

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 4, 2016

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

In Attendance

2016 Chair, Angie Wei

Commissioners Martin Brady, Daniel Bagan, Christy Bouma, Shelley Kessler.

Absent

Doug Bloch, Sean McNally

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

Approval of Minutes from February 19, 2016, Meeting	Approved
Posting of a White Paper on Utilization Review, by Barbara Wynn at RAND, When Available	Approved

Chair Angie Wei honored the life and work of Kristen Schwenkmeyer. Commissioner Schwenkmeyer, the longest-serving member of CHSWC, died on July 20, 2016.

Chair Wei requested the approval of CHSWC meeting minutes from the February 19, 2016, CHSWC meeting. The motion was proposed by Commissioner Shelley Kessler, and Commissioner Martin Brady seconded the motion. All the attending commissioners approved the minutes and the motion unanimously.

Update on Cal/OSHA Program

Juliann Sum, Chief, Cal/OSHA

Ms. Juliann Sum stated she has been the head of Cal/OSHA since September 2013. She stated that Cal/OSHA had been rebuilt and was moving forward and flourishing. Several internal and external rebuilding efforts are in process. Internally, Cal/OSHA has experienced an increase in resources, enhanced communications, procedures, training, decision making and collaboration. Externally, Cal/OSHA has made significant improvements in outreach and communications and is conducting extensive rulemaking in many areas.

Ms. Sum pointed out that the 2015 Federal Annual Monitoring and Evaluation (FAME) annual report shows a marked change in fiscal 2015 in contrast to previous years and noted progress in Cal/OSHA and recognized improvements in the following:

- Success in establishing new positions and hiring

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- Abatement incentives
- Training
- Excellent penalty retention rate after appeal process is completed
- Heat illness prevention and roofing safety initiatives
- FAME identified room for improvement. Ms. Sum stated she agreed and was working with her field staff to improve Cal/OSHA.

Comments by Commissioners

Commissioner Brady stated that he is on the board of California Joint Powers Authority (CAJPA) and is in communication with his peers in the state as it pertains to public agencies in cities and counties. CAJPA staff has experienced a notable improvement in its connection with Cal/OSHA and the people who work in the field. Commissioner Brady stated that Ms. Sum had established a great tone, and he wanted to thank her.

Commissioner Kessler stated that she was pleased that an inspector went to San Francisco International Airport (SFO) and discovered many problems and was allowed to go beyond the security checkpoints. The inspector found that there were not enough people to cover all the problems, and Cal/OSHA still had vacancies. She asked Ms. Sum to discuss recruiting, what is needed to be a field inspector, and the timelines to fill existing vacancies.

Ms. Sum replied that a lengthy, formal hiring process was set up under human resources procedures that all state agencies have to follow. There is a current exam, and, in some cases, they have to create a new exam. All exams are now current at Cal/OSHA. Then applicants have to apply to take the current exam. There is a screening process to see whether applicants meet the minimum qualifications. The requirements are set forth on the website <https://jobs.ca.gov>. After applicants pass the entrance requirements, they can take the exam. In some cases, the exams are panel reviews. So senior employees in the department have to meet each applicant in person for the exam, and then those results are compiled and ranked. For every job position posted, there is a ranking of applicants who applied for it. They are only allowed to interview the people who are above a certain rank.

For the jobs posted, there is a formal process of writing the job descriptions and the duty statements, performed by DIR human resources staff as well as the Cal/OSHA personnel staff. There is communication about how to do this. If the applicants are interviewed, then they are interviewed by the hiring managers, and many field managers are very busy interviewing several applicants for numerous positions. Then there is a final process of getting approval and conducting a background check. Then the applicant is cleared to be hired and offered the job.

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Commissioner Kessler asked how long it takes to be hired. Ms. Sum replied that it depends on whether the exam needs to be posted. On average, it took several months, but it varied.

Chair Wei said that the FAME report is fantastic, and it will be great to see that same trajectory in the following years.

