February 2010, is especially geared for small employers and their employees. It briefly describes workers' compensation anti-discrimination and disability rights laws in California, including: how workers' compensation law protects injured employees from discrimination; and what employers' obligations are under FEHA. It also describes six basic steps that constitute best practices to help injured employees return to safe and appropriate work in a timely fashion, including: how employers can comply with the requirements of the interactive process under FEHA; what the time frames are for engaging in the interactive process and offering work; and examples of RTW in construction and agriculture. In addition, it discusses: how to establish an effective program to carry out best practices; how to ensure that everyone assumes their roles and responsibilities; and why employers should evaluate existing jobs and working conditions.

Additional resources are included in Appendix sections for physicians and insurers and about job accommodations, workers' compensation benefits rights and procedures, and disability rights and procedures under FEHA. Appendix A lists additional resources to help employers and employees design, implement, and participate in an effective return-to-work program; it also lists resources of the state agencies that administer workers' compensation and disability rights laws. Appendix B and Appendix C explain how to access the laws and regulations discussed in this handbook.

Factsheet: "Best Practice in Returning an Injured Employee to Work: Factsheet for Employers"

A Factsheet based on the Handbook, **"**Best Practices in Returning an Injured Employee to Work: Factsheet for Employers," was also prepared and made available in February 2010. The Factsheet presents key points from the RTW/FEHA/ADA Handbook: *Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California, February 2010.*

Status: Completed.

For further information …

"Summary of December 9, 2008 Return-to-Work/FEHA/ADA Advisory Group Meeting" (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_SummaryRTWFEHAADAGuidebookRoundtable2009.pdf

Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California
http://www.dir.ca.gov/chswc/Reports/2010/HandbookRTW_2010.pdf

"Best Practices in Returning an Injured Employee to Work: Factsheet for Employers," February 2010.
http://www.dir.ca.gov/chswc/CHSWC_FactsheetRTW_2010.pdf

INFORMATION FOR WORKERS AND EMPLOYERS

Uninsured Employers Benefits Trust Fund Educational Booklet

Background

Injured workers whose employers are illegally uninsured or whose employers do not provide information about their insurance face significant hurdles in requesting workers' compensation benefits, either from the employer or from the Uninsured Employers Benefits Trust Fund (UEBTF). It is often difficult or impossible to determine the legal name and address of the employer, obtain coverage information from the Workers' Compensation Insurance Rating Bureau (WCIRB) because of the difficulties of naming the employer and finding and properly serving the employer because the employer is avoiding service of process.

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Objectives and Scope

Injured workers, legal services organizations, and agencies that investigate workers' compensation fraud have expressed a need for these workers to receive help and support in following the steps described above. The Division of Workers' Compensation (DWC) has produced basic materials on steps to take in a UEBTF case. Further educational work is needed to clarify and fully explain the procedural steps set forth in these materials with easy-to-understand terminology and examples. Funding has been approved for University of California (UC), Berkeley staff to assist the Commission on Health and Safety and Workers' Compensation (CHSWC) in developing a fully designed educational booklet based on DWC materials and advisory input from members of the workers' compensation community.

This project is being coordinated with the CHSWC's project to streamline the UEBTF process and offer additional services to injured workers of uninsured employers and to pilot these services with the Information & Assistance (I&A) office in Salinas. The booklet was drafted based on the design of the pilot. It is being revised to incorporate comments from the Legal Unit of the Office of the Director of Industrial Relations (DIR). It will then be distributed to other advisors for their review and comment.

The booklet is available in English and Spanish online and distributed at I&A Offices.

Status: In process.

For further information …

"If Your Employer is Illegally Uninsured: How to Apply for Workers' Compensation Benefits" (June 2011).
http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers.pdf.
The Spanish version is posted at:
http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers_Spanish.pdf.
"CHSWC Background Paper: Uninsured Employers Benefits Trust Fund" (April 2007).
http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf

INFORMATION FOR WORKERS AND EMPLOYERS

Benefit Notices: Recommendations

Background

Labor Code Section 77(b) authorizes the Commission on Health and Safety and Workers' Compensation (CHSWC) to issue periodic reports and recommendations to improve and simplify benefit notices. In March and April 2010, Commission staff held separate meetings with members of a small task force of knowledgeable advisors from organizations including the Schools Insurance Authority, California Workers' Compensation Institute, Tristar Risk Management, California Applicants' Attorneys Association, and Southern California Edison Company to review specific problems with the current system of benefit notices and discuss possible alternatives.

Objectives

California does not have a streamlined benefit notices program that allows claims administrators to communicate effectively with injured workers. Benefit notices should:

- Help injured workers understand the entire claims process.
- Inform injured workers of their rights and obligations and instruct them on steps to take each stage of the process.
- Be easy to administer.
- Help avoid unnecessary litigation.

Scope of Study

Advisors consulted identified problems with benefit notices including:

- Too voluminous (e.g., overly wordy, redundant, containing factsheets and forms that are not needed by all workers).
- Complex, overwhelming, frightening, vague, confusing (e.g., "you may lose important rights if you do not take certain actions within 10 days"; "you may be asked to return to the physician for a new evaluation").
- Difficult to understand (e.g., indirect wording, unfamiliar terminology).
- Not coordinated as a single system, not standardized.
- Misleading (e.g., workers think they are required to submit the Qualified Medical Evaluator (QME) panel request form; notice that no permanent disability exists sounds like denial of the entire claim).
- Not conveying the main points to workers.
- Difficult to keep updated (i.e., the required factsheets).

Suggestions to improve benefit notices included:

- Identify what injured workers need to know at each stage. Relay necessary information at the right time, eliminate unnecessary information, and use plain language. Clearly inform injured workers about applicable deadlines.

- Explore providing background and explanatory information to all injured workers about the entire claims process and workers' rights

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and obligations. Provide the information early in their claims, and make it continually available to allow workers to access relevant portions later in their claims. The information could be posted on the Internet, for example. Transferring this information from factsheets included with the current benefit notices to an online source would greatly reduce the volume of paper in the system and would allow claims administrators to convey the main points about a particular claim in the individual notices.

- Provide clear information to workers about where and how they can access information on the Internet about workers' compensation and the forms that are needed by some workers. Create mechanisms to allow access for workers who do not have easy access to the Internet, such as providing paper copies upon request.

- Simplify and standardize the language of benefit notices. Consider, for example, using a form similar to Form DIA 500, which was a one-page benefit status notice used in the 1980s by the Division of Industrial Accidents, the predecessor to the Division of Workers' Compensation (DWC). Using a similar form may help claims administrators concisely relay necessary messages to the workers about their claims.

To assess the feasibility of providing background and explanatory information through online sources, Commission staff sought data to estimate the extent that injured workers have access to the Internet. Over the course of four working days in April 2010, Commission and DWC staff administered a brief questionnaire to injured workers by calling and visiting the Information & Assistance (I&A) offices in Salinas, San Bernardino, San Diego, Oakland, and Stockton. These five offices have high volumes of traffic, serve urban and rural locations in Northern and Southern California, and employ one or more I&A officers. In addition, these offices probably serve populations facing some of the greatest barriers to accessing the Internet.

The workers were asked whether they access the Internet and whether they or anyone in their household accesses the Internet at least once a month. Of the 162 workers who responded, 16 percent indicated they did not have access to the Internet.

Recommendations

Currently, there is no requirement to provide all injured workers with comprehensive information that workers can use and reference to understand the individual benefit notices they receive in their claims. It is recommended that CHSWC collaborate with DWC to explore and implement methods to provide clear information to all injured workers soon after injury describing the entire workers' compensation claims process and the parties' respective rights and obligations, as well as make this information continually available for workers to access later in their claims, and to improve California's system of benefit notices.

The bulk of the information currently provided with benefit notices, including the DWC form to request a QME panel and the content of the DWC fact sheets on temporary disability benefits, permanent disability benefits, and the QME/agreed medical evaluator (AME) process, would be made available on the Internet for most workers and made available upon request to workers who do not have easy access to the Internet. The notices themselves would become much shorter in length and greatly reduced in total volume. This would allow claims administrators to effectively communicate the main messages. It would also enable injured workers to understand their rights and obligations and not be overwhelmed by the claims process.

Estimated Costs

Sixteen (16) percent of the workers in the survey described above indicated they did not have access to the Internet. Because a greater percentage of all injured workers in California probably have access to the Internet compared to the workers who participated in the survey, we believe the 16 percent figure is on the high side. Furthermore, Internet access will probably increase over time for everyone. On the other hand, some workers would request a paper copy even if they are able to access the Internet. Therefore, it

is estimated that 10 to 20 percent of newly injured workers would request a paper copy of a written booklet describing the entire claims process if informed of its availability.

There were 625,765 claims in 2008 (CHSWC Annual Report, 2009, page 44). Assuming 10 to 20 percent of newly injured workers would request a paper copy, it is estimated that 60,000 to 130,000 copies will need to be provided. The cost of printing and delivering one booklet similar to the CHSWC *Guide* for Injured Workers is $5.00. This cost multiplied by 60,000 to 130,000 yields a total cost to print and deliver paper booklets of $300,000 to $650,000, or less than $1 million per year.

Estimated Savings

Improving communications between claims administrators and injured workers will reduce confusion, misunderstandings, disputes and litigation. Insured employers incur legal defense expenses of $607 million per year (Workers' Compensation Insurance Rating Bureau, 2008 California Workers' Compensation Losses and Expenses report, June 25, 2009, page 4) and represent 70 percent of all California workers' compensation claims (DWC Workers' Compensation Information System data). Dividing the $607 figure by 70 percent yields an estimated cost of $867 million for all employers. It was assumed conservatively that providing comprehensive information early in the claims process and substantially clarifying the information in benefit notices will reduce legal defense expenses by 5 percent, or $43 million per year.

In addition, shortening the length of benefit notices and eliminating enclosures will significantly reduce printing and mailing costs.

Estimated Net Savings

As discussed above, the costs of providing paper copies of an informational booklet to injured workers upon request are estimated be less than $1 million per year, and the savings in legal defense costs and printing and mailing costs are estimated to be $43 million or more per year. The overall net savings are estimated to be more than $42 million per year.

Recommendation

The Commission's July 2010 "Report on Benefit Notices and Recommendations" recommends legislation requiring a system of benefit notices to be written in plain language and a guidebook for injured workers also to be written in plain language, which the benefit notices can refer to. At its August 19, 2010 meeting, the Commission voted to initiate background work on simplification of notices and to revise the 2006 *Guidebook for Injured Workers*.

The revised guidebook includes changes since 2006, such as the extension of time to receive temporary disability benefits, the new Medical Treatment Utilization Schedule, and changes in the right to pre-designate.

Status: Completed.

Legislation contained in Assembly Bill (AB) 335 implements these recommendations, and was signed into law in 2011. The law now requires the Administrative Director of DWC and CHSWC to develop and make available such plain language notices with accompanying information materials. For more information about AB 335, please see "Special Report on Legislation and Regulations" in this Annual Report.

For further information …

"Report on Benefit Notices and Recommendations," July 2010.
http://www.dir.ca.gov/chswc/Reports/2010/BenefitNoticesRecommendationspdf.pdf

INFORMATION FOR WORKERS AND EMPLOYERS

Feasibility Study on Collecting and Providing Workers' Compensation Public Agency Data

Background

As part of its responsibilities to evaluate the health, safety and wokers' compensation systems and make recommendatios of administrative or legislative modifications to improve the system, the Commission on Health and Safety and Workers' Compensation (CHSWC) has attempted to evaluate, compare and contrast workers' compensation payments for types of indemnity and medical benefits made by insurers, self-insured employers, and public agencies in California.

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In accordance with Inusrance Code Section 11759.1, the Workers' Compensation Insurance Rating Bureau (WCIRB) collects and publishes data on the payments made by insurers (on behalf of insured employers). The data are arrayed in such a way as to provide detailed breakdowns and comparisons of various medical and indemnity payments.

While detailed data about insurer paymens are avaiable from WCIRB, data in sufficient detail about workers' compensation payments made by public agencies to perform a more thorough anlaysis are not available.

Data on workers' compensation and indemnity and medical payments on behalf of employees of public self-insured employers and public agencies would assist the community in comparing and contrasting that information with payments from insurers. In addition, having standardized data on workers' compensation payments would provide better accountability and baseline information to monitor the impact of reforms.

At its August 18, 2011 Commission meeting, the Commission voted to approve a feasibility study on collecting and providing workers' compensation public agency data.

Description

The purpose of the study is to provide a feasibility study regarding collecting and reporting workers' compensation public sector data. The study would include examining alternatives and making recommendations for collecting and reporting public agency data on a regular basis.

This analysis, which would allow for an ongoing monitoring and recording of the costs of public agencies and the State of California, is important because:

- Public agencies' employees represent a fraction of the workplace. Data from the California Employment Development Department (EDD) show that federal, state or local government employed approximately 16 percent of the work force in California in June 2011 (http://www.calmis.ca.gov/file/lfmonth/cal$spds.pdf).

- Public agencies' workers' compensation costs comprise about 20 percent of overall California workers' compensation costs.

- High industrial injury and illness incidence rates are in state and local government as compared to private industry.

Status: In process.

INFORMATION FOR WORKERS AND EMPLOYERS

Workplace Wellness: How to Address Both Occupational and Lifestyle Issues on the Job

Background

Integration of wellness and occupational health and safety has become a key focus of efforts by employers of large, medium-size and small businesses and labor. Efforts to develop an integrated approach to health promotion and occupational health and safety programs have focused on research and public health literature, as well as best practices of wellness programs implemented by employers.

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Description

On July 16, 2008, the Commission on Health and Safety and Workers' Compensation (CHSWC) hosted a Workplace Wellness Roundtable facilitated by the University of California (UC), Berkeley Labor Occupational Health Program (LOHP). Participants included representatives from employers of large, medium-size and small businesses, labor, research organizations, and state agencies. (See list of participants that follows.) The purpose of the Workplace Wellness Roundtable was to begin a dialogue about strategic approaches, both short-term and long-term, to integrating workplace wellness and occupational health and safety programs in California. Attendees were encouraged to share experience with workplace wellness initiatives and programs and to reflect on how these ideas relate to their own organizations.

Objectives

The objectives for the Roundtable were to:

- Develop a general understanding of what constitutes an integrated approach to health promotion and occupational health and safety programs.
- Explore barriers to integration of workplace health promotion and workplace health and safety programs**.**
- Discuss strategies for overcoming challenges to integration of programs.
- Identify strategies and resources for promoting more and better programs that address workplace health in a holistic manner for employers of large, medium-size and small businesses.

