

INTRODUCTION

The California Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to present the Executive Summary and Recommendations from the 1999-2000 CHSWC Annual Report of its activities to improve programs vital to all Californians.

CHSWC was established by the 1993 workers' compensation reform legislation to oversee the health and safety and workers' compensation systems in California and recommend administrative and/or legislative modifications to improve their operation. The Commission is composed of eight members appointed by the Governor, Senate, and Assembly to represent employers and labor.

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

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

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

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

Our common goals are safe workplaces and a system that delivers the proper benefits to injured workers in a prompt and cost-effective manner.

CHSWC looks forward to further cooperative endeavors with the community to improve the health, safety and workers' compensation systems in California.

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OVERVIEW OF RECOMMENDATIONS

RECOMMENDATIONS FOR LEGISLATIVE ACTION

- L 1. Consider workers' compensation benefit increases.
- L 2. Eliminate the 'baseball arbitration' provisions of Labor Code Section 4065.
- L 3. Establish requirements for the provision of information to injured workers.
- L 4. Revise the DWC workers' compensation audit function.
- L 5. Revise Labor Code Section 78(b) to change the funding mechanism for the Commission on Health and Safety and Workers' Compensation.
- L 6. Reconsider the presumption of correctness for treating physician reports.
- L 7. Consider revising the workers' compensation pharmaceutical cost structure for potential savings.
- L 8. Consider increasing incentives for returning permanent disabled workers to jobs with the same employer.
- L 9. Clarify Labor Code Section 5814 regarding penalties for "unreasonable delays".
- L 10. Consider increasing options for injured workers entitled to Vocational Rehabilitation.
- L 11. Establish requirements to identify illegally uninsured employers and bring them into compliance.
- L 12. Require workers' compensation anti-fraud notices or warnings be given to employers and insurers, similar to those given to workers.
- L 13. Consider streamlining the provision of benefits by paying indemnity benefits at a single rate.
- L 14. Consider establishing statutory limitations on workers' compensation liens.

OVERVIEW OF RECOMMENDATIONS

RECOMMENDATIONS FOR ADMINISTRATIVE ACTION

- A 1. Evaluate the judicial function of the Division of Workers' Compensation.
- A 2. Standardize WCAB judicial operations by eliminating 'local' forms and procedures.
- A 3. Consider utilizing technology to support and manage office operations.
- A 4. Improve DWC information systems

RECOMMENDATIONS FOR CONTINUED EFFORTS

- C 1. Permanent Disability
- C 2. Occupational Health and Safety
- C 3. Focus on efforts to help injured workers return to sustained employment.
- C 4. Improve the Workers' Compensation Benefit Notice Program
- C 5. Protect and Educate Young Workers
- C 6. Continue anti-fraud activities in the workers' compensation system.
- C 7. Evaluate the Workers' Compensation Anti-Fraud Program
- C 8. Review Statutorily-Required Safety Efforts
- C 9. Monitor Medical Care and Costs

RECOMMENDATIONS FOR LEGISLATIVE ACTION

Recommendation for Legislative Action – L 1

Consider workers' compensation benefit increases.

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

Various proposals to increase workers' compensation benefits have been submitted to the Legislature. Concerns have been expressed that increases in benefits would have a negative impact on the California economy and on California employers and employees.

At its December 1999 meeting, the Commission voted to engage in a project to analyze workers' compensation benefit costs in relation to the larger California economic picture.

Data utilized in these analyses were derived from a variety of sources, including the Legislative Analyst's Office, the Office of Economic Research, the Department of Finance, the Division of Labor Statistics and Research, the Workers' Compensation Insurance Rating Bureau of California, the California Workers' Compensation Institute and other organizations. The Survey Research Center at the University of California at Berkeley contributed expertise and technical models.