Preliminary Discussion on Physical Therapy (PT) and Chiropractic Caps

Dr. Ray Meister, Executive Medical Director, Division of Workers' Compensation (DWC)

Dr. Meister provided a short history:

- Between 1998 and 2004 workers' compensation medical costs increased 138%.
- In early 2000s, California claims resulted in twice the average number of chiropractic and nonhospital provider visits.
- In January 2004, Senate Bill 228 put in place American College of Occupational and Environmental Medicine (ACOEM) guidelines for utilization review (UR) and a 24-visit cap for chiropractic physical therapy (PT) sessions.
- In April 2004, a way to rebut the ACOEM guidelines was added, and the 24-visit cap was extended to occupational therapy.
- In 2007, the Medical Treatment Utilization Schedule (MTUS) became effective, and postsurgical physical medicine and rehabilitative services were exempted from the 24-visit cap.
- In 2009, the Postsurgical Physical Medicine Guideline became effective.

Early reports from the Workers' Compensation Insurance Rating Bureau (WCIRB) and California Workers' Compensation Institute (CWCI) note:

“Following the enactment of workers' compensation reforms of SB 228, physical therapy utilization has been reduced by approximately 66 percent and chiropractic utilization by approximately 82 percent.”

With regard to the 24-visit cap:

- The evolution of evidence-based medical treatment guidelines is an important consideration in any discussion of the 24-visit cap on PT and chiropractic visits.
- Prior to 2004, no guidelines were in place.
- The evolution of 2004 guidelines is an important consideration.
- Now, there are much more comprehensive guidelines, which include evidence-based recommendations for physical medicine visits.

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- To illustrate this point, the 2004 ACOEM Practice Guidelines consist of 16 chapters, a total of 563 pages. In the most recent revision of the guidelines, an individual chapter can be more than 563 pages, which shows the extent of development and evolution.

It is important to consider the concept of functional improvement. Comparing the Official Disability Guidelines (ODG) and the ACOEM Guidelines:

- **ACOEM: Functional improvement**

Evaluation of the patient prior to the initiation of treatment should include documentation regarding objective physical findings and current functional abilities both at home and at work. This should include a clear statement of which objective or functional goals are to be achieved through the use of treatment, if anything other than full functional recovery occurs.

- **ODG: Functional improvement measures**

Recommended. Restoration of function should be the primary measure of treatment success. Functional improvement measures should be used over the course of treatment to demonstrate progress in a return to functionality and to justify further use of ongoing treatment methods.

In summary:

- Evidence-based medical treatment guidelines have evolved;
- Functional improvement is a central consideration in caring for injured workers;
- Recommendations on physical medicine treatments have come a long way since 2004

Comments by Commissioners

Commissioner Christy Bouma asked about firefighters who want to stay on the job and visit their chiropractors to stay out of pain and do their job. She noted that when treatment is denied because of the cap on visits, sometimes those denials rest on whether the report actually stated “functional improvement” versus “pain relief.” However, she stated that if there is pain relief, then there is functional improvement; she then asked whether a solution is being developed in these guidelines. Dr. Meister replied that documentation can be very important and that following the general tone of the guidance in some of these slides [that he presented] was important. He stated that the DWC was in the later stages of developing an online educational program on the MTUS, and part of the message was the importance of documentation. He was also working diligently to get the MTUS updated because many of the chapters are based on the 2004 guidelines. Updated guidelines with education and good documentation by the clinicians would go a long way toward addressing those issues. They do see instances in which the patient

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and the physician have that information, but the documentation is not there to support the treatment request, so it is really important to get it documented.

Commissioner Bouma stated that she had seen another presentation indicating having UR caps, and some states seem to be adopting evidence-based guidelines, and having access to the UR process and the existence or a lack of a cap seems to have no impact on the use of these types of services. Dr. Meister replied that with the evolution of the guidelines and the evolution of the amount of guidance, that does not surprise him. If people are following evidence-based guidelines, the level of care is consistent with what is recommended in evidence-based guidance and not necessarily the cap.

Commissioner Daniel Bagan asked whether any data shows how many times the cap is utilized in California as opposed to using the evidence-based guidelines. He stated that running into the cap would be improbable if the guidelines were being utilized. Dr. Meister said he did not know the answer but will look into it. Dr. Meister recalled that the 2004 visit cap was 10 visits, well below the 24-visit cap. According to the guidance, for the vast majority of conditions, it will be less than the 24-visit cap. However, post-surgical guidance was a different scenario.