Booklet on Integrating Wellness and Occupational Health and Safety Programs

As a result of the Roundtable, a booklet, *The Whole Worker: Integrating Wellness & Occupational Health and Safety Programs*, was developed. The booklet addresses the central role that the workplace plays in the health of most Americans. Average working American adults spend more than half their waking lives at work. In order to fully address health, what happens inside and outside the workplace has to be a key focus.

Many employers are required by OSHA law to provide safe and healthy workplaces. Consequently, many employers are voluntarily establishing wellness or health promotion programs to address employee health. They view the workplace as an opportunity to engage workers in efforts to prevent disease, promote better overall health, and possibly lower costs and increase morale and productivity. There is evidence that wellness programs that emphasize correcting workplace hazards show greater

participation rates than those that focus only on individual behavior change and have a greater chance of success if integration with occupational health and safety is a priority.

The objectives of the booklet are to:

- Develop a general understanding of what constitutes an integrated approach to health promotion and occupational health and safety programs.
- Explore barriers to integration of workplace health promotion and workplace health and safety programs.
- Identify strategies for overcoming challenges to integration of programs.
- Identify resources for promoting programs that address worker health in a holistic fashion.

The booklet provides examples of specific wellness/health promotion programs and discusses their effectiveness. It also presents a Checklist and a Planning Worksheet for integrating workplace wellness programs and occupational health and safety, as well as a List of Resource Organizations and a bibliography of publications related to wellness and occupational health and safety.

Status: Completed.

For further information **…**

"Summary of the July 16, 2008 Workplace Wellness Roundtable" (December 2008).
http://www.dir.ca.gov/chswc/Reports/CHSWC_SummaryWorkplaceWellnessRoundtable.pdf
The Whole Worker: Integrating Wellness and Occupational Health and Safety Programs
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/WOSHTEP_TheWholeWorker.pdf

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OCCUPATIONAL SAFETY AND HEALTH

The Impact of Worker's Compensation Experience Modification Rating (Ex-mod) and Firm Age on Safety Behavior and Risk

Background

At the request of the Commission on Health and Safety and Workers' Compensation (CHSWC), Commission staff held a Health and Safety Research Advisory Committee meeting on November 19, 2007, in Oakland, to identify key health and safety areas where further research and study could help improve workplace health and safety in California. The Advisory Committee included stakeholders in the health, safety and workers' compensation communities representing insured and self-insured employers, labor, health and safety researchers, and state agencies.

One of the recommendations of the Health and Safety Research Advisory Committee was to rigorously identify the consequences of different:

- Safety policies and practices such as workers' compensation experience modification (Ex-mod) rating.
- Workplace health and safety activities for different types of employers by size, age of firm and industry.

Two areas of research that warrant attention with respect to the above recommendations are how workplace safety behavior is affected by workers' compensation experience modification rating (Ex-mod) and the safety risk and employer safety behavior within different age firms.

In addition to the above recommendations, the Experience Rating Task Force, established in 2007 in response to concerns expressed by the California Insurance Commissioner, made recommendations regarding research on workers' compensation Ex-mod. The Task Force report suggested that research opportunities to "evaluate the effectiveness of experience rating as a safety incentive" should be undertaken "to the extent such research is likely to produce meaningful results relevant to potential future Rating Plan changes."

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Description

The study responds to the above research recommendations of the Experience Rating Task Force and the Health and Safety Research Advisory Committee and evaluates:

- The impact of workers' compensation Ex-mod on the safety behavior of small, medium-size and large employers.
- The safety risk of new firms versus older firms.
- Whether apprenticeship training programs help lead to better safety.

Objectives of the Study

Objectives of the study are to identify:

- Whether the application of and changes to workers' compensation Ex-mod has an effect on the safety experience of small, medium-size and large employers in addition to its original purpose of addressing insurer underwriting concerns.

- Whether the application of and changes to workers' compensation Ex-mod to medium-size and large employers has an effect on their safety experience.

- If employers' performance now affects their premiums, but overall premiums are declining, whether employers would pay more or less attention to how to decrease their injury losses.

- Policy recommendations on improving the current workers' compensation Ex-mod methodology.

- Whether new firms have a greater safety risk than older firms. The analysis will look at firms by payroll, size and rating class.

- Policy recommendations on safety interventions if new firms are determined to be more unsafe than older firms.

- Whether apprentices, who undergo rigorous training, including safety training, are safer than similar workers who do not undergo the rigorous training.

- Whether apprentices who fall in the low-wage class are consistently safer than the average worker in the low-wage class and whether an estimate of the appropriate discount for union employers can be determined which reflects this difference and offsets the possible subsidy of low-wage employers.

Status: In process.

OCCUPATIONAL SAFETY AND HEALTH

Evaluation of the Effectiveness of California's Injury and Illness Prevention Program and Compliance Officers' Inspections

Background

At the request of the Commission on Health and Safety and Workers' Compensation (CHSWC), Commission staff held a Health and Safety Research Advisory Committee meeting on November 19, 2007, in Oakland, to identify key health and safety areas where further research and study could help improve workplace health and safety in California. The Advisory Committee included stakeholders in the health, safety and workers' compensation communities representing insured and self-insured employers, labor, health and safety researchers, and state agencies.

One of the recommendations of the Health and Safety Research Advisory Committee was to rigorously identify the consequences of different regulators' policies and practices with respect to job safety and health standards and enforcement through worksite inspections.

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Description

The purpose of the study is to conduct research that addresses the above recommendation with respect to the effectiveness of the Injury and Illness Prevention Program (IIPP) standard and compliance officers' inspections to reduce injury and illness rates, as well as to identify the effects and policy implications of IIPP in California. The research can help to improve the ability of occupational health and safety agencies to prevent injuries, potentially preventing a significant number of injuries and illnesses. The study will identify:

- The effect of the adoption and enforcement of the IIPP regulations.
- The elements of the IIPP standard that may be most effective.
- Whether firms that comply with Section 3203 have lower injury and illness rates (and better experience modification ratings) than similar firms that do not.
- Whether compliance with Section 3203 leads to a reduction in injury and illness rates.
- Whether there is any relation between the stringency of enforcement of Section 3203 and reductions in injury rates.
- When controlling for other factors that affect inspection outcomes, whether reductions in injury and illness rates vary depending on the compliance officer who carries out the inspection.
- Which characteristics of the more successful compliance officers and their inspection activities distinguish them from other compliance officers.
- What the policy implications are for the selection, training, and incentives for compliance officers.

Status: In process.

For further information **…**
See special report "Occupational Safety and Health" in this Annual Report.

OCCUPATIONAL SAFETY AND HEALTH

Evaluating the Role of the IIPP in Helping to Reduce Injuries in High Hazard Industries

Background

Each year, Cal/OSHA designates high hazard industries based on the latest Days Away, Restricted or Transferred Duty (DART) injury rates calculated for industries in the State from the Survey of Occupational Injuries and Illnesses (SOII). The industries listed are those with DART rates at least twice the average for the private sector in the State in that year.

Cal/OSHA officials have stated that it would be most useful to have more specific information about those industries which are a major focus of attention.

Description

The study will look at enforcement of the Injury and Illness Prevention Program (IIPP) and its effects in industries that Cal/OSHA has designated as high hazard. It will build on current work that has identified the average effects of IIIPP enforcement in all of manufacturing and in other industries, including wholesale trade, health care, transportation and utilities. It will focus on the 2011-12 list, the latest list of industries, except for the roofing industry, but will also follow the establishments over time, i.e., almost every year since 2004-05, and focus on the industries which have been on the high hazard lists for a number of years.

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The study will identify:

- The number of workers hospitalized due to work injury and acute toxic exposures.
- The selection of industries which had been on the high hazard list but have shown steady (relative) declines since, and which are now on the high hazard list due to (relative) increases in their rates.
- The percentage of inspections and establishments in which particular IIPP sections are violated; the changes over time in those violations both in re-inspections and in first-time inspections; and the pattern of violation of other standards (i.e., other than the IIPP) to see which decline or disappear and which are persistent.
- The relation between the IIPP status found in an inspection and the injury rate in that establishment in the prior two years.
- The change in the injury rate from the year before the inspection to the year following the inspection.
- Whether compliance differs across these high hazard industries and between them and non-high hazard industries.
- Whether the relationship between IIPP compliance rates is different across these industries and between them and other industries.
- Whether the effect of Cal/OSHA inspections is different across these industries and between them and other industries.

Status: In process.
OCCUPATIONAL SAFETY AND HEALTH

Model Injury and Illness Prevention Program Training Program

Background

Injury and Illness Prevention Programs (IIPPs) are required in California workplaces and are a critical component of any health and safety program because they establish key procedures for protecting the health and safety of employees.

The Commission on Health and Safety and Workers' Compensation (CHSWC) has designed a model training program that assists employers and employees throughout California in their efforts to reduce work-related injuries and illnesses by effectively developing and implementing their IIPPs.

This program is especially timely given that federal OSHA is considering promulgating a federal IIPP standard modeled on Cal/OSHA's IIPP standard. Development and implementation of the proposed training program and IIPP materials would allow CHSWC to take a leadership role in creating a model that can be useful nationwide.

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Description

The purpose of the study is to create a focused training program specifically aimed at creative effective IIPPs and targeting a range of industries in California. The program will draw on materials from two key Commission programs: the Worker Occupational Safety and Health Training Program (WOSHTEP); and the School Action for Safety and Health (SASH) program.

The first phase of the program will include:

- A one-day interactive training program targeting staff responsible for creating or implementing IIPPs.
- Adapted training materials, including a generic model IIPP guide and template and program tools including a factsheet on promoting employee involvement; a sample new employee safety orientation training outline and activities; sample accident investigation forms; and hazard identification worksheets.

During the second phase of the project, the following activities will be implemented:

- Conducting at least 2-3 sessions of the training program. Recruitment will target a variety of industries in order to assess program applicability to a range of occupations and worksites. Based on results of these trainings, the generic one-day training program will be finalized.
- Developing a Roll-out Plan: an outreach and dissemination plan will be developed to support roll-out of the program in subsequent years. Depending on available funding, the program may eventually be made available statewide.

Status: In process.

OCCUPATIONAL SAFETY AND HEALTH

Disability Retirement Benefits for Public Safety Officers

Background

The provision of public safety is one of the most important responsibilities of government. Workers charged with protecting the public routinely put their lives and well-being at risk. It is documented that, in general, public safety employees tend to have much higher-than-average rates of work-related injuries and illnesses, both fatal and non-fatal, as compared to other sectors. Because public safety occupations inherently entail significant risk and because of the social importance of the services these employees provide, public safety employees are usually rewarded with comparatively higher compensation in the event of a work-related injury.

The high incidence and high cost of injuries sustained by public safety employees raise a number of important policy questions. For instance, do workers' compensation and disability retirement benefits provided to public safety employees adequately compensate them for disabling injuries? Could specific safety interventions reduce the frequency of injuries to public safety employees and thereby lower the cost of providing workers' compensation and disability retirement benefits to these workers? What types of injuries do public safety employees suffer and at what ages, as compared to other public employees?

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Description

The high rate of injury and disability sustained by vital public safety employees, particularly police and firefighters, is of great concern to the workers' compensation community. In October 2004, Assembly Members Juan Vargas and Rick Keene requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study of public sector injury prevention. In particular, they requested a comprehensive evaluation and recommendations on effective public safety employee injury and illness prevention measures.

In response to the above bi-partisan request, CHSWC contracted with RAND in September 2005 to conduct a study that would assist the Legislature in its goals to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured. The objectives of the study include:

- Describe the incidence and types of injuries suffered by public safety employees and assess how the distribution of these injuries differs from that of other public (and potentially private) employees.

- Explore which aspects of public safety employment lead to the greatest injury and disability rates and whether specific interventions could reduce the risk of injury among those workers.

- Estimate the impact of disability on earnings of public safety employees and assess the adequacy of workers' compensation and disability benefits provided to these injured workers.

- Examine the extent to which disability retirements for public safety employees have changed over time and what factors have contributed to any observed trends.

Findings

RAND conducted in-depth discussions with members of eight California agencies covering fire/emergency-management services, law enforcement, and corrections. Key findings from these discussions included:

- Better surveillance of injury data, particularly for injuries to law enforcement and emergency medical personnel, is needed.

- Design and targeting of safety and health promotion efforts could also be improved with better monitoring of the types of situations and causes of injury that lead to the most severe and disabling injuries.

- There is a need to reduce strains, sprains and musculoskeletal disorders among public safety employees, which are by far the leading cause of nonfatal injuries.

- Training, increased information analysis and sharing, strong safety messages from department leadership, and improvements to protective equipment were areas identified as effective tools for improving safety of public safety employees.

- Both firefighters and police officers become more susceptible to disability as they age. Policies designed to reduce the rate of disability retirement may be most effective if focused on either preventing injuries among older public safety employees or taking steps to alleviate the impact of injuries on their ability to work.

Status: A joint CHSWC/NIOSH report was completed in 2008.

For further information …

"Occupational Safety and Health for Public Safety Employees: Assessing the Evidence and the Implications for Public Policy," RAND (2008).
http://www.dir.ca.gov/CHSWC/Reports/CHSWC_PublicSafetyEmployeesReport2008.pdf

OCCUPATIONAL SAFETY AND HEALTH

Firefighters Musculoskeletal Injuries

Background

Firefighting is a dangerous and difficult occupation that places considerable toll on the health and safety of workers. Policymakers and researchers have made efforts to understand the adverse conditions that arise at a fire ground and to devise policies and equipment that protect firefighters. However, because much of the attention has focused on monitoring and reducing fatalities and chronic diseases among firefighters, there is still much that is unknown about the causes and consequences of non-fatal acute injuries among firefighters.

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In particular, musculoskeletal conditions account for a majority of all nonfatal injuries, dominate the medical costs of workers' compensation claims and are a leading contributor to disability retirements for firefighters. While musculoskeletal conditions represent the most common injury type in virtually all occupations, there are aspects of firefighting that could make firefighters particularly susceptible to work-related musculoskeletal injuries: the work is often physically strenuous; it often takes place under adverse conditions (poor visibility, wet surfaces); and it involves sudden bursts of activity following long periods of inactivity. On the other hand, firefighters are typically drawn from a set of physically more fit and healthier people than the general population, which could lead to fewer musculoskeletal injuries. In addition, the long shifts associated with firefighting lead to a considerable amount of time when firefighters are conducting normal life activities while technically working, leading some to wonder what fraction of injuries occur at work that would likely have otherwise occurred at home.