The following observations were derived from those analyses:

- California has the largest and most diverse economy in the nation. The California economy is robust and is projected to continue to do very well. Economic growth in California is expected to continue to exceed that of the nation as a whole, reflecting faster population growth and the state's favorable mix of high-tech industries. The resources appear to be there to provide adequate compensation to those workers who lose their ability to compete in the labor market.
- California's industrial injuries and illness rates have declined significantly in all industries and sectors between 1988 and 1998 even though California's economy was growing. This improvement has been ascribed to a number of factors including shifts in the workforce, greater emphasis on work-place safety, continued efforts to combat workers' compensation fraud, limitations on psychiatric injuries, and changes in employer reporting patterns.
- Workers' compensation benefits have not kept up with inflation. For example, the value of the permanent disability benefit after adjustment for inflation has declined to about 80% of its value in 1984. Consideration should be given to indexing benefits.

RECOMMENDATIONS FOR LEGISLATIVE ACTION

- Workers' compensation costs decreased from 1992 through 1995 due in large part to declining claim frequency and the elimination of the minimum rate law governing workers' compensation premiums.
- Increases in total workers' compensation costs from 1995 to 1998 are due in part to the growth of the California workforce. Projected increases in cost from 1999 to 2005 also take into account projected workforce growth. These estimates reflect underlying cost increases calculated by the Workers' Compensation Insurance Rating Bureau of California (WCIRB) that led WCIRB to recommend increases in the premium rate.
- The ratio of workers' compensation costs to total payroll (and to the Gross State Product and to Personal Income) has dropped significantly during the 1990s. Proposed increases to benefits do not seem to significantly impact the ratio of benefits to total payroll (and to GSP and PI), but such increases could affect certain sectors more than they might others.
- Whenever a benefit increase goes into effect, the Commission on Health and Safety and Workers' Compensation should study the impact of benefit increase on wage loss of workers, time-out of work, the benefit adequacy and equity, costs and utilization. This should include an ongoing evaluation of the adequacy of workers' compensation benefit levels and recommendations for adjustments as needed.

For further information...



See the section of the complete 1999-2000 CHSWC Annual Report entitled "Workers' Compensation and the California Economy"

Recommendation for Legislative Action – L 2

Eliminate the ‘baseball arbitration’ provisions of Labor Code Section 4065.

Final offer arbitration – also known as ‘baseball arbitration’ – was introduced into the workers' compensation decision process as a result of the 1993 reforms.

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

However, the result of the use of such ‘baseball arbitration’ is often perceived as unfair. Experienced triers of fact in the workers' compensation field believe that more often than not an applicant's true disability lies somewhere between the description of permanent disability obtained by the applicant and that procured by the defendant. Concern has been expressed that under Labor Code §4065 the workers' compensation judge may be “forced” to award too much or too little in permanent disability benefits to the injured worker.

In April 1999 the Commission requested a report on the effectiveness and experience of baseball arbitration in the WCAB. CHSWC staff collected data and information in the WCAB district offices. The Commission was informed that Workers' Compensation judges are having problems with the application of Section 4065 and that many are reluctant to use it. This is confirmed by the reported cases in the CHSWC study. The parties are equally adept at avoiding baseball arbitration. The literature review, the preliminary data analysis, and legal and anecdotal evidence all indicate that there are problems with the implementation of final offer arbitration in workers' compensation.

A report entitled “Preliminary Evidence on the Implementation of ‘Baseball Arbitration’ in Workers' Compensation” was issued in November 1999. At its meeting on December 16, 1999 in Los Angeles, the Commission on Health and Safety and Workers' Compensation voted unanimously to recommend the repeal of Labor Code Section 4065.

For further information...



CHSWC Report: ‘Preliminary Evidence on the Implementation of Baseball Arbitration’ (1999)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 3

Establish requirements for the provision of information to injured workers.

The Commission noted that various laws and regulations had been identified as problematic with respect to workers' compensation benefit notices and directed that staff draft proposed statutory changes to the Labor Code to address those problems. A report entitled "Recommendations: Information for Injured Workers" detailing the proposed legislative changes was approved by the Commission at its April 2000 meeting.