Chair Wei stated she is also interested in these data [about how many times the cap is being used].

Commissioner Kessler stated that the 66% reduction in visits might not equate to a reduction in injuries but might be due to the cap—that the people are not assessed or do not have UR of their injuries. Therefore the question about the impact of the cap was really important, so she would like to have that information. Caps may have prevented access, such as post-surgery. She stated that the workforce has challenges, even though they can get a doctor to review this and employers to authorize additional visits. Sometimes, in reality it is difficult for an employer to do it; otherwise, it would essentially be an administrative director. She asked whether there is an adjuster who allows someone to go back for additional treatment. Dr. Meister replied that there is a caveat that the employer can provide more than the 24-visit cap, and that decision is made somewhere in the UR process, whether with a claims adjuster or with a UR physician.

Commissioner Kessler asked whether it would make a difference if the caps were removed and the visits were based on purely medical assessments and factual data. Dr. Meister stated that he will look into the question about how many times the cap is used, which will provide useful information. He also stated that there has been an evolution in the guidance for physical therapy (PT) and in the way PT is administered. Commissioner Kessler stated that if one is talking about evidence-based medicine, someone should have evidence to continue treatment, an important factor in this discussion. Commissioner Kessler stated she is worried that being taken off a treatment protocol may lead to opioid drug-related dependency because the injured workers will

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no longer get the treatment they deserve. The doctor might also say the worker has reached the cap and prescribes painkillers. She was wondering about the relationship between access to treatment by people who have left their treatment protocol and those who are now just receiving pain medication to deal with the result of their initial injury. Dr. Meister replied that he shares her concern, but things have evolved. It is important to get all the medical providers onboard with the guidelines and have an overall plan when there is treatment, whether PT or the use of opioids. With the opioid guidelines becoming effective and with the educational efforts for providers, he hopes to get the system to work better, and evidence-based medicine is the foundation.

Commissioner Brady reiterated the importance of functional medicine and recordkeeping for examiners. Examiners are very conscious of that, and if there is progress toward improvement they can continue to grant approval beyond 24 visits. It does not get to that point very often, but when it does, it is an option that they have utilized. Functional improvement and being able to monitor that is very important. Dr. Meister agreed.

Chair Wei appreciated seeing the evidence-based guidelines and the proposed number of visits per injury. She asked whether there is any situation in which an injured worker has chiropractic treatment, and the problems flare up again afterward. Do the guidelines address a recurrence in how to handle more visits, and how does that interact with the caps? Because the cap is over the life of the claim, are there scenarios in which this type of therapy will restore function? Dr. Meister replied that we are all different, and his presentation provided a snippet of all the guidance that is in the various guidelines. The patient has to be assessed from where he or she starts and not from where the average person starts. Individual differences are important and should be considered. There is guidance about flare-ups, or if the injury getting worse, and having additional visits with the goal of addressing the issue. Being part of the program that imparts PT is important. Chair Wei asked whether the evidence-based guidelines take into account recurrent problems and whether all the visits that were part of the guidelines' recommendation would ever add up to more than 24. Dr. Meister stated he will provide an answer in the future. Chair Wei noted that if the 24-visit cap is a hard cap and if the evidence-based guidelines lead to more than 24 visits and the principle is that we need to follow evidence-based guidelines and it leads to more than 24, then something needs to be done. Dr. Meister stated that documentation is important. Whether someone is improving ties in to evidence-based medicine to make a recommendation.

Commissioner Kessler asked if the cap were completely removed whether it would result in an explosion of visits since some people have not even reached the 24-visit cap; or would removal of the cap have a terrible effect because of the ability or inclination of people to pursue it unnecessarily. Dr. Meister replied that his hope was that evidence-based guidelines were already being used and that there would not be a significant change if the cap were removed. The MTUS

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easily allows someone to use more recent guidelines, and he is hoping to update them. The current guidance is very good now and is being utilized effectively, and most of the recommendations are below the cap. This is anecdotal about the cap, but there might be some people who would think that, as long it is below the cap, approval will be easy, so it can be a “double-edged sword.” Commissioner Kessler stated that it is evidence based on the medical situation.