Given a lack of comprehensive data, however, it is unclear as to just how frequent musculoskeletal injuries are to firefighters in California, how severe these injuries are when they occur, and what the economic consequences are for injured firefighters. Such information is essential in order to design effective policies to protect firefighters against such injuries and safeguard them when they do sustain these types of occupational injuries.

The importance of understanding the frequency and severity of firefighter musculoskeletal disorders (MSDs) has also become heightened due to recent changes to the California workers' compensation system since 2004. These changes include the reduction of permanent disability ratings that occurred due to the adoption of a new disability rating system, new rules for apportioning disability, the adoption of treatment guidelines to provide utilization review, and the imposition of caps on the number of chiropractic and physical therapy visits. Many of these changes could have a disproportionate impact on workers with musculoskeletal injuries, potentially making firefighters more vulnerable to any adverse impacts.

Description

At the request of Assembly Member Sandré R. Swanson, Chair, Assembly Committee on Labor and Employment, to the Commission on Health and Safety and Workers' Compensation (CHSWC), the CHSWC musculoskeletal injury study gathered data and analyzed the types, frequencies and treatments applied to major musculoskeletal injuries incurred by firefighters while performing their job-related duties. The objectives of this project included:

- Describe the average frequency and severity of work-related MSDs experienced by firefighters in California.
- Study the impact of work-related MSDs on the earnings and employment of firefighters several years after injury.

- Evaluate the impact of reforms to the disability rating system on the ratings of firefighters with permanently disabling MSDs.

- Assess whether reforms to the medical delivery system impacted the employment outcomes of firefighters with MSDs.

Findings

- Firefighters face considerably more risk of nonfatal injuries than workers in the private sector, but the risk is even more pronounced for MSDs. In addition, firefighters 55 years of age and older are more than 10 times more likely to suffer an MSD relative to private sector workers of the same age, and when injured, they take more than four times longer to return to work.

- Both the frequency and severity of injuries, particularly MSDs, are worse for older firefighters than for younger firefighters.

- Although the frequency and severity of MSDs are greater for firefighters than workers in other occupations, particularly in the private sector, that does not necessarily translate into worse long-term economic consequences for workers.

- Firefighters experienced significant declines in average permanent disability ratings as a result of the reforms to the disability rating system:

    - The declines experienced by firefighters are comparable to those experienced by other workers.

    - The biggest impact on firefighters appears to have come from a disproportionately large fraction of cases that now receive a zero disability rating.

    - Apportionment has led to a small reduction in the average rating for firefighters as it has for other workers. However, while the effects are small on average, there is often a large reduction in ratings whenever apportionment is applied.

- Since chiropractor and physical therapy treatments do not appear to be correlated with significantly better health or return to work relative to treatment by a general practitioner, it does not appear that outcomes for firefighters who are unable to obtain treatment beyond the 24-hour cap will dramatically worsen.

- The study's analysis does not suggest that employment outcomes of firefighters were worse after the adoption of medical reforms designed to limit the utilization of chiropractic and physical therapy treatments.

Status: Completed.

For further information **…**

"The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California," RAND, 2010.
http://www.dir.ca.gov/chswc/Reports/2010/FirefightersMusculoskeletal.pdf

OCCUPATIONAL SAFETY AND HEALTH

Study on Older Workers, Injury Risk and Future Cost Trends

Background

The Commission on Health and Safety and Workers' Compensation (CHSWC), with the assistance of the University of California (UC), Berkeley, is preparing a study on older workers and their post-injury outcomes. One of the recommendations of the Commission's annual report for several years has been to examine disability duration by age. The study will help determine if older workers experience longer average time off work when disabled in California, or if older workers simply experience the kinds of injuries that are associated with longer disability durations. This determination will be ultimately important for both safety and prevention.

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Aging Workforce

Key questions about the aging workforce include: do older workers get injured more or less often than younger workers? and how does the duration of disability compare by age? These are important questions for employers, workers, government budgets and benefit programs. The importance is magnified because the workforce is aging, and many older workers are choosing to stay in the labor force for economic reasons.

At best, the research in this area is limited or, at worst, anecdotal. One perspective is that older workers get injured less often because they are safer and more experienced. However, when older workers are injured, it takes longer to recover, costs more in disability payments and medical treatment, is more likely to result in permanent disability, and results in greater economic loss to the worker. The study will seek to assess how true these claims are and if true, whether the cause is age-related or driven by other causes, as well as what the answers to these questions mean for future trends.

Even if the study reveals that older workers are less likely to experience injury, as many claim, key questions still needing to be answered include whether older workers are actually safer due to experience, or whether lower injury rates are simply the consequence of more experience, or whether older workers sorting into safer jobs (supervisor, etc.).

The study will also examine whether older workers experience longer average time off work when disabled and whether age is the reason, or whether older workers simply experience the kinds of injuries that are associated with longer disability duration, perhaps because of the types of occupations in which they work. For instance, older workers may be more likely to suffer back injuries which take longer to heal than lacerations and contusions. Alternatively, older workers may experience more cumulative injuries, also associated with longer disability, because of greater lifetime exposure to the underlying cause.

If age drives injuries and disability duration, then an aging workforce will lead to increasing occupational medical and disability costs and costs for government programs. On the other hand, to the extent that any differences in older workers' frequency and duration of occupational conditions are due to the types of work into which they migrate over their careers and not a due to their age, a higher proportion of older workers will not lead to changes in medical treatment, insurance, and government benefit costs. In either case, understanding how an older workforce interacts with occupational safety is important for focusing future investments in prevention and research.

Status: In process.

OCCUPATIONAL SAFETY AND HEALTH

Worker Occupational Safety and Health Training and Education Program

Background

Labor Code Section 6354.7 establishes a Workers' Occupational Safety and Health Education Fund (WOSHEF) for the purpose of establishing and maintaining a statewide worker-training program. The Commission on Health and Safety and Workers' Compensation (CHSWC) has developed the Worker Occupational Safety and Health Training and Education Program (WOSHTEP) to raise awareness and promote injury and illness prevention through training and dissemination of materials by a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

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Description

CHSWC has taken the following steps in implementing this program:

- ***Prepared a Survey of State, National and International Worker Health and Safety Training Programs.*** This survey includes websites and descriptions of available programs and lists courses for each program. The survey can be found as a link on CHSWC's website at http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html

- ***Created a labor-management Advisory Board to oversee program activities, which meets semi-annually.*** The WOSHTEP Advisory Board consists of employers and workers or their representatives who assist in guiding development of curricula and broadening partnerships with worker-based organizations, labor studies programs, employers, insurance companies, and other stakeholders in the workers' compensation community. The Advisory Board prepares an Annual Report on WOSHTEP. (See http://www.dir.ca.gov/chswc/woshtep.html)

- ***Conducted needs assessments with stakeholders that will continue on an ongoing basis.*** Needs assessments are conducted with workers and their representatives, employers, insurers, community-based organizations serving difficult-to-reach workers, and potential training providers.

- ***Designed a core curriculum and supplemental training materials based on the results of the needs assessment***. This 24-hour Worker Occupational Safety and Health (WOSH) Specialist curriculum is aimed primarily at "workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on a health and safety committee or serving as a designated safety representative." Participants who complete six core modules and three supplemental modules become WOSH Specialists.

- ***Developed a training-of-trainers curriculum to train a statewide network of trainers as mandated by the statute.*** Training-of-trainers sessions are held in Northern, Central and Southern California, and network trainers have been co-teaching with mentor trainers from the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley, and the Labor Occupational Safety and Health Program (LOSH) at University of California, Los Angeles (UCLA).

- ***Adapted and disseminated statewide WOSH Specialist curriculum materials in collaboration with the State Building and Construction Trades Council (SBCTC), AFL-CIO,*** which incorporate

WOSHTEP curricula appropriate for apprenticeship and pre-apprenticeship programs. The *Construction Case Study Training Guide* materials include construction industry-specific health and safety case studies, including green case studies, which focus on health and safety and on green jobs. In addition, a factsheet for apprentices on health and safety issues in green jobs, with particular focus on job hazards in the photovoltaic, green building and weatherization industries is being developed.

- ***Developed materials for the implementation of heat illness training to protect California's farm workers from outdoor heat illness and workers in other industries from indoor heat illness.*** Developed *Heat Hazards in Agriculture* tailgate guide and implemented distribution statewide, collaborating with existing *promotora* networks to reach farm workers.

- ***Adapted the WOSH Specialist curriculum and materials for NISH-affiliated Community Rehabilitation Programs in California that serve and employ individuals with disabilities***. LOHP provided WOSH Specialist trainings to the managers and supervisors from several community rehabilitation programs (CRPs) on how to teach basic health and safety skills to their workers with disabilities and how to design and implement a successful injury and illness prevention program (IIPP) in their workplaces. This program was promoted by: NISH – Creating Employment Opportunities for People with Severe Disabilities; The ARC in Southern California; and Pride Industries in Northern California.

- ***Created a Small Business Resources program component to target very small employers who do not have the resources to send employees to 24 hours of training***. Materials have been developed for owners and managers of small businesses across industries, and industry-specific materials have been developed for the restaurant industry, the janitorial industry, and the dairy industry.

- ***Created health and safety programs for young workers, including a Young Worker Leadership Academy***. One or two Academies have been offered annually in Northern California and/or in Southern California.

- ***Completed and disseminated a booklet, "The Whole Worker: Integrating Wellness & Occupational Health and Safety Programs."*** The booklet outlines what constitutes an integrated approach to health promotion and occupational health and safety programs and provides examples of specific wellness/health promotion programs and their effectiveness.

- ***Established Resource Centers that house and distribute training materials and additional health and safety resources***. These Resource Centers are located at LOHP, LOSH and the Western Center for Agricultural Health and Safety (WCAHS) at UC Davis.

- ***Prepared a Multilingual Health and Safety Resource Guide to Worker Training Materials on the Web for WOSHTEP***. This Guide, prepared by LOHP, is a collection of worker training materials, such as fact sheets, checklists and other educational resources that are available online. Information from the guide can be printed to distribute to workers participating in workplace injury and illness prevention programs.
  (See http://www.dir.ca.gov/CHSWC/MultilingualGuide/MultilingualGuideMain.html.)

Next Steps

CHSWC has assessed fees to California workers' compensation insurance carriers pursuant to Labor Code Section 6354.7 for the next fiscal year. Next steps include:

- ***Continued WOSH Specialist training by LOHP, WCAHS and LOSH*** in a variety of industries for participants in diverse occupations and work settings. Courses are taught through community colleges, at employers' places of business, and in many other settings. Courses are taught in English,

Spanish and Chinese.

- ***Continued Refresher trainings*** *or courses* to update WOSH Specialists on health and safety information to assist them in carrying out activities they choose to do in their workplaces after completion of the WOSH Specialist training.

- ***Continued Awareness Sessions*** drawing on the WOSH Specialist curriculum to help promote awareness of and interest in the WOSH Specialist course and to provide injury and illness prevention education. These trainings are presented in English and Spanish.

- ***Ongoing development of the statewide network of trainers*** who will partner with mentor trainers from LOHP and LOSH to deliver WOSH Specialist courses.

- ***Continued geographic expansion to the Central Valley and other areas of Northern and Southern California.*** WCAHS, the Central Valley partner, is conducting WOSHTEP activities under the direction of LOHP WOSHTEP staff. Expansion in Southern California includes San Diego and the Inland Empire.

- ***Ongoing development and dissemination of injury and illness prevention materials on*** health and safety topics such as indoor and outdoor heat illness, motor vehicle safety, emergency preparedness, and integration of wellness and occupational safety and health.

- ***Ongoing dissemination of health and safety material for small businesses*** across industries and for restaurants, janitorial services companies, and the dairy industry.

- ***Ongoing Young Worker Leadership Academies and young worker health and safety programs***.

- ***Additional outreach to ensure wider use of Resource Centers*** in Northern, Central and Southern California and wider distribution of multilingual resource training materials.

- ***Ongoing evaluation of WOSHTEP*** to identify accomplishments and outcomes.

Status: Ongoing.

For further information …

WOSHTEP List of Publications
http://www.dir.ca.gov/chswc/WOSHTEP.html

WOSHTEP Advisory Board Members

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Marti Fisher
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Judith Freyman
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Simmi Gandhi
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Scott Hauge
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Jon Hughes
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LA Trade Technical College, Labor Studies

Thomas Neale
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Bob Snyder
Liberty Mutual Insurance Group

Dave Strickland
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Jan Vogt
State Compensation Insurance Fund

Ed Walters
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Pacific Compensation Insurance Company

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California Division of Occupational Safety and Health

Len Welsh
State of California
Department of Industrial Relations

Jim Zanotti
Chartis Insurance

OCCUPATIONAL SAFETY AND HEALTH

California Partnership for Young Worker Health and Safety

Background

Over the past five years, an average of 37 teens have died each year in the United States (U.S.) as a result of approximately 146,000 work-related injuries, and an estimated 49,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

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Description

The Commission on Health and Safety and Workers' Compensation (CHSWC) continues to put California in the forefront as a nationwide leader in protecting and educating teen workers. Over the past ten years, CHSWC has sponsored and convened the California Partnership for Young Worker Health and Safety, established by Assembly Bill (AB) 1599 in September 2000. The Partnership is coordinated by the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley, with key support from the Labor Occupational Safety and Health Program (LOSH) at the University of California, Los Angeles (UCLA), and other members of the Partnership. In addition to serving California, these efforts have inspired similar activity throughout the U.S.

The California Partnership for Young Worker Health and Safety is composed of agencies and organizations dealing with youth employment and education issues, as well as others who can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, governmental agencies and others.

The purpose of the Partnership is to identify potential strategies to:

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

During the past year, the Partnership met twice. In addition, subcommittees held conference calls to develop and implement the following activities:

- ***Promote the twelfth annual California Safe Jobs for Youth Month public awareness campaign in May,*** which was established by former Governor Gray Davis's proclamation starting in 1999. This year's public awareness and education activities have included: a teen poster contest (with posters distributed to 1,000 schools and hundreds of other youth-serving organizations); a teen video public service announcement (PSA) contest, funded separately by the Department of Industrial Relations (DIR), with the winning PSA shown in movie theaters in for a month; and distribution of the current Safe Jobs for Youth Month Resource Kit to over 100 educators and community groups (primarily through downloads from the website), plus over 1300 downloads of resource kit materials from past years.

  For the second time, Partnership members came together to conduct a press conference to promote Safe Jobs for Youth Month on May 16th, 2011. Agency heads from the Department of Industrial Relations (DIR), including Labor Commissioner Julie Su, the Department of

Education, and the federal Department of Labor joined with teen representatives from the 2011 Young Worker Leadership Academy (YWLA) to honor the poster and PSA contest winners at a press conference held at Pasadena High School, where the poster contest winners are students.