Chair Wei opened the meeting up for public comment.

Chris Forsyth, of the California Chiropractic Association, stated that this is obviously an important issue for chiropractors. Dr. Meister did a wonderful job of laying out the framework on why the cap started as well as the evolution of evidence-based medicine. From his perspective, a hard cap conflicts with public policy if they are using evidence-based medicine and utilization and what is appropriate and not appropriate with the treatment, and he knows from experience that not having a cap does not create overutilization, and where you have a cap, there is no cap utilization so he encouraged movement toward removing the cap. In particular, public safety professionals suffer flare-ups and need to return to treatment periodically so that they can continue to work; if they cannot do that due to some arbitrary cap, then that is not evidence-based medicine. Then their only alternative is opioids, and they are not supposed to go to work on opioids.

Monica Miller, of the California Chiropractic Association, stated that she concurs with what the prior speaker said, and, having been through all these workers’ compensation meetings, she understood the necessity of the cap when it was first implemented in 2004 because there was a need to figure out what was going on in the system as they developed the guidelines. Now that the guidelines are fully in use, there is a particular need to keep injured workers on the job when they do have flare-ups, and the hard cap and opioids are really not the answer. They have seen the explosion in opioid use, and it is killing a lot of people and is dangerous. She stated that there needs to be an alternative and appreciates the discussion today and is looking forward to having it move forward.

Brook Price, chiropractor and Joint Powers Authorities (JPA) Director, stated that, while running a workers’ compensation program, it was interesting to see the abuse by the chiropractors in his community. It was also a shame to see what he saw. Mr. Price stated that if you remove the cap, the abuse will come back. If they were following evidence-based medicine, you can see that after 10 to 12 visits the condition will be over; there is always the issue when someone is reinjured, but the 24-visit cap is perfectly appropriate if you know what you are doing in the chiropractic field. There are chiropractors who will disagree with him. However, the chiropractic mills, the high-volume mills are being opened.

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Rick Meehan, workers' compensation attorney, California Applicant Attorneys Association, stated they are not seeing many denials of physical therapy based on the 24-visit cap and most of it goes to UR. UR tends to be ruling treatment at this time. This information was presented as scientific-based evidence; however, these are consensus-based rules; scientific-based medicine has been adopted as if it were fact. The language has been adopted so thoroughly by this board so it comes across as a fact. If it is scientific-based evidence, then show the outcomes and show how this is improving the outcome for injured workers instead of outcomes for the insurance companies. It is a cost control system and not a science-based outcome system.

Report on Public Self-Insured Entity Data Collection

Harold Jackson, Office of the Director, Legal Unit

Mr. Jackson gave background information on the topic of public self-insured programs and described the status of the project to collect data as well as the broader goals of greater accountability and transparency.

Background on public self-insured programs

447 individual public self-insured entities, 89 Joint Powers Authorities (JPA)

- Examples: cities, counties, schools, special districts
- Public entities' workers' compensation costs: 20% of all costs
- Employers must either have insurance or obtain a certificate of consent to self-insure from the Director of DIR

Legislative action: SB 863 (2012)

Revised Labor Code section 3702.2(a): added that public self-insurers "shall provide" such detailed information as the Director of Industrial Relations deems necessary to evaluate costs of workers' compensation claims administration and benefit expenditures and the solvency and performance of public self-insured programs.

Enacted (later sunsetted) Labor Code section 3702.4: CHSWC to conduct an examination of the public self-insured program and address the new section 3702.2(a) factors.

Bickmore report to CHSWC

Bickmore's recommendations for strengthened data reporting:

- Obtain more information on the demographic makeup of public entities to achieve meaningful comparison between like entities.

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- Collect data that distinguish categories of benefits and costs: total disability from partial disability amounts, medical and legal cost containment expenses, etc.
- Obtain fuller financial data to shed light on true extent of public entity liability exposure and loss adjustment.

Current projects

1. Initial working group (OSIP; California Association of Joint Powers Authorities [CAJPA], Schools Insurance Authority [SIA], and Bickmore representatives) began analyzing and planning to update annual report requirements; working group to be expanded to more stakeholders, including individual self-insurers, labor representatives, JPA.
2. Rulemaking procedure anticipated to implement Labor Code section 3702.2(a)'s new provisions. Annual report form last revised in April 1992. Consideration being given to transactional reporting to Workers' Compensation Information System (WCIS) administered by the Administrative Director.
3. Categories of data now: much is in aggregate form: list of open indemnity cases provides total paid indemnity, total paid medical, reserve indemnity, and reserve medical.
4. Need more data on claims administration costs, which have risen in comparison to indemnity and medical benefits. Under consideration:
 - More detailed data on benefits expenses, claims administration costs, and incurred liabilities
 - More financial information for evaluation of employer solvency and ability to pay benefits (method of recognizing claims and claims expense liabilities, method of budgeting and funding, etc.)
 - Employer characteristics and demographics (e.g., type of entity, location, payroll classifications)
5. Need to standardize definitions (e.g., components of allocated and unallocated loss adjustment expense).
6. Potential pilot project under consideration to measure impact on increased filings on OSIP as well as the public self-insurers themselves.
7. Broad goals:

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- Solvency: Shed more light on incurred workers' compensation liabilities of public self-insurers and the funding for those liabilities
- Benefits and claims expenses: Enable accountability from perspective of the public self-insurers, providing feedback to empower them to benchmark, contrast, and improve their performance as against industry best practices
- Performance: More transparency will enable local and state policy makers to develop better approaches to secure workers' compensation benefits for injured workers and reduce the cost of claims administration public self-insurers. Data analysis can help measure the impact of ongoing workers' compensation legal reforms on public self-insurers. Injured workers can better understand the division of the tax dollars spent on the workers' compensation programs;
- Enhance effectiveness of OSIP: data will assist OSIP to evaluate the efficiency of public self-insurer programs and enable OSIP to help entities themselves to understand the strengths and weaknesses of their programs

Comments by Commissioners

Commissioner Brady said that every October 1, public agencies are required to submit their annual report to OSIP, and for years they have obtained static information from that; it is one dimensional and not transactional. This would be refreshing and would help them immensely in terms of understanding programs, exposures, and loss patterns. He said that they had done some preliminary work with a few other JPA to try to look at this as a concept. They were surprised at the different definitions they had for things as simple as a litigated claim; everyone had a different definition, so it was humbling to go through that process. He said it could be very productive. He further stated that it is somewhat ironic, in today's age, that they have more data on the private sector than on the public sector. It is good news that they are going to get their arms around this so that they can ensure that tax dollars are being used appropriately.

Mr. Jackson agreed that there is a lot more information on the private sector through the efforts of WCIRB and CWCI. The public sector has been understudied, and the goal is to shed more light on it sooner than later.

Commissioner Bouma said that, in her other capacity, she has been on record speaking about the lack of data before the legislature about workers' compensation policy and how it makes decisions about what is best for workers and the public sector. She said this is when she goes on record about her opinion on the data void that is not informing that policy. She said that, in her capacity on the commission, as Bickmore was making a presentation on a specific policy item moving through the legislature, the report was full of asterisks saying this is the data we have,

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but we really cannot rely on it. She said that that kind of information is not helpful for anyone, so she appreciates the effort. She hopes that those who work for public agencies hear and understand the dialogue that is going on and can provide a valuable perspective.

Commissioner Bagan said that the update is great and that they are going in the right direction. He asked how far away they are from having formal rules in place, since it seems that they are in the analysis phase. Mr. Jackson said that they are interested in expanding the working group and getting more perspectives into this project. His prediction was that later this year or early next year, they would be in formal rulemaking.

Chair Wei asked for clarification, and Mr. Jackson repeated himself about the timing for formal rulemaking. He said that that was a process that the Office of Administrative Law sets up, with certain requirements: there has to be 30 days here, 45 days there, for instance, for public comments, and a public hearing.

Chair Wei opened up the meeting for public comment.