In addition, 6 youth teams that participated in the YWLAs (see below) conducted activities in their communities to promote safe jobs for youth. These activities included: workshops conducted by teens at school and in the community for other students; development of materials for distribution at career centers and other work-readiness programs; school-wide job fairs and lunchtime information-sharing events; and presentations to two school boards in support of Safe Jobs for Youth Month.

- ***Support and conduct one Young Worker Leadership Academy.*** A statewide Young Worker Leadership Academy (YWLA) was held in Berkeley in February 2011. The Academy is a part of the CHSWC Worker Occupational Safety and Health Training and Education Program (WOSHTEP). This year's Academy was coordinated by LOHP and supported by active participation by Partnership members, including LOSH, DIR, federal Department of Labor, and the Economic Employment Opportunity Commission (EEOC). Young people from six different organizations around the state attended.

  The goals of the Academy are: to teach youth about workplace health and safety and their rights on the job; to help youth start thinking about ways to help ensure that young people do not get hurt on the job; and to provide a forum for these youth to plan for specific actions they can take in their own communities to promote young worker safety. Academy alumni youth led many of the activities at the Academies and developed their own outreach projects. The California Partnership is also exploring opportunities for building the skills of YWLA young leaders, including speaking opportunities and ways to reconnect throughout the year, such as through social networking sites.

- ***Improve the work permit system.*** Interagency meetings improved communication among the Division of Labor Standards Enforcement, U.S. Department of Labor, and the California Department of Education. With support from the Partnership, the Department of Education has improved the work permit application form and is working toward standardizing the process.

- ***Improve outreach to employers.*** With funding from federal OSHA, LOHP developed guidelines for organizations interested in reaching employers, *Engaging Employers in Protecting Young Workers: Tips and Best Practices from the Young Worker Safety Resource Center*. Partnership members are exploring opportunities to integrate information on young workers for employers into existing seminars for employers. Health and safety workshops for small business owners and managers conducted at local Small Business Development Centers have included information on effective supervision and training for young employees.

- ***Coordinate the provision of information and resources on young worker health and safety by Partnership members.*** Over the past year, Partnership members with direct access to teachers, employers and youth jointly reached and served organizations and individuals throughout California with important health and safety information. Partnership members helped with promoting and recruiting for the YWLA, the poster contest, the video PSA contest, and Safe Jobs for Youth month resources and activities, as well as with providing ongoing links to young worker health and safety information. Information and training were offered in both English and Spanish. In addition, the Partnership provides a space for youth to voice their opinion on young worker health and safety issues. Several youth have made presentations to Partnership members about their issues and concerns and their innovative ideas to help reduce young worker injuries and illnesses.

Partnership accomplishments include:

- More than 800 teachers, employers and youth received direct training or presentations.

- At least 2,000 teachers, employers and youth received written information, such as the fact sheets for teens and for employers, the Safe Jobs for Youth Month Resource Kit produced by LOHP, or articles in Partnership newsletters, such as that of the California Association of Work Experience Educators (CAWEE). In addition, CAWEE estimates that its own members reach approximately 15,000 students, parents and employers with workplace safety information. Thousands more received information through listserv postings, email announcements, radio and video PSAs, and posters.

- About 50 teachers, employers and youth received direct technical assistance via phone, email, or via the www.youngworkers.org website.

- The www.youngworkers.org website averaged 93 unique visitors per day (1.32 visits/visitor; 2.13 pages per visit, equaling an average of 262 pages visited/day) for a total of 34,000 unique visitors served during the year, or 96,000 pages visited. This represents an increase of 6 percent in the number of visitors compared to last year. The most frequently visited California pages, after the home page, were: the teen info page (viewed 7200 times); the "What is a Union?" page (viewed 3800 times); the Downloads page (viewed 3300 times); the FAQs page (viewed 3100 times); the Around the Nation page (viewed 2800 times); and the employers page (viewed 2200 times). The most frequent downloads, after the poster and PSA contest materials, were: the components of the YWLA Guide (2900); current and past Safe Jobs for Youth Month Resource Kit activities (1200); the teen fact sheet (600); and the safety orientation checklist for worksite supervisors (800).

- At least three newsletter, newspaper or web-based articles have been published.

- Health and safety information continued to be integrated into ongoing statewide activities of many of the partners, including regular in-service training for work experience educators, widespread use of health and safety curricula in job training and work experience programs, and organizational links to the http://www.youngworkers.org website. The WorkAbility program, which places youth with learning and cognitive disabilities in the workplace, has required that all of their staff receive training on how to teach their participants about health and safety. Trainings have been conducted for four of five regions to date.

In the coming year, priorities are to:

- Continue to strengthen and expand youth involvement by holding at least one YWLA and exploring funding opportunities to hold YWLA reunions and other youth-led events in Northern, Central and Southern California, including exploration of social media networking strategies.

- Continue to strengthen activities of Partnership members, with a focus on outreach and information tools for the employer community, including development of a "one-stop" webpage with health and safety and youth employment information, and exploring strategies for institutionalizing this information, such as through the business license application process.

- Expand the membership of the Partnership to include greater representation from employers, youth organizations and youth employment/job training organizations.

- Continue to share the California Partnership for Young Worker Health and Safety model with other states and assist them with replicating this model.

California Partnership for Young Worker Health and Safety

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DIR, Cal/OSHA

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California Association of Work Experience Educators

Mario Feletto
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Fred Glass
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(continued)

Jonathan Hughes
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Erika Monterozza
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New Ways to Work

Jim Muldavin
California Center for Civic Participation

Lee Pliscou
California Rural Legal Association

Eric Rood
Dept. of Labor Standards Enforcement

Cory Sanfilippo
California Parent Teachers Association

Carol Smith
Department of Education

Fernando Tapia
LOSH

Krystal Tena
Watsonville Law Center

Rick Ullerich
DIR, Cal/OSHA

Status: Ongoing.

For further information …

Young Worker Websites for information for teens, teen workers in agriculture, employers, parents and educators.
http://www.dir.ca.gov/YoungWorker/YoungWorkersMain.html
http://www.dir.ca.gov/chswc/woshtep.html
http://www.youngworkers.org
UCLA-LOSH Youth Project.
http://www.losh.ucla.edu
"Keeping California's Youth Safe on the Job – Updated Recommendations of the California Partnership for Young Worker Health and Safety" (2004).
http://socrates.bekeley.edu/-safejobs/downloads/pdf/2004Recommendations904.pdf.

OCCUPATIONAL SAFETY AND HEALTH

School Action for Safety and Health Program

Background

Per the mandate set forth in the Labor Code, the Commission on Health and Safety and Workers' Compensation (CHSWC) is to assist inner-city schools or any school or district in establishing effective occupational injury and illness prevention programs (IIPPs). Priority shall be given to schools or districts with high risk of injury and illness.

Project Team

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Description

CHSWC has established a schools health and safety model program, California's School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention practices and resources. The program includes training and resources to enable schools or school districts to develop or improve IIPPs and to make other health and safety improvements that will help protect school or school district employees from injuries and illnesses on the job. The target audience consists of K-12 schools and school districts at high risk of occupational injury and illness, including, but not limited to, the Youth Authority overseen by the California Department of Corrections and Rehabilitation (CDCR).

On June 27, 2008, CHSWC hosted a roundtable discussion that brought together representatives from schools and school districts, the Governor's Office of Homeland Security, labor, and school-related agencies and organizations in California. (See list of participants on the next page.) The objectives of the meeting were to determine how best to structure and implement the model program including a training program for schools or schools districts with the priority training going to schools or school districts with high incidence rates and a pilot with schools from around the State. A second Advisory Group meeting was held on June 30, 2009, to provide feedback on the project. An additional Advisory Group meeting held March 29, 2010, focused on feedback from the two pilot trainings and suggestions for implementation.

The SASH program includes: a needs assessment conducted to determine the types of training and resources; development of materials and resources, including an online resource guide and establishment of a SASH Resource Center at the University of California (UC), Berkeley Labor Occupational Health Program (LOHP); a pilot group; statewide trainings; and evaluation.

To date, 31 one-day SASH training classes have been conducted for 594 attendees from 226 school districts and 32 counties with school district and county office of education staff, including two pilot trainings. Follow-up activities after the classes include sending a class roster so attendees can stay in touch and use each other as a resource and newsletters to those who have already attended trainings. Further development of the model program would include: expanding partnerships with key constituents throughout the State; expanding the target population statewide; developing a network of expert trainers; ensuring measures of accountability; and institutionalizing the program by identifying continuing health and safety education opportunities for schools.

A NIOSH-funded project, Promoting School Employee Injury and Illness Prevention Programs, is to evaluate the effectiveness of the California SASH program in order to develop a model national program targeting school districts and other educational entities in other states. The project includes evaluation tools, including an electronic survey and follow-up phone interviews. Analysis of the data

collected will result in recommendations for improving SASH and implementing similar programs across the nation.

Advisory Group

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Commissioner, CHSWC

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Cal/OSHA Consultation Service

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San Diego County Schools Risk Management JPA

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Governor's Office of Homeland Security

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Schools Insurance Authority

Margie Brown
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Advisory Group (continued)

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Coalition for Adequate Schools Housing

Manolo Platin
State and Consumer Services Agency

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California Association of School Business Officials

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Governor's Office of Homeland Security

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School Facilities Planning Division

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Interagency Support Division
Department of General Services

Mark Weber
Governor's Office of Homeland Security

Charles Williams
CSAC Excess Insurance Authority

Status: Materials have been finalized and posted to the Commission's website. Materials include: the SASH brochure; Factsheet; Tools; Tip Sheets; Resource List; Worksheets for the training course; and IIPP Guide and template. Trainings are being offered statewide.

For further information …

SASH Website http://www.dir.ca.gov/chswc/SASH/index.htm

LIST OF PROJECTS AND STUDIES

I. PERMANENT DISABILITY AND TEMPORARY DISABILITY STUDIES

Permanent Disability Schedule Analysis

Status: Completed

CHSWC Reports:

Memorandum to Christine Baker, Executive Officer of CHSWC regarding "Analysis of Ratings Under the New PD Schedule Through June 2007" (August 2007).
http://www.dir.ca.gov/chswc/Reports/memo_on_new_ratings_through_june_30_07_revised_aug_9.pdf

Memorandum to Christine Baker, Executive Officer of CHSWC regarding "Analysis of ratings under the new PD schedule, through January 2007" (February 2007).
http://www.dir.ca.gov/CHSWC/Reports/MemoOnRatingsThruJan2007.pdf

"Permanent Disability Rating Schedule Analysis" (2006).
http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-2006.pdf

Impact of Changes to the Temporary Disability Benefits

Status: Completed

CHSWC Memorandum:

"Evaluate and Identify Impact of Changes to the Temporary Disability Benefit" (2007).
http://www.dir.ca.gov/CHSWC/Reports/Memo_On_TD_Benefits_Beyond_2Years.pdf

Initial Wage Loss Analyses

Status: Completed

CHSWC Reports:

"Compensating Permanent Workplace Injuries: A Study of the California System," RAND (1998).
http://www.rand.org/pubs/monograph_reports/MR920

"Findings and Recommendations on California's Permanent Partial Disability System - Executive Summary," RAND (1997).
http://www.dir.ca.gov/CHSWC/Reports/PPDFindingsAndRecommendations.pdf

Enhancement of Wage Loss Analysis – Private Self-Insured Employers

Status: Completed

CHSWC Report:

"Permanent Disability at Private Self-Insured Firms: A Study of Earnings Loss, Replacement, and Return to Work for Workers' Compensation Claimants," RAND (2003).
http://www.dir.ca.gov/CHSWC/Reports/PD-Study.pdf

Impact of Local Economic Conditions on Wage Loss

Status: Completed

CHSWC Report:

"Trends in Earnings Loss from Disabling Workplace Injuries in California – The Role of Economic Conditions," RAND (2001).
http://www.dir.ca.gov/CHSWC/Reports/TrendsInEarningsLoss-EcoCondition.pdf

Permanent Disability Rating Tool

Status: Completed

CHSWC Reports:

"An Evaluation of California's Permanent Disability Rating System," Summary, RAND (2005).
http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System_Summary.pdf

"An Evaluation of California's Permanent Disability Rating System," Full Report, RAND (2005).
http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System.pdf

"Evaluation of California's Permanent Disability Rating Schedule," Interim Report, RAND (2003).
http://www.dir.ca.gov/CHSWC/Reports/PermanentDisabilityRatingSchedule-InterimReport.pdf

PERMANENT DISABILITY AND TEMPORARY DISABILITY STUDIES (continued)

Apportionment
Status: Completed
*CHSWC Report*s:
"Understanding the Effect of SB 899 (Stats 2004, Chap 34) on the Law of Apportionment" (April 2007).
http://www.dir.ca.gov/chswc/CHSWC_ApportionmentPaper.pdf
"Understanding the Effect of SB 899 (Stats 2004, Chap 34) on the Law of Apportionment" (October 2005).
http://www.dir.ca.gov/CHSWC/FinalApportionmentPaper.pdf
"Background Paper on Workers' Compensation Causation and Apportionment" (May 2004).
http://www.dir.ca.gov/CHSWC/Causation_and_Apportionment_Final_May_2004.pdf

Disability Evaluation and Medical Treatment
Status: In process

II. RETURN TO WORK

Return to Work
Status: Completed
"Workers' Compensation Reform and Return to Work: The California Experience," RAND, 2011.
Summary
http://www.dir.ca.gov/chswc/Reports/2010/RAND_RTW2011_sum.pdf
Full Document
http://www.dir.ca.gov/chswc/Reports/2010/WCReformandReturntoWork.pdf

Return-to-Work Programs
Status: Completed
CHSWC Reports:
"How Effective are Employer Return to Work Programs?" RAND, February 2010.
http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_RANDRTW.pdf
"Report on the Return-To-Work Program Established in Labor Code Section 139.48."
http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_RTWReport.pdf
http://www.dir.ca.gov/chswc/Reports/2009/ReimbursementProgramRecommendations2009.pdf
"Best Practices in Returning an Injured Employee to Work: Factsheet for Employers," February 2010.
http://www.dir.ca.gov/chswc/CHSWC_FactsheetRTW_2010.pdf
Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California, February 2010.
http://www.dir.ca.gov/chswc/Reports/2010/HandbookRTW_2010.pdf

International Forum on Disability Management (IFDM) 2010
Status: Completed
Information and Call for Papers: http://www.dir.ca.gov/chswc/Conferences/IFDM/IFDM.html

Return-to-Work Program Established in Labor Code Section 139.48
Status: Completed
CHSWC Reports:
"Recommendations for the Return-to-Work Program Established in Labor Code Section 139.48" (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/ReimbursementProgramRecommendations2009.pdf
"Report on the California Return-to-Work Program Established in Labor Code 139.48" (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_ReportontheCaliforniaReturntoWorkProgramEstablishedinLaborCode139_48_2009.pdf
For further information …
See the project synopsis in the "Projects and Studies" section.