Dennis Loper, from Keenan and Associates, described their business as brokering for JPA. He said that since this is the first they had heard of the project, it is hard to have any extensive comments. Prior to the meeting, they had asked for an update from the executive director, but understandably there was nothing available. He said that they were concerned about a few things. First, as one of the biggest JPA in the state, his organization is concerned about not being included in any of these comments. He finds it a little surprising, and he thinks that their expertise should not have been excluded or ignored, since they are opening up more comments now. He wanted to make it clear that, for at least three years, they have been interested in involvement in the process, so it should not be surprising. He hopes that they could be afforded that courtesy. It is hard to discuss what should be transparent and what should not be transparent if you are not included in the conversation. It is hard to know what people consider transparent or whether it is for competitive purposes. They think a lot needs to be included. Confidentiality is there for a reason. They are not saying there should not be a bit more. But it has to be for the purpose of public policy. They hope their message is heard, and they appreciate the direction in which they are going.

No further public comments were made.

Chair Wei ended by saying that the commission looks forward to more action on the public self-insured. She said that some members of the commission would be interested in joining the working group and some of the constituencies that they may represent.

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Update on Trends in Injury Rates among California Janitorial Workers Project

Frank Neuhauser, UC Berkeley

Mr. Neuhauser said that some concerns have been raised by the public and the industry that trends in injuries of janitors have been different from those among other types of workers and questions have emerged about what might be driving the differences.

Three objectives of the study:

1. Look at trends in injuries among janitorial workers.
2. Are trends different between: Janitors and all other workers? Union and non-union firms?
3. If different, what types of injuries may be driving the difference

Caveats:

1. Data slow to be available.
2. Don't yet have appropriate denominators.
3. Data are incomplete, but are they representative?

Mr. Neuhauser displayed a chart with trend lines indicating a similar downward trend from 2002-2014 for injuries among both janitors at non-janitorial firms and all employers, with a slight difference in recent years.

Another chart displayed union and non-union janitorial firms, with the trend line rising for both and no clear difference between the two. The preliminary observation is that the injury rates are not rising for janitors at non-janitorial firms but may be rising at janitorial-specific firms regardless of union membership.

Preliminary findings are that trends among janitors at non-custodial firms are similar to those for all workers, but trend might be diverging. The trends for janitorial firms may be diverging from those for all firms. Union and non-union janitorial firms appear to face the same safety challenges.

Mr. Neuhauser said that is where they are now and that they should be finished in a month or so for the October CHSWC meeting.

Comments by Commissioners

Chair Wei asked about a chart and the percentage of injuries by year as shown by the vertical axis title. Mr. Neuhauser said that it was a way of putting injuries on the same scale. Given that they do not have denominators yet, it describes over time the percentage of injuries in a particular year. Chair Wei clarified her understanding that it does not compare janitors to anyone

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else. Mr. Neuhauser confirmed that, for the described group, it is a way to see whether the frequency of injuries is increasing or decreasing over time, given that they do not have denominators yet. Chair Wei clarified her understanding that it is a weight for each year. Mr. Neuhauser confirmed: if there were no change from year to year, the line would be flat. If the line is trending up, it looks as if there are more injuries over time in a particular segment. If it is trending down, as it is for all workers, you are seeing fewer injuries over time. For janitors in union and non-union janitorial firms, it looks like rates are trending upward, but they need to do more work on the denominator.

Commissioner Bagan asked whether the denominator is hours worked. Mr. Neuhauser confirmed: what they will get from WCIRB is the exposure, which is the payroll. They know the average wage for each of the segments and can derive the hours.

Commissioner Brady asked whether there could be a geographic split, perhaps weighted more heavily in the Los Angeles Basin. Mr. Neuhauser said he could look at the injuries, but he cannot look at the underlying hourly payroll because that is reported statewide. He said they could get a pretty good fix on geography. Mr. Neuhauser reminded Commissioner Brady that Los Angeles is still 60% of the state so they expect to see two-thirds of the injuries there. The data for the unionized firms are probably pretty standard across the north and south; the wage rates are similar. They should be able to make that comparison.

Commissioner Kessler asked whether, when Mr. Neuhauser received the data, he talked to people who were janitors themselves or the heads of the firms. Mr. Neuhauser answered that these are injury data; these are injuries to janitors, whether for a school district or for a janitorial firm. Commissioner Kessler asked whether these injuries were reported. Mr. Neuhauser confirmed. She then asked: reported to whom? Mr. Neuhauser replied, to WCIS. Commissioner Kessler asked whether in this analysis they intended to go to any particular worksite to talk to workers. She said her concern is that for janitors, especially for those for whom English is not their primary language and for whom there may be some challenges if they report, they get fired. How, she asked, are they dealing with issues of intimidation, harassment, coercion, and other kinds of things in order to make an assessment that is factually based in actual work environments, especially for the non-union workers? She asked what their process is for collecting data that would be reflected in those charts going forward.

Mr. Neuhauser said that that was an excellent question. He said, first, that Executive Officer Eduardo Enz might be able to answer more precisely, but another half of the study is being performed by the Labor Occupational Health Program, which is addressing these questions with focus groups and interviews with workers to find out which mechanical and social processes might restrict reporting. Second, with respect to the data, the question is whether the barriers to

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reporting and other similar problems are consistent over time or they have reason to believe that they change dramatically in any particular year. If the barriers stay the same, then building trends such as these is OK. In the event of changes in how people might be perceived, for example, if reforms were passed that legalized immigration status, they might see some change. To the extent that the environment stays the same, the data ought to be similar over time and any underreporting should be similar.

Commissioner Kessler asked whether as they do the assessment they are looking at the types of injuries. Mr. Neuhauser confirmed that this is the case and said that if they find differences—and once they have the denominator from the bureau (WCIRB)—they would like to look through the injuries and geographic location of the worker, and things like that, and see whether there are particular kinds of injuries and particular causes that might drive injuries to be higher. They will report whether they see distinct differences between the kinds of injuries in the custodial industry and injuries that happen to custodial workers in industries that are primarily something else.

Commissioner Kessler asked whether they are looking at short- or long-term injuries. For example, a back injury might be an immediate short-term injury. A long-term injury may be exposure to chemicals, used long term, that might cause a person to develop a certain form of cancer directly related to the carcinogens they were working with to clean a particular environment. She asked whether they were looking at those kinds of aspects in their analysis. Mr. Neuhauser said that the answer is in part a dissertation and that he would be happy to speak to her about it offline. He said that they see all kinds of injuries in their data. The kinds of injuries that are exposure to illnesses are data that lag so much that they are underreported due to the nature of that condition. If they do show up, they will be seeing them because they are tracking any condition that is reported. Somebody in 2002 who had been working in the janitorial industry for 20 years might be reporting that condition, and somebody who started in 2002 and is injured in 2014 might be reporting that condition. He said that they should see those conditions, with the caveat that those kinds of injuries and exposures and the assignment of causation are always very difficult.

Commissioner Kessler asked when they anticipated bringing back the next series of reports. Mr. Neuhauser said that if they have the data from the bureau (WCIRB) in the next week or two, and he thinks they will, they should have a draft report by October. She asked whether he could tell the commission in advance what the denominators are. Mr. Neuhauser said that Commissioner Bagan was correct earlier that they will use exposure and can look at the dollars and average wages, so they will have hours or FTEs in a standard format.

CHSWC Report

Eduardo Enz, Executive Officer, CHSWC

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On behalf of the commission staff, Mr. Enz expressed sadness over the passing of Commissioner Schwenkmeyer. He thanked the commission members for the opportunity to brief them. Commission staff has been monitoring ongoing studies related to SB 863 implementation and evaluation of its effects and helping coordinate and host stakeholder meetings to address the fraud issue in the workers' compensation system.

Review of Ongoing Studies

The commission is awaiting the completion of a comprehensive RAND study on *Medical Care Provided to California's Injured Workers* and a white paper from Barbara Wynn at RAND with a focus on UR. The larger RAND study should be completed before the next meeting, in October. The RAND white paper on UR should be completed this month and is an action item for consideration.