RETURN TO WORK (continued)

RTW/FEHA/ADA – Coordination and Interaction
Status: Completed
CHSWC Booklet, Factsheet and Report:
Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California, February 2010.
http://www.dir.ca.gov/chswc/Reports/2010/HandbookRTW_2010.pdf
"Best Practices in Returning an Injured Employee to Work: Factsheet for Employers," (February 2010).
http://www.dir.ca.gov/chswc/CHSWC_FactsheetRTW_2010.pdf
"Summary of December 9, 2008 Return-to-Work/FEHA/ADA Advisory Group Meeting" (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_SummaryRTWFEHAADAGuidebookRoundtable2009.pdf.

Evaluation of Return-to-Work Reforms
Status: Completed
"Workers' Compensation Reform and Return to Work: The California Experience" (November 2010).
http://www.dir.ca.gov/chswc/Reports/2010/WCReformandReturntoWork.pdf
For further information…
See the project synopsis in the "Projects and Studies" section.

Return-to-Work Roundtable
Status: Completed
CHSWC Report:
"Summary of November 17, 2006 CHSWC Return-to-Work Roundtable" (April 2007).
http://www.dir.ca.gov/CHSWC/Reports/ReturnToWorkRoundtable-Final.pdf

Assembly Bill 1987 and Return to Work
Status: Completed
CHSWC Report:
"AB 1987 and Return-to-Work Incentives and Alternatives" (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/RTW-AB1987.pdf

Review of Literature on Modified Work
Status: Completed
CHSWC Report:
"Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?" (August 1997).
http://www.dir.ca.gov/CHSWC/Modified_Work_Krause.html

Policies and Strategies to Help Injured Workers Return to Sustained Employment
Status: Completed
CHSWC Report:
"Return to Work in California: Listening to Stakeholders' Voices" (July 2001).
http://www.dir.ca.gov/CHSWC/RTWinCA0701.html

Primary Treating Physician Effectiveness in Return to Work (RTW) After Low-Back Injuries
Status: First phase: Completed
Second phase: In process
CHSWC Report:
"Physical Workplace Factors and Return to Work After Compensated Low-Back Injury: A Disability Phase-Specific Analysis," JOEM (March 2000).
http://journals.lww.com/joem/Abstract/2000/03000/Physical_Workplace_Factors_and_Return_to_Work.15.aspx

RETURN TO WORK (continued)

Predictors and Measures of Return to Work
Status: Completed
CHSWC Report:
"Determinants of Duration of Disability and Return to Work After Work-Related Injury and Illness: Challenges for Future Research" (April 2001).
http://www.dir.ca.gov/chswc/Determinants.pdf

III. WORKERS' COMPENSATION REFORMS

Evaluation of System Changes
Status: In process
CHSWC Summary:
"CHSWC Summary of System Changes in California Workers' Compensation" (February 2008).
http://www.dir.ca.gov/Chswc/Reports/CHSWCRptonSummarySystemChangesDRAFTFeb%202008.pdf

Assembly Bill 749 Analysis
Status: Completed
CHSWC Summaries:
"CHSWC and AB 749 as Amended" (October 2002).
http://www.dir.ca.gov/CHSWC/749Report/AB749asamended112202.html
"CHSWC and AB 749" (February 2002).
http://www.dir.ca.gov/CHSWC/ab749.html

Assembly Bill 227 and Senate Bill 228 Analysis
Status: Completed
CHSWC Summary:
"Reforms of 2003, AB 227" (October 2003).
http://www.dir.ca.gov/CHSWC/Reports/Reforms_of_2003-AB227.pdf
"Reforms of 2003, SB 228" (October 2003).
http://www.dir.ca.gov/CHSWC/Reports/Reforms_of_2003-SB228.pdf

Senate Bill 899 Analysis
Status: Completed
CHSWC Summaries:
"Summary of Workers' Compensation Reform Legislation" (2004).
http://www.dir.ca.gov/CHSWC/Summary-of-SB899.doc
"Section-by-Section Review of SB 899" (2004).
http://www.dir.ca.gov/CHSWC/Section-by-section-Review-of-SB899.doc

Evaluation of the Division of Workers' Compensation (DWC) Audit Function
(Special Study at the Request of the Legislature)
Status: Completed
CHSWC Reports:
"CHSWC Report on the Division of Workers' Compensation Audit Function" (1998).
http://www.dir.ca.gov/CHSWC/FinalAuditReport.html
"CHSWC Study of the Division of Workers' Compensation Audit Function" (December 1998).
http://www.dir.ca.gov/CHSWC/AuditSummaryCover.html

WORKERS' COMPENSATION REFORMS (continued)

Medical-Legal Study
Status: Ongoing
CHSWC Reports:
"Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey" (July 1997).
http://www.dir.ca.gov/CHSWC/DisabilityReport/data_and_methodology.html
"Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey" Executive Summary (July 1997).
http://www.dir.ca.gov/CHSWC/DisabilitySummary/execsummary.html
For further information …
See the project synopsis in the "Projects and Studies" section.

Vocational Rehabilitation Study
Status: Completed
CHSWC Reports:
"Vocational Rehabilitation Reform Evaluation" (March 2000).
http://www.dir.ca.gov/CHSWC/Vocrehabreform2000.pdf
"Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms" (August 1997).
http://www.dir.ca.gov/CHSWC/rehab/rehabcover.html

Evaluation of Treating Physician Reports and Presumption
Status: Completed
CHSWC Report:
"Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician" (August 1999).
http://www.dir.ca.gov/CHSWC/Report99/TPhysician.html

Update of Treating Physician Reports and Presumption Study
Status: Completed
CHSWC Report:
"Doctors and Courts: Do Legal Decisions Affect Medical Treatment Practice"? (November 2002).
http://www.dir.ca.gov/CHSWC/CHSWCLegalDecAffectMedTreatPractice/ptpfinalrpt.html

Evaluation of Labor Code Section 5814 Penalty Provisions
Status: Completed
CHSWC Reports:
"Issue Paper on Labor Code Section 5814" (April 2000).
http://www.dir.ca.gov/CHSWC/LC5814Cvr.html
"Background Paper on Labor Code Section 5814" (February 1999).
http://www.dir.ca.gov/CHSWC/LC5814.htm

"Baseball Arbitration" Provisions of Labor Code Section 4065
Status: Completed
CHSWC Report:
"Preliminary Evidence on the Implementation of 'Baseball Arbitration' in Workers' Compensation" (November 1999).
http://www.dir.ca.gov/chswc/Baseballarbfinal%27rptcover.htm

CHSWC Response to Questions from the Assembly Committee on Insurance
Status: Completed
CHSWC Report:
"CHSWC Response to Questions from the Assembly Committee on Insurance" (2001).

WORKERS' COMPENSATION REFORMS (continued)

Evaluation of Workers' Compensation Cost and Benefit Changes Since the Beginning of the Reforms (*Special Study at the Request of the Legislature*)

Status: Completed

CHSWC Report:

"Workers' Compensation Costs and Benefits After the Implementation of Reform Legislation" (August 1999).
http://www.dir.ca.gov/chswc/Report.htm

"Executive Summary Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability" (August 1999).
http://www.dir.ca.gov/chswc/ExecutiveSummary.htm

"Summary Estimating the Workers' Compensation Reform Impact on Employer Costs and Employee Benefits" (August 1999).
http:///www.dir.ca.gov/chswc/Summary.htm

Cost Trends 1985-2005

Status: Completed

NASI Brief:

"Workers' Compensation in California and in the Nation: Benefit and Employer Cost Trends, 1989-2005" (April 2008).
http://www.dir.ca.gov/chswc/Reports/CAWorkers'CompensationBrief2008.pdf

Temporary Disability Payments Beyond the Two-Year Restriction

Status: Completed

CHSWC Memorandum:

"Impact of Relaxing Restrictions on Eligibility for Temporary Disability Payments Beyond the Current Two Years From Commencement of Benefit Payment" (January 2007).
http://www.dir.ca.gov/CHSWC/Reports/Memo_On_TD_Benefits_Beyond_2Years.pdf

IV. OCCUPATIONAL SAFETY AND HEALTH

The Experience Modification (Ex-mod) Rating and Safety Behavior

Status: In process

The Injury and Illness Prevention Program (IIPP) Requirement and Cal/OSHA Inspections

Status: Completed

"An Evaluation of the California Injury and Illness Prevention Program"

"Are There Unusually Effective Occupational Safety and Health Inspectors?"

Aging Workforce

Status: Completed

"Working Safer or Just Working Longer? The Impact of an Aging Workforce on Occupational Injury and Illness Costs," February 2011.
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_AgingWorkforceOccupationalInjuryIllnessCost.pdf

Research Agenda for Improving Workplace Health and Safety in California

Status: Report completed; individual studies ongoing.

CHSWC Report:

"Research Agenda for Improving Workplace Health and Safety in California" (February 2008).
http://www.dir.ca.gov/CHSWC/reports/CHSWCReportHealthandSafetyResearchAgendaFeb2008.pdf

OCCUPATIONAL SAFETY AND HEALTH (continued)

California Occupational Safety and Health Programs

Status: Completed

CHSWC Report:

"Background Report on California Occupational Safety and Health Programs" (February 2008).
http://www.dir.ca.gov/CHSWC/reports/CHSWCBackgroundReportonCaliforniaHealthsafetyProgramsFeb2008.pdf

ISO 9001

Status: Completed

CHSWC Report:

"Quality Management and Job Quality: How the ISO 9001 Standard for Quality Management Systems Affects Employees and Employers" (August 2008).

Disability Retirement Benefits for Public Safety Officers

Status: Completed

CHSWC Report:

"Occupational Safety and Health for Public Safety Employees: Assessing the Evidence and the Implications for Public Policy" (2008).
http://www.dir.ca.gov/CHSWC/Reports/CHSWC_PublicSafetyEmployeesReport2008.pdf

For further information …

See the project synopsis in the "Projects and Studies" section.

Musculoskeletal Injuries to Firefighters in California

Status: Completed

CHSWC Report:

"The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California," RAND 2010.
http://www.dir.ca.gov/chswc/Reports/2010/FirefightersMusculoskeletal.pdf

School Action for Safety and Health Program

Status: In process

CHSWC Report and Materials:

SASH Brochure
http://www.dir.ca.gov/chswc/SASH/Publications/SASH_brochure.pdf
SASH Flyer
http://www.dir.ca.gov/chswc/SASH/Publications/SASH_Flier.pdf
Injury and Illness Prevention Program Template
http://www.dir.ca.gov/chswc/SASH/index.htm
SASH Factsheets, Tools, Tip Sheets, Resource List, Worksheets, and IIPP Guide and Template.
http://www.dir.ca.gov/chswc/SASH/index.htm
SASH Online Resource Guide
http://www.lohp.org/docs/projects/sash/sashonlineresourceguideweb.pdf
SASH Poster
http://www.dir.ca.gov/chswc/SASH/Publications/SASH_Poster.pdf
"Summary of the June 29, 2008 Schools Injury and Illness Prevention Program Roundtable" (December 2008).
http://www.dir.ca.gov/chswc/Reports/CHSWC_SummarySchoolsInjuryIllnessPreventionProgramRoundtable.pdf

OCCUPATIONAL SAFETY AND HEALTH (continued)

Project: Worker Occupational Safety and Health Training and Education Program (WOSHTEP)
Status: Ongoing
CHSWC Reports and Materials:
WOSHTEP Brochure
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/WOSHTEP%20Brochures.English.2009.06.09.pdf
2004-2011 WOSHTEP Advisory Board Annual Reports
http://www.dir.ca.gov/chswc/woshtep.html
"State, National and International Safety and Health Training Program Resources" (2003)
http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html
"Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List" (July 2009).
http://www.dir.ca.gov/CHSWC/MultilingualGuide/MultilingualGuideMain.html
Heat Hazards in Agriculture: A Guide for Employers to Carry out Tailgate Training for Workers (2008).
http://www.dir.ca.gov/chswc/Reports/CHSWC_HeatAgriculturEnglish.pdf
http://www.dir.ca.gov/chswc/Reports/CHSWC_HeatAgricultureSpanish.pdf
Construction Case Study Training Guide
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/ConstructionCaseStudyTraining.pdf
Status: In Process
"Excessive Heat: How to Prevent Indoor Heat Stress" (under development)
"Green Jobs /Safe Jobs Factsheet" (under development)
The Whole Worker: Integrating Wellness & Occupational Health and Safety Programs
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/WOSHTEP_TheWholeWorker.pdf
"WOSHTEP NEEDS ASSESSMENT REPORT: Opportunities to Integrate Worker Health and Safety Education into Building Trades Apprenticeship Programs, March 2010"
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/ApprenticeshipNeedsAssessment.pdf
NISH Occupational Health and Safety Course Flier
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/NISHGenericFlier.pdf
Awareness Session: Preventing Workplace Injuries and Illnesses
Guide – English and Spanish
http://www.dir.ca.gov/chswc/WOSHTEP/Awareness/AwarenessModuleEnglish.pdf
http://www.dir.ca.gov/chswc/WOSHTEP/Awareness/AwarenessModuleSpanish.pdf
Training Cards – English and Spanish
http://www.dir.ca.gov/chswc/WOSHTEP/Awareness/CardsEnglish.pdf
http://www.dir.ca.gov/chswc/WOSHTEP/Awareness/CardsSpanish.pdf
Small Business Health and Safety Training Materials (General) (July 2009).
http://www.dir.ca.gov/chswc/SBMRhealthandsafety.htm
Small Business Restaurant Supervisor Safety Training Materials (Industry-specific) (July 2009).
http://www.dir.ca.gov/chswc/SBMRMaterials.htm (English and Spanish)
Protecting the Safety and Health of Restaurant Workers: A Workbook for Employees – English and Spanish and Korean
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/RestaurantWorkbook.pdf
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/RestaurantTrainingGuide_Spanish.pdf
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/RestaurantWorkbook_Korean.pdf
Small Business Janitorial Health and Safety Training Materials (Industry-specific) (July 2009).
http://www.dir.ca.gov/chswc/WOSHTEP/SBMR_Janitorial.htm (English and Spanish)
Small Business Health and Safety Materials for the Dairy Industry – English and Spanish
Training Guide
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/DairyTrainingGuide.pdf
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/DairyTrainingGuide_Spanish.pdf
Fotonovela (Picture Book)
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/DairySafetyFotonovela.pdf
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/DairySafetyFotonovela_Spanish.pdf

OCCUPATIONAL SAFETY AND HEALTH (continued)

Motor Vehicle Safety Programs Fact Sheet
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/MotorVehicleSafety.pdf
Teens Working in Agriculture: Activities for High School ESL Classes
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/ESLCurriculumActivitiesBooklet.pdf
Teens Speak Out for Safety on the Job: Lessons from the Young Worker Leadership Academy (2008).
http://www.youngworkers.org/downloads/pdf/TeensSpeakOut.pdf

Workplace Wellness
Status: Completed
CHSWC Booklet and Report:
The Whole Worker: Integrating Wellness & Occupational Health and Safety Programs.
http://www.dir.ca.gov/chswc/WOSHTEP/Publications/WOSHTEP_TheWholeWorker.pdf
"Summary of the July 16, 2008 Workplace Wellness Roundtable" (December 2008).
http://www.dir.ca.gov/chswc/Reports/CHSWC_SummaryWorkplaceWellnessRoundtable.pdf

Low-Wage Workers - Barriers to Occupational Health
Status: Completed
CHSWC Report:
"Barriers to Occupational Health Services for Low-Wage Workers in California" (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/Barriers_To_OHS.pdf

California Partnership for Young Worker Health and Safety
Status: Ongoing
CHSWC Report:
"Protecting and Educating Young Workers: Report of the California Study Group on Young Worker Health and Safety" (March 1998).
http://www.dir.ca.gov/chswc/studgrp.html
www.youngworkers.org for the California Partnership for Young Worker Health and Safety, providing information for teens, teen workers in agriculture, employers, and educators

Project: Child Labor Photography Exhibit and Teen Workshops
Status: Presented in 2004, 2005 and 2006**.**

V. WORKERS' COMPENSATION ADMINISTRATION

Assessment of EAMS
Status: Completed
CHSWC Report:
"Electronic Adjudication Management System (EAMS) Information Technology Needs Assessment Report," June 2011.
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_EAMS_AssessmentReport.pdf
Stakeholder public comments about EAMS Needs Assessment Report
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_EAMS_AssessmentReport_publicReport.pdf

Liens
Status: Completed
"Liens Report," January 2011.
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReport.pdf
Stakeholder public comments about Lien Report, Volume 1
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReportVolume1.pdf
Volume 2
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReportVolume2.pdf

WORKERS' COMPENSATION ADMINISTRATION (continued)

System Monitoring
Status: Completed
Memo on System Monitoring, January 2011
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_MemoOnSystemMonitoring.pdf

Review of Disability Evaluation Delays and Supplemental QME Reports
Status: Completed
CHSWC Report:
"Review of Disability Evaluation Delays and Supplemental QME Reports," June 2010.
http://www.dir.ca.gov/chswc/Reports/2010/CHSWC_DEUDelaysandSupplementalQMEReports.pdf

Report on Benefit Notices and Recommendations, July 2010
Status: Completed
CHSWC Report:
Report on Benefit Notices and Recommendations, July 2010
http://www.dir.ca.gov/chswc/Reports/2010/BenefitNoticesRecommendationspdf.pdf

Selected Indicators in Workers' Compensation
Status: Completed
*CHSWC Report*s:
2004-2011 "Selected Indicators in Workers' Compensation: A Report Card for California.
http://www.dir.ca.gov/chswc/AnnualReportpage1.html

The System of Access to Benefits for Injured Employees When Employer May Not Be Insured
Status: Completed
CHSWC Report:
"Background Paper on Uninsured Employers Benefits Trust Fund" (April 2007).
http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf

Electronic Deposit of Benefits
Status: Completed
CHSWC Report:
"Costs and Benefits of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California" (November 2004).
http://www.dir.ca.gov/chswc/chswc_accesstofunds.pdf/

Workers' Compensation Court Management and Judicial Function Study
Status: Completed
CHSWC Reports:
"Improving Dispute Resolution for California's Injured Workers," Summary, RAND (2003).
http://www.dir.ca.gov/CHSWC/Reports/ImprovingDisputeResolution-Summary.pdf
"Improving Dispute Resolution for California's Injured Workers," Full Report, RAND (2003).
http://www.dir.ca.gov/CHSWC/Reports/ImprovingDisputeResolution.pdf

Court Technology Project
Status: Completed
CHSWC Reports:
"Briefing on the Use of Technology in the Courts" (2003).
"Feasibility Study Report," Gartner (2003).

WORKERS' COMPENSATION ADMINISTRATION (continued)

Final Offer Arbitration in Determining a Permanent Disability Rating Under Labor Code 4065
Status: Completed
CHSWC Reports:
"Preliminary Evidence on the Implementation of Baseball Arbitration" (November 1999).
http://www.dir.ca.gov/chswc/BasebalArbFfinal.htm

Local Forms and Procedures – Labor Code Section 5500.3
Status: Completed
For further information …
CHSWC 1998-99 Annual Report: "Projects and Studies" section.

Profile of Division of Workers' Compensation (DWC) District Office Operations
Status: Completed
For further information …
CHSWC 1997-98 Annual Report: "Program Oversight" section.

CHSWC Roundtable on Division of Workers' Compensation (DWC) Lien Workload
Status: Completed
For further information …
CHSWC 1998-99 Annual Report: "Projects and Studies" section.

Evaluation of the DWC Audit Function
(*Special Study at the Request of the Legislature*)
Status: Completed
CHSWC Reports:
"CHSWC Report on the Workers' Compensation Audit Function" (December 1998).
http://www.dir.ca.gov/chswc/FinalAuditReport.html
"Executive Summary - CHSWC Study of the Division of Workers' Compensation Audit Function" (December 1998).
http://www.dir.ca.gov/chswc/AuditSummary Cover.html
"Project Description Study of Workers Compensation Audit Function" (1998).
http://www.dir.ca.gov/chswc/Auditfunctiondesc.html

VI. INFORMATION FOR WORKERS AND EMPLOYERS

Uninsured Employers Benefits Trust Fund Educational Booklet
Status: Completed
"If Your Employer is Illegally Uninsured: How to Apply for Workers' Compensation Benefits," June 2011.
http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers.pdf.
Spanish version: http://www.dir.ca.gov/chswc/Reports/2011/UninsuredEmployers_Spanish.pdf

Workers' Compensation and Disability Rights Laws in California: RTW, FEHA, and the Interactive Process
Status: Completed
Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California, February 2010.
http://www.dir.ca.gov/chswc/Reports/2010/HandbookRTW_2010.pdf
"Best Practices in Returning an Injured Employee to Work: Factsheet for Employers," February 2010.
http://www.dir.ca.gov/chswc/CHSWC_FactsheetRTW_2010.pdf
"Summary of December 9, 2008 Return-to-Work/FEHA/ADA Advisory Group Meeting" (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_SummaryRTWFEHAADAGuidebookRoundtable2009.pdf

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Status: Completed
CHSWC Booklet and Fact Sheet:
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http://www.dir.ca.gov/CHSWC/Reports/MedicalCareFactsheet.pdf
Getting Appropriate Medical Care for Your Injury (2006).
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Benefit Notices Simplification Project
Status: Completed
CHSWC Reports:
"Project to Improve Laws and Regulations Governing Information for Workers Recommendations: Information for Injured Workers" (May 2000).
http://www.dir.ca.gov/CHSWC/IWCover.html
"Navigating the California Workers' Compensation System: The Injured Workers' Experience" (July 1996).
http://www.dir.ca.gov/CHSWC/navigate/navigate.html

Workers' Compensation Information Prototype Materials
Status: Completed
CHSWC Report, Fact Sheets and Video:
"Project to Augment, Evaluate, and Encourage Distribution of the Prototype Educational Materials for Workers" (2000).

Workers' Compensation Fact Sheets and a Video, "Introduction to Workers' Compensation"
http://www.dir.ca.gov/chswc/EduMaterials.html

Consolidating and Coordinating Information for Injured Workers
Status: English and Spanish versions completed.
CHSWC Reports:
Workers' Compensation in California: A Guidebook for Injured Workers Third Edition (November 2006).
http://www.dir.ca.gov/CHSWC/Reports/WorkersCompGuidebook-3rdEd.pdf (English)
http://www.dir.ca.gov/CHSWC/Reports/GuidebookSpanishforInjuredWorkers2006.pdf (Spanish)
"Workers Compensation Update: Predesignating a Medical Group" (March 2007).
http://www.dir.ca.gov/chswc/Reports/WorkersCompUpdateMarch2007d.pdf
"Workers Compensation Update: New Law Extends Period for Temporary Disability Payments to Injured Workers" (April 2008).
http://www.dir.ca.gov/chswc/Reports/WorkersCompUpdate-2008.pdf

Workers' Compensation Medical Care in California Fact Sheets
Status: Completed
Fact Sheets:
"Workers' Compensation Medical Care in California: Quality of Care, Costs, Access to Care, System Overview" (August 2003).
http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm

Workers' Compensation Carve-Out Booklet
Status: Completed
CHSWC Report:
How to Create a Workers' Compensation Carve-Out in California: Practical Advice for Unions and Employers (2006).
http://www.dir.ca.gov/CHSWC/carve-out1.pdf

INFORMATION FOR WORKERS AND EMPLOYERS (continued)

Workers' Compensation Carve-Out Guidebook
Status: Completed
CHSWC Report:
Carve-Outs: A Guidebook for Unions and Employers in Workers' Compensation (May 2004).
www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.doc

Carve-Outs – Alternative Workers' Compensation Systems
Status: Completed
CHSWC Report:
Carve-outs in Workers' Compensation: An Analysis of Experience in the California Construction Industry (September 1999).
http://www.dir.ca.gov/CHSWC/CarveOutReport/Carveoutcover.html

VII. MEDICAL CARE

Medical Care Provided Under California Workers' Compensation Program
Status: Completed
CHSWC Report:
"Medical Care Provided Under California's Workers' Compensation Program: Effects of the Reforms and Additional Opportunities to Improve the Quality and Efficiency of Care"

Use of Compound Drugs, Medical Foods, and Co-Packs in California Workers' Compensation Program
Status: Completed
CHSWC Report:
"Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program: An Overview of the Issues"

Medical Study of Impact of Recent Reforms
Status: Completed
CHSWC Report:
"Working Paper: Pay-for-Performance in California's Workers' Compensation Medical Treatment System," RAND (August 2007).
http://www.dir.ca.gov/chswc/Reports/Pay_for_Performance_Report_2007.pdf

Medical Care Provided California's Injured Workers
Status: Completed
CHSWC Report:
"Medical Care Provided California's Injured Workers: An Overview of the Issues," RAND (September 2007)
http://www.dir.ca.gov/chswc/CHSWC_MedCareProvidedCAIWs.pdf

Quality-of-Care Indicators: A Demonstration Project Using Carpal Tunnel Syndrome
Status: Completed
"RAND/UCLA Quality-of-Care Measures for Carpal Tunnel Syndrome: Tools for Assessing Quality of Care and Appropriateness of Surgery," RAND, 2011.
Summary at:
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_QualityofCareMeasuresforCarpalTunnel_summary_2011.pdf
Full report at:
http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_QualityofCareMeasuresforCarpalTunnel_Tools_2011.pdf
Appendices at: http://www.rand.org/pubs/technical_reports/TR809.html

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CHSWC Study on Spinal Surgery Second-Opinion Process
Status: Completed
CHSWC Report:
"Report and Recommendations on the Spinal Surgery Second-Opinion Process" (April 2007).
http://www.dir.ca.gov/chswc/Reports/SSSOP-Final.pdf

State Disability Insurance Integration Project
Status: In process
CHSWC Draft Report:
"The Impact of Occupational Injury and Illness on Pricing an Integrated Disability Benefit" (October 2008).
http://www.dir.ca.gov/chswc/Reports/SDI_paper_final_draft_2008_Oct_29.pdf

Medical Treatment Studies
Status: In process.
CHSWC Report:
"Inpatient Hospital Services: An Update on Services Provided Under California's Workers' Compensation Program Report," RAND (January 2009).
http://www.dir.ca.gov/chswc/Reports/CHSWC_InpatientHospitalServices.pdf
"Inpatient Hospital Fee Schedule and Outpatient Surgery Study," RAND (February 2002)
http://www.dir.ca.gov/CHSWC/HospitalFeeSchedule2002/HospfeeschedulePage1.html
"Ambulatory Surgery Facility Services Provided to California's Injured Workers," RAND (March 2009).
http://www.dir.ca.gov/chswc/Reports/2009/FacilityServicesforAmbulatorySurgery.pdf
"Hospital Emergency Department Services Furnished Under California's Workers' Compensation Program," RAND (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/EmergencyDepartmentServices.pdf
"Regulatory Actions that Could Reduce Unnecessary Medical Expenses Under California's Workers' Compensation Program," RAND (July 2009).
http://www.dir.ca.gov/chswc/Reports/2009/RANDpaper.pdf

CHSWC Study on Medical Treatment Protocols
Status: Completed
CHSWC Reports:
"Evaluating Medical Treatment Guideline Sets for Injured Workers in California," RAND (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/Evaluating_med_tx_guideline.pdf Full Report
"Evaluating Medical Treatment Guideline Sets for Injured Workers in California," Summary, RAND (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/Eval_med_tx_guideline_summary.pdf
"Updated and Revised CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines" (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/Medical_Treatment_Recommendations_Final_040606.pdf
"CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines" (November 2004).
http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.pdf
"Estimating the Range of Savings from Introduction of Guidelines Including ACOEM" (October 2003).
http://www.dir.ca.gov/CHSWC/ACOEMGuideline.pdf

Health Care Organizations
Status: Completed
CHSWC Staff Report:
"A Report on Health Care Organizations (HCOs) in Workers' Compensation" (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/HCO-WC-Apr2006.pdf

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Repackaged Drugs Study
Status: Completed
CHSWC Issue Paper:
"Paying for Repackaged Drugs Under the California Workers' Compensation Official Medical Fee Schedule" (May 2005).
http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf

Pharmacy Reporting Impact Study
Status: Completed
CHSWC Report:
"Impact of Physician-Dispensing of Repackaged Drugs on California Workers' Compensation, Employers' Cost, and Workers' Access to Quality Care" (July 2006).
http://www.dir.ca.gov/CHSWC/Reports/Physician-Dispensend-Pharmaceuticals.pdf

Workers' Compensation Pharmaceutical Costs Study
Status: Completed
CHSWC Reports:
"Study of the Cost of Pharmaceuticals in Workers' Compensation" (June 2000).
http://www.dir.ca.gov/CHSWC/Pharmacy/pharmacover.html
"Study of the Cost of Pharmaceuticals in Workers' Compensation," Executive Summary (June 2000).
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Payment for Hardware Study
Status: Completed
CHSWC Report:
"Payment for Hardware Used in Complex Spinal Procedures Under California's Official Medical Fee Schedule for Injured Workers," RAND (September 2005).
http://www.dir.ca.gov/CHSWC/Hardware_comp9.pdf

Burn Diagnosis-Related Groups (DRGs) Study
Status: Completed
CHSWC Report:
"Payments for Burn Patients under California's Official Medical Fee Schedule for Injured Workers," RAND (May 2005).
http://www.dir.ca.gov/CHSWC/WR-263.Burn050525.pdf

California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work
Status: Completed
CHSWC Report:
"California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work," RAND (2006).
http://www.dir.ca.gov/chswc/Reports/2009/MedBenefit_and_RTW_2006.pdf

Integrating Occupational and Non-Occupational Medical Treatment
Status: In process

Occupational and Non-Occupational Integrated Care (ONIC) Roundtables
Status: Completed
CHSWC Report:
"Summary of Occupational and Non-Occupational Integrated Care Roundtables" (December 2008).
http://www.dir.ca.gov/chswc/Reports/SummaryOandNO_ICR2008.pdf

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CHSWC Study on 24-Hour Care

Status: Completed
CHSWC Reports:

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http://www.dir.ca.gov/CHSWC/Reports/24-Hour-Care-Final.pdf
"Assessment of 24-Hour Care Options for California" (2004).
http://www.dir.ca.gov/CHSWC/Reports/24HourCare.pdf
"CHSWC Background Paper: Twenty-four Hour Care" (October 2003).
http://www.dir.ca.gov/CHSWC/CHSWC_24hCare.pdf

Workers' Compensation Medical Billing Process

Status: Completed
CHSWC Background Paper:

"Background Information on Workers' Compensation Medical Billing Process, Prepared for the Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations" (2003).