Mr. Enz read the Action Item as follows:

Does the commission wish to approve for final release and posting when it becomes available the draft white paper on UR in the California Workers' Compensation System by Barbara Wynn at RAND?

Chair Wei asked the commissioners for a motion to entertain the Action Item. Commissioner Bouma moved to do so, and Commissioner Brady seconded the motion. Commissioner Bouma said they do not have the white paper and asked whether they were moving to approve it for release. Mr. Enz explained the report in general terms, and Commissioner Bouma concluded that the vote was a way to expedite the information before the legislature is done talking about it. Commissioner Kessler said she wanted to see the paper before voting on it. She said if they have questions or comments, if they are going to release the paper with the commissioners' approval, she would like to see it before voting on it. She said she will abstain on this issue until she has time to look at what she is voting on in order to make an informed decision. Chair Wei said she sees this as a way for the commission to pass through a draft report for public comment. She said the motion would allow them to put up the draft. She said as commissioners and in their other roles they are welcome to make comments on the draft and then the final draft will come back to the full commission for a final vote before it is listed as a final, approved report of the commission. Chair Wei asked Mr. Enz whether that was accurate. Mr. Enz confirmed that it is. Chair Wei said that she would like to believe that because of the timing of when the white paper is available and the timing of this meeting that they are simply going to be a pass-through body as a draft for public comment. She said this is not the final report; they are not entertaining a motion to vote on a final report for publication. Commissioner Kessler said that she would have liked to see it beforehand. Chair Wei said that she thinks this is not the way it is going to be going for the commission, but, because of the timing of the issues and the pressing nature of the

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legislative discussion, they are simply going to take the vote and pass this through for public comment to expedite the process.

The motion passed with one abstention (Commissioner Kessler).

Mr. Enz said that RAND continues to make progress on its *Evaluation of SB 863 Medical Care Reforms* study, and they expect to receive a final report by spring 2017. Additionally, the *janitorial study* is underway and they have entered into memoranda of understanding regarding the data to carry out the research.

Developing a Formulary

DWC has made significant progress in developing the drug formulary for the workers' compensation system pursuant to AB 1124. An interim report on implementation status has been posted to the DWC website to provide an update on progress to date. RAND has been contracted to (1) conduct a review of existing formularies that DWC might consider and summarize their relative weaknesses and strengths, (2) review the options for the related policies needed to implement and update the formulary, and (3) make recommendations for the formulary implementation policies and updating process. This report is expected to be released this month.

DWC is developing the structure of the key reference tool, the preferred drug list, which will soon be circulated for public review and input. This preferred drug list will detail which drugs require prospective UR based on the MTUS guidelines. DWC is drafting the rules for the formulary, which will soon be posted on the DWC Forum for public review and input. An announcement will be made after these materials are available.

Antifraud Efforts

Secretary David Lanier directed DIR director Christine Baker to undertake a concerted effort to identify and curb fraudulent activity in the workers' compensation system. As directed by Secretary Lanier, DIR, the Department of Insurance, DWC, and CHSWC are working collaboratively and, as part of their efforts, convened working groups in June to elicit information and evidence of fraudulent activity in the workers' compensation system. A white paper on antifraud efforts is expected this fall.

PT and Chiropractic Cap Elimination Legislative Request

The commission received a request from state Senator Jim Beall that the CHSWC conduct a study on the effects of eliminating the statutory 24-visit cap on PT and chiropractic on either utilization or cost, given the universally required UR and other existing safeguards regarding unnecessary care. They are continuing to monitor the data, and updates of the Medical Treatment Utilization Schedule Guidelines should provide guidance.

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Other than the February 19 meeting minutes and the RAND white paper on UR, there were no other action items to vote on.

Comments by Commissioners

Commissioner Kessler said that when the commission needs to vote on something to be made public, she would appreciate having it before a vote so that they can take a look at it. She said she was aware of the time constraints, but as a matter of doing business, if they want her to vote on something, in the future she would like to see it first.

The commissioners had no further comments.

Public Comment

There were no further public comments.

Other Business

None.

Adjournment

The meeting was adjourned at 11:37 a.m.

Approved:

Angie Wei, 2016 Chair

Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC

Date