Workers' Compensation Medical Payment Systems

Status: Completed
CHSWC Staff Reports:

"Workers' Compensation Medical Payment Systems: A Proposal for Simplification and Administrative Efficiency, Prepared for the Honorable Richard Alarcón, Chair, California Senate

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Committee on Labor and Industrial Relations" (2003).
http://www.dir.ca.gov/CHSWC/CHSWC_WCMedicalPaymentSystem/CHSWC_WCMedicalPaymentSystem.pdf
"Adopting Medicare Fee Schedules: Considerations for the California Workers' Compensation Program," RAND (2003).
http://www.dir.ca.gov/CHSWC/Reports/AdoptingMedicareFeeSchedules-summary.pdf

VIII. COMMUNITY CONCERNS

Analysis of WCIRB Pure Premium Rates

Status: Completed
CHSWC Report:

"Analysis of Proposed WCIRB 2009 Pure Premium Rates Submitted to the California Department of Insurance" (September 2008).
http://www.dir.ca.gov/chswc/Reports/Analysis_of_proposed_WCIRB_2009_pure_premium_rates-20080923.pdf

Public Access to Workers' Compensation Insurance Coverage Information

Status: Completed
CHSWC Reports:

"Workers' Compensation Compliance and Proof of Coverage" (February 2006).
http://www.dir.ca.gov/CHSWC/Papers/ProofOfCoverage2006.pdf
"CHSWC Issue Paper on Public Access to Workers' Compensation Insurance Coverage Information" (April 2005).
http://www.dir.ca.gov/CHSWC/ProofofCoverage.pdf

COMMUNITY CONCERNS (continued)

DWC Workers' Compensation Audits
Status: In process
CHSWC Report:
"Draft CHSWC Response to Community Concerns Regarding DWC Workers' Compensation Audits" (February 2007).
http://www.dir.ca.gov/CHSWC/Reports/DWC_Audits_022107.pdf

U.S. Longshore and Harbor Workers' Compensation Market in California
Status: Completed
CHSWC Report:
"CHSWC Issue Paper on the United States Longshore and Harbor Workers' Compensation Market in California" (April 2005).
http://www.dir.ca.gov/CHSWC/USLonghsoreAndHarborPaper.pdf

Workers' Compensation and the California Economy
Status: Completed
CHSWC Report:
"Update – Workers' Compensation and the California Economy" (April 2000).
http://www.dir.ca.gov/CHSWC/CalEconomy/CalEconomyCover.html

Evaluation of Workers' Compensation Cost and Benefit Changes Since the Beginning of the 1989 and 1993 Reforms
(*Special Study at the Request of the Legislature)*
Status: Completed
CHSWC Reports:
Workers' Compensation Costs and Benefits After the Implementation of Reform Legislation (August 1999).

http://www.dir.ca.gov/CHSWC/Report.htm
"Executive Summary Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability" (August 1999).
http://www.dir.ca.gov/CHSWC/ExecutiveSummary.htm
"Summary Estimating the Workers' Compensation Reform Impact on Employer Costs and Employee Benefits" (August 1999).
http://www.dir.ca.gov/CHSWC/Summary.htm
CHSWC 1998-99 Annual Report incorporates this report.

Workers' Compensation Anti-fraud Activities
Status: Completed
CHSWC/Fraud Assessment Commission (FAC) Study:
"Workers' Compensation Medical Payment Accuracy Study" (June 2008).
http://www.dir.ca.gov/chswc/Reports/2009/Navigant_Medical_Payment_Report.pdf
CHSWC Reports:
"Reporting Workers' Compensation Injuries in California: How Many are Missed?" (August, 2008).
http://www.dir.ca.gov/chswc/Reports/ReportingWorkersCompensationInjuriesinCalifornia2008August.pdf
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http://www.dir.ca.gov/chswc/Reports/Fraud_in_WC_payroll_Report_Aug_14_2007.pdf
"Split Class Codes: Evidence of Fraudulent Payroll Reporting" (August 2007).
http://www.dir.ca.gov/chswc/Reports/Split_Class_Codes_13Aug2007.pdf
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"**COMMUNITY CONCERNS (continued)**

Report on the Campaign Against Workers' Compensation Fraud" (May 2000).
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"Workers' Compensation Anti-Fraud Activities – Report on the CHSWC Public Fact-Finding Hearing" (September 1997).
http://www.dir.ca.gov/CHSWC/Fraud/Fraudreport.html

Illegally Uninsured Employers Study
Status: Completed
CHSWC Reports:
"Uninsured Employers Benefits Trust Fund," Background Paper (April 2007).
http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf
"Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring Them Into Compliance" (December 1998).
http://www.dir.ca.gov/CHSWC/uefcover.html

IX. INSURANCE INDUSTRY AND COVERAGE

Insurance Insolvency Study
Status: Completed
CHSWC Report:
"California's Volatile Workers' Compensation Insurance Market: Problems and Recommendations for Change," RAND, December 2009.
http://www.dir.ca.gov/chswc/Reports/2009/InsolvencyReport.pdf

Self Insurance Groups
Status: Completed
CHSWC Reports:
"Report on Self Insurance Groups" (December 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_SIGReport.pdf
"Issue Paper on Tax Status of Self-Insured Groups (SIGs)" (April 2006).
http://www.dir.ca.gov/CHSWC/Reports/SIG-TaxStatus.pdf

Training of Claim Adjusters and Bill Reviewers
Status: Completed
CHSWC Report:
"Revised Claims Adjuster and Bill Reviewer Training and Certification by Insurers Report" (April 2009).
http://www.dir.ca.gov/chswc/Reports/2009/CHSWC_TrainingCertificationClaimsAdjusters.pdf.

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Status: Completed
CHSWC Background Paper:
"Workers' Compensation Compliance and Proof of Coverage" (February 2006).
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State of the California Workers' Compensation Insurance Industry
Status: Completed
CHSWC Background Papers:
" Study of the California Workers' Compensation Insurance Market Study" (September 2003).
http://www.dir.ca.gov/CHSWC/Reports/CA_InsuranceMarketStudy.pdf
"State of the California Workers' Compensation Insurance Industry," Background Paper (April 2002).
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X. DISASTER PREPAREDNESS AND TERRORISM

Impact of Terrorism on Workers' Compensation
Status: Completed
CHSWC Issue Paper:
"CHSWC Background Paper on the Impact of Terrorism and California Workers' Compensation" (April 2006).
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Forum on Catastrophe Preparedness: Partnering to Protect Workplaces (April 2006)
Status: Completed
CHSWC Staff Report:
"A Report on the Forum on Catastrophe Preparedness: Partnering to Protect Workplaces" (April 2006).
http://www.dir.ca.gov/chswc/forum2006.html

XI. CHSWC ISSUE PAPERS

Study of Labor Code Section 132a
Status: Completed
CHSWC Memorandum:
"Update on Labor Code Section 132a and Employer Termination of Health Insurance Coverage: Calif. Supreme Court Decision in *State of California, Dept of Rehab v. WCAB (Lauher)"* (July 2003).
http://www.dir.ca.gov/chswc/Lauher132aUpdate.pdf

Information on Industrial Medical Council (IMC) Disciplinary Actions Taken on Qualified Medical Evaluators (QMEs)
Status: Completed
CHSWC Background Paper:
"Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulation of QMEs" (July 2003).
http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.doc or
http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.pdf

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California
Status: Completed
CHSWC Paper:
"CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California" (November 2004).
http://www.dir.ca.gov/CHSWC/CHSWC_AccesstoFunds.pdf or
http://www.dir.ca.gov/chswc/CHSWC_Accesstofunds.doc

Strategic Plan
Status: Completed
CHSWC Report:
"CHSWC Strategic Plan" (November 2002).
http://www.dir.ca.gov/CHSWC/StratPlanReport2002/Stratplan2002.html

XII. OTHER

Pending Final Disposition:

”Comparing the costs of delivering medical benefits under group health and workers’ compensation—Could integration pay for covering the working uninsured?” (October 2009). http://www.dir.ca.gov/chswc/Reports/2009/Medical_Overhead_Cost_Comparision_2009.pdf

CHSWC PARTNERSHIPS WITH THE COMMUNITY

Introduction

Since its inception, the Commission on Health and Safety and Workers' Compensation (CHSWC) has been working closely with the health and safety and workers' compensation community including employers, employees, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.

In certain projects and studies, CHSWC partners with other state agencies or other organizations in areas of mutual interest. Key partnerships include the following.

Return-to-Work/FEHA/ADA Process and Handbook and Factsheet for Injured Workers

Partnership with the California Department of Industrial Relations, the Department of Fair Employment and Housing, and the University of California, Berkeley

CHSWC has partnered with the California Department of Industrial Relations (DIR), the Department of Fair Employment and Housing (DFEH), and the University of California (UC), Berkeley, to support efforts to reduce litigation, reduce friction and provide information to employers, particularly small employers who have the most difficult time complying with requirements regarding return to work, by providing improved information for all system participants about the requirements of the Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA).

A handbook, *Helping Injured Workers Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California,* was developed and made available in February 2010. The handbook provides an overview of the laws which govern an injured employee's right to continue working and the employer's obligations to accommodate the employee: workers' compensation law, Labor Code Section 132a, which protects the employee from discriminatory treatment; and disability rights law under FEHA, which requires the employer to engage in a timely, good faith, interactive process to find a reasonable accommodation for the employee's disability. This handbook is especially geared for small employers and their employees.

The handbook includes additional resources in Appendix sections for physicians and insurers and for employers and employees to design, implement and participate in an effective return-to-work program. Also included is a list of state agencies that administer workers' compensation and disability rights laws.

A Factsheet based on the handbook, **"**Best Practices in Returning an Injured Employee to Work: Factsheet for Employers," was also prepared and made available in February 2010.

Customer Service Initiative

Partnership with Division of Workers' Compensation and Workers' Compensation Enforcement Collaborative

CHSWC has partnered with the Division of Workers' Compensation (DWC) and the Workers' Compensation Enforcement Collaborative (WCEC), based in Watsonville, CA, to overcome hurdles faced by injured workers seeking benefits when their employers are illegally uninsured. In late May 2009, a pilot-enhanced customer service initiative in one Information & Assistance (I&A) Office in Salinas, in Northern California, was launched to assist unrepresented (*in pro per*) injured workers in properly identifying employers and serving papers.

In addition to CHSWC and the Department of Industrial Relations (DIR) and its divisions, members of the WCEC include: the Watsonville Law Center; the Department of Insurance (CDI) Fraud Division; the San

Francisco, Santa Cruz and Monterey County Offices of the District Attorney; the Fraud Assessment Commission; Kaiser Permanente; the UC Berkeley Institute for Research on Labor & Employment; the Workers' Compensation Insurance Rating Bureau (WCIRB); Salud Para La Gente; Worksafe; La Raza Centro Legal; California Rural Legal Assistance (CRLA); and the California Applicants' Attorneys Association (CAAA).

Injured workers face unique barriers in pursuing claims where the employer is uninsured. Accessing the Uninsured Employers Benefits Trust Fund (UEBTF) is procedurally complicated, especially for unrepresented injured workers. Before UEBTF can be joined in a case, the employer must be correctly identified using the legal name and then be served notice of a claim in order to establish the court's jurisdiction. The process discourages attorneys and deters most injured workers without attorneys. With stakeholder input from the community, CHSWC has published useful guides for injured workers, and it has reported on various barriers to the workers' compensation systems for low-wage workers and other categories of workers with a view to improving access to the workers' compensation system for all injured workers. In particular, CHSWC has reported on UEBTF, including a review of the statutory provisions and DWC guidance materials that detail the required steps in filing a UEBTF claim. In addition, CHSWC has funded a user's guide to be developed and based on the experience of the customer service initiative pilot.

The customer service initiative was developed to test whether more assistance is needed or is productive in assisting injured workers. Once the unique requirements of a UEBTF claim have been completed, the I&A process reverts to normal customer service in the provision of information and assistance.

This initiative began in the Salinas, California I&A Office on June 1, 2009, and was to continue for one year before results were reviewed. However, preliminary results before the year ended were deemed positive enough to expand the pilot to a Southern California office in Anaheim.

Quality-of-Care Indicators Study
Partnership with RAND and Zenith Insurance Company

CHSWC has partnered with RAND and Zenith Insurance Company on a demonstration project that suggests a mechanism for monitoring and improving the quality of care provided to injured workers. The goal of the study was to demonstrate quality measurement in workers' compensation. The objectives were to:

- Develop quality-of-care measures for carpal tunnel syndrome (CTS).
- Pilot test the measure in workers' compensation provider and payor organizations.
- Place measures and supporting tools in the public domain.
- Use the measures to assess quality of care for a larger population of patients.

Public-private partnerships made the study possible. Funding support was provided by the Commission and Zenith Insurance. The Commission also provided essential technical assistance in developing the project. Partners-in-kind included Kaiser Permanente Northern California Regional Occupational Health and the California State Compensation Insurance Fund (State Fund), which were involved in pilot testing.

Occupational and Non-Occupational Integrated Medical Care Pilot Project
Partnership with the California HealthCare Foundation, University of California, Berkeley, DMS Facility Services, and the Service Employees International Union Local 1877

The California HealthCare Foundation (CHCF) awarded a grant to CHSWC to develop a proposal to integrate occupational and non-occupational medical treatment, an alternative that could offer savings on

medical utilization, unit pricing, and administrative expenses while potentially offering improvements in the quality of health care. As a secondary advantage, the project is expected to expand access to affordable medical insurance.

The project team is calculating the administrative and overhead cost of delivering occupational care under workers' compensation, comparing each cost category from workers' compensation to the counterpart in private health insurance, and calculating the total amount that could potentially be saved if occupational medical treatment and insurance were completely integrated under group health.

CHSWC hosted a series of roundtable discussions of the results and the opportunities and challenges of implementing an integrated occupational and non-occupational medical treatment and insurance product. In addition, the National Academy of Social Insurance (NASI) held a national conference in November 2009 on the issue of integration, which focused on the California example.

Forum and Study Regarding Medicare Secondary Payor
Partnership with RAND Corporation

CHSWC and RAND are partnered on a forum and study regarding Medicare secondary payor. The forum, held in September 2010, brought together parties to discuss the potential impact of Medicare set-asides. Since the early 2000s, Medicare has taken a more aggressive stance on the responsibility of insurers and self-insured employers when they settle the future medical liabilities in a workers' compensation case.

CHSWC and RAND are conducting further research and analysis on the impact of Medicare set-asides on the workers' compensation system.

International Forum on Disability Management 2010: *Collaborating for Success*
Partnership with the Department of Industrial Relations and the International Association of Industrial Accident Boards and Commissions

CHSWC partnered with the Department of Industrial Relations (DIR) and the International Association of Industrial Accident Boards and Commissions (IAIABC) on the International Forum on Disability Management (IFDM) 2010: *Collaborating for Success,* which was held in Los Angeles, California, September 20-22, 2010. The purpose of the Forum, which is held every two years, is to share information about disability management and to identify barriers and ways to overcome barriers in disability management systems. IFDM 2010 brought together over 400 attendees from 33 countries across the world who represent the health, safety, medical and workers' compensation communities. The diverse audience included employers, workers, disability management practitioners, healthcare providers, advocates for full employment with disabilities, policymakers, such as legislators and heads of the executive branches, dynamic leaders in labor, business and insurance, and experts in disability management, including people mastering personal disabilities. Representatives of organizations with an interest in disability issues and a commitment to more effective systems for overcoming barriers to the rehabilitation and full integration of workers with disabilities in gainful employment participated in the discussion.

The IFDM 2010 Advisory Committee included representatives from the following national and international agencies and organizations: National Institute for Occupational Safety and Health; National Institute for Disability Management and Research; Cornell University, International Labor Relations School; Griffith Health Executive, Griffith University, Gold Coast Campus; Association of Workers' Compensation Boards of Canada; Council on Employee Health & Productivity, National Business Group on Health; Baylor School of Medicine; Health Sciences Programs, College of Arts, Social and Health Sciences, University of Northern British Columbia; Eur., Federal Ministry of Labour and Social Affairs; World Institute on Disability**;** German Social Accident Insurance; International Labour Organization; Kaiser Foundation Health Plan, Inc.; California Consortium to Promote Stay-at-Work/Return-to-Work; U.S. Government Accountability Office, Education, Workforce, and Income Security Team; Netherlands

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More information on IFDM 2010 is available at: http://www.ifdm2010.com; www.dir.ca.gov/chswc.

Northern California Summit and Consortium to Promote Stay-at-Work/Return-to-Work
Partnership with employers, medical providers, insurers, and non-profit disability organizations

CHSWC partnered with employers, medical providers, insurers, and non-profit disability organizations to plan the first Northern California Summit to Promote Stay-at-Work/Return-to-Work (SAW-RTW) in Northern California on June 21, 2007. The goal of the summit was to advance toward sustained solutions for preventing needless time away from work and the realignments needed to meet this goal.

The Northern California Consortium to Promote SAW-RTW was developed following the June 2007 California Summit. Its mission is to provide resources and strategies for interested stakeholders to ensure that more California employees stay at work and/or return to work.

Key SAW-RTW areas addressed by the Consortium include: dissemination of information through the Consortium's website and use of social media; using data to manage work disability; change management in promoting work disability prevention; promoting SAW-RTW for California's aging workforce; promoting multi-stakeholder communications in preventing needless work disability, including featuring an employer-employee checklist; and engaging California healthcare providers in preventing needless work disability. In addition, the Consortium is preparing an "SAW-RTW Needs Checklist" in response to a request in May 2011 from the Department of Industrial Relations (DIR) Director for recommendations on SAW-RTW.

The Consortium also solicits ongoing feedback from Summit participants about positive changes related to SAW-RTW in their organizations and posts that feedback along with resources on SAW/RTW on the Consortium's website: http://www.casawrtw.org. In 2010, the Consortium participated in the International Forum on Disability Management (IFDM) 2010: *Collaborating for Success*, held September 20-22, in Los Angeles and is participating in planning IFDM 2012.

School Action for Safety and Health Program
Partnership with representatives from schools and school districts, the Governor's Office of Homeland Security, labor, and state and school-related agencies and organizations in California

Per the mandate set forth in the Labor Code, CHSWC will assist inner-city schools or any school district in establishing effective occupational injury and illness prevention programs (IIPPs). CHSWC has established a model program, the School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention practices and resources. The program includes training and resources to enable schools or school districts to develop or improve IIPPs and make other health and safety improvements that will help protect school employees from injuries and illnesses on the job. The target audience focuses on K-12 schools and school districts at high risk of occupational injury and illness.

On June 27, 2008, CHSWC hosted a roundtable discussion that brought together representatives from schools and school districts, the Governor's Office of Homeland Security, labor, and school-related agencies and organizations in California. The program was developed based on a needs assessment conducted to determine the types of training and resources that would be most effective. The SASH program now includes a day-long training program for district-level employees, resource materials and a SASH Resource Center for technical assistance. The program is being implemented statewide. Ongoing evaluation indicates that the program is well received by participants.

The IIPP template and SASH brochure and binder of materials are available on the SASH section of the CHSWC website. The binder materials include: Factsheets, Tools, Tip Sheets, Resource List of organizations and agencies, Worksheets, and IIPP Guide and template. An online resource guide with factsheets related to specific health and safety information for school district employees is also included.

Workplace Wellness: How to Address Both Occupational and Lifestyle Issues on the Job
Partnership with employers of small, medium-size and large companies, labor, medical providers, and federal and state agencies

On July 16, 2008, CHSWC hosted a Workplace Wellness Roundtable including participants from employers, labor, research organizations, and state agencies. The purpose of the Workplace Wellness Roundtable was to begin a dialogue about strategic approaches, both short-term and long-term, to integrating workplace wellness and occupational health and safety programs in California. As a result of recommendations from Roundtable participants, a booklet on integration of workplace wellness and occupational health and safety programs in California was developed.

The workplace wellness booklet, *The Whole Worker: Integrating Wellness & Occupational Health and Safety Programs*, helps promote a general understanding of what constitutes an integrated approach to health promotion and occupational health and safety programs; explores barriers and strategies to overcome barriers to integration of workplace health promotion and workplace health and safety programs; and identifies resources for promoting more effective programs that address worker health in a holistic fashion. The booklet is available on the CHSWC website.

Small Business Health and Safety Resources

Health and Safety Training and Resources for Small Businesses Across Industries
Partnership with the State Compensation Insurance Fund and US Department of Small Business Administration, Small Business Development Centers

Health and safety resources for small businesses across industries have been developed in English and Spanish through the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). CHSWC has partnered with the State Compensation Insurance Fund (State Fund) to implement training and disseminate health and safety information to small businesses throughout the State of California. Through WOSHTEP, health and safety resources have also been developed for the restaurant industry, the janitorial industry, and for the dairy industry.

Health and Safety Training for Small Business Restaurant Owners
Partnership with the State Compensation Insurance Fund and the California Restaurant Association and the Korean Immigrant Workers' Alliance

CHSWC has partnered with the State Compensation Insurance Fund (State Fund) and with the California Restaurant Association (CRA) to provide health and safety trainings to small business restaurant owners and managers throughout California through WOSHTEP. Preliminary findings from the evaluation of these trainings have been positive. In addition, CHSWC has partnered with the Korean Immigrant Workers' Alliance (KIWA) to produce health and safety materials for restaurant industry employees in English, Spanish and Korean.

Health and Safety Training and Resources for the Janitorial Industry
Partnership with the State Compensation Fund and the Service Employees International Union Local 1877

Health and safety training and resources have been developed for the janitorial industry through WOSHTEP. CHSWC has partnered with the State Compensation Insurance Fund (State Fund) and the Building Skills Partnership, a program of the Leadership Training & Education Fund between the California Janitors' Union, SEIU 1877, and employers to provide health and safety training to small businesses within the janitorial industry.

Health and Safety Training and Resources for the Dairy Industry
Partnership with University of California, Davis

Health and safety training and resources have been developed for the dairy industry through WOSHTEP. CHSWC has partnered with the University of California at Davis and other WOSHTEP stakeholders to provide materials to owners and managers of dairies to strengthen their health and safety programs. Materials are being used by universities and organizations including the National Farm Medicine Safety, the Canadian Ag Safety Association, the Swedish University of Ag Sciences, the University of Illinois at Urbana-Champaign, Cornell University and Quantico MD, the National Farm Medicine Center in Wisconsin, and the Dairy Herd Network.

Integration of Worker Health and Safety Education into Building Trades Apprenticeship Programs
Partnership with the State Building and Construction Trades Council of California (SBCTC), AFL-CIO, with 13 member unions

Union, apprenticeship and pre-apprenticeship training programs provide a potential avenue to integrate worker health and safety education. CHSWC contracted with the UCLA Labor Occupational Safety and Health Program (LOSH) to address worker injuries and illnesses in the construction industry by bringing together the resources of WOSHTEP and those offered by apprenticeship and pre-apprenticeship programs.

A needs assessment revealed opportunities to adapt construction-related health and safety materials that are currently part of the WOSHTEP curriculum for apprenticeship and pre-apprenticeship programs. Findings included that: WOSHTEP materials be shortened to be appropriate for the building trades and should include worker safety in green construction; adapted materials could be delivered to apprentices during orientations to their apprenticeship programs, in the classroom, or on-the-job at tailgate safety training; apprenticeship instructors, senior apprentices or journeymen could present training modules; and adapted training could be presented to journeymen as part of their refreshers, upgrades or supervisory training.

In response to the findings from the needs assessment, LOSH, LOHP and the State Building and Construction Trades Council of California (SBTC), AFL-CIO, developed a *Construction Case Study Training Guide* of 13 case studies (including 4 green construction cases) from real life stories of construction workers who had an occupational fatality, injury or illness on the job. The *Guide* was developed for use in pre-apprenticeship programs to teach about the importance of occupational safety and health.

In addition, a factsheet for apprentices on health and safety issues in green jobs, with particular focus on job hazards in the photovoltaic, green building and weatherization industries, has been developed.

Health and Safety on the Job for Workers with Disabilities
Partnership with NISH, The ARC in Southern California, and Pride Industries in Northern California

Materials and outreach and training based on the Worker Occupational Safety and Health (WOSH) Specialist curriculum, including a trainer-of-trainers' component, were developed for managers, supervisors and employees in sheltered workshops in California that serve and employ individuals with disabilities on: how to provide health and safety training to their workers with intellectual disabilities; and

how to design and implement a successful injury and illness prevention program (IIPP) in their workplaces. This program was developed in partnership with NISH – Creating Employment Opportunities for People with Severe Disabilities, The ARC in Southern California, and Pride Industries in Northern California.

The program includes materials from the *Staying Safe at Work: Teaching Workers' with Disabilities and Health & Safety on the Job* curriculum developed in 2009 by the University of California, Berkeley Labor Occupational Health Program (LOHP) and the National Institute for Occupational Safety and Health (NIOSH).

Implications of Developments in Workers' Compensation for Social Security Disability Insurance
Partnership with the National Academy of Social Insurance and the Social Security Administration

CHSWC partnered with the National Academy of Social Insurance (NASI) and the Social Security Administration (SSA) in November 2009 to host a seminar to enhance understanding of policy and administrative issues relating to the fit between workers' compensation and social security disability insurance (SSDI). Key topics included how to improve coordination between the two programs and better serve disabled workers. Sessions focused on: priorities in social security disability programs and policy; national trends in workers' compensation; the California experience – growth and retrenchment; social security disability insurance and the offset; pathways from workers' compensation to SSDI; how injured workers learn about SSDI; and California innovations in return to work.

CHSWC AND THE COMMUNITY

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- What's New
- Research Studies and Reports
- Information Bulletins
- Commission Members
- Meeting Schedules and Minutes
- DIR Young Workers Website
- Information for Workers and Employers
- WOSHTEP
- Conferences
- Public Comments and Feedback
- Resources
- School Action for Safety and Health (SASH) Program

CHSWC Publications

In addition to the many reports listed in the CHSWC Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports
1994 through 2012

CHSWC Strategic Plan 2002

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.

Association of Workers' Compensation Professionals
Disability Management Conference

California Coalition on Workers' Compensation
9th Annual Conference

California Self-Insurers Association
Board Meeting
Annual and Educational Program

California Workers' Comp Institute
47th Annual Meeting
Claim and Medical Care Committee Meeting, Presentation

Department of Industrial Relations
Division of Workers' Compensation
18th Annual Educational Conference

Disability Management Employer Coalition
Executive Officer Briefing

International Association of Industrial Accident Boards and Commissions
96th Annual Convention
Executive Committee Meeting

International Forum on Disability Management 2012
Advisory Committee Meeting

National Academy of Social Insurance
Board of Director Meeting
23rd Annual Conference

Northern California Workers' Comp Forum
Executive Officer presentation

RAND Corporation
Advisory Board Meeting

Self-Insurers Security Fund
Presentation

Workers' Compensation Research Institute
CA CompScope Advisory Committee Meeting

Workers' Compensation Insurance Rating Bureau
Claims Subcommittee Meeting

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