The primary purpose of the proposed legislative changes is to make uniform the Labor Code provisions regarding notices to injured workers. The objectives of the proposed changes are to improve the information given to employees by employers prior to and soon after injury, information available at state Information and Assistance offices, information from claims administrators, the content and clarity of benefit notices, and the timing of some of the most problematic benefit notices.

The proposed legislation would specify the following:

A. Information from Employer Prior to Injury

Prior to injury, all workers will have basic, introductory information about workers' compensation. This will include, for example: the right to designate one's personal physician prior to injury; how to get emergency medical treatment if needed; and how to report a job injury. The information will be posted in the workplace and given to new employees in writing.

B. Information from Employer Soon After Injury

Soon after injury, injured workers who are entitled to receive a claim form will be given practical, instructional information. This will include, for example: how to request workers' compensation benefits; what happens with the claim form after it is filed; from whom the employee can obtain medical care for the injury; the role and function of the primary treating physician; and sources of information and help. The information will be contained on the reverse side of the claim form, and the claim form will instruct the injured worker to read the reverse side.

C. Information Available from State Information & Assistance Offices

A comprehensive guide advising employees about the California workers' compensation system will be available from state Information & Assistance offices. (This will expand upon the information currently required under Labor Code Section 139.6.)

D. Information from Claims Administrator

If the employer did not give an injured worker who is entitled to receive a claim form the instructional information described in B, above, the claims administrator will provide it to the worker. (This will clarify an existing requirement that claims administrators provide an injured worker with the instructional information that is contained on the reverse side of the claim form, if the employer failed to do so. The existing requirement is set forth in the California Code of Regulations, Title 8, Sections 10117, 10118, and 10119.)

For injured workers who are sent benefit-notice letters, the claims administrator will include, with the first letter, a comprehensive guide about the workers' compensation system. (This will simply modify an existing requirement that claims administrators include an "information pamphlet" with the first benefit-notice letter sent to a claimant. The existing requirement is set forth in Labor Code section 138.4(a) and the California Code of Regulations, Title 8, Sections 9810(d), 9812, and 9813.)

E. Format of Benefit Notices

The basic information and concepts given in the comprehensive guide described in D, above, will not be repeated within the main body of benefit-notice letters. Instead, the letters will refer the injured worker to relevant portions of the comprehensive guide.

Information regarding the claimant's remedies and the right to consult with a state Information & Assistance officer or an applicants' attorney (which will be given in the comprehensive guide described in D, above) will not be repeated within the main body of benefit-notice letters. Instead, each benefit notice will be accompanied, outside the main body of the letter, by brief statements describing the right to disagree with a decision and how to contact an I&A officer or the State Bar of California. (This will revise existing requirements to include -- within benefit notices -- vague, difficult-to-understand language describing remedies, I&A services, and attorneys. The existing requirements are set forth in Labor Code sections 138.4 and 4061 and the California Code of Regulations, Title 8, Sections 9811(f), 9812, and 9813.)

For further information...

-  See the CHSWC Project Section of the complete 1999-2000 Annual Report:
'Benefit Notice Simplification'
-  CHSWC Report: 'Recommendations: Information for Injured Workers' (2000)
-  CHSWC Report: 'Navigating the California Workers' Compensation System: The Injured Workers' Experience' (1996)
-  Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 4

Revise the DWC Workers’ Compensation Audit Function

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

In April 1998, the Senate Industrial Relations Committee and the Assembly Insurance Committee jointly requested that the Commission undertake an evaluation of the effectiveness of the audit function of the Division of Workers’ Compensation.

This legislative initiative was in part a response to considerable concern raised by some members of the workers compensation community. These concerns focused on the results of recent annual audits that showed substantial numbers of violations and found what many felt were excessive levels of unpaid compensation. Some observers also interpreted these data, when extrapolated to the entire population of claims locations, to indicate a trend toward poor performance in the delivery of benefits to injured workers.

The Commission project team researched the issue and conducted thoughtful discussions with DWC Audit Unit management and staff, the Audit Advisory Committee and other community members. The study determined that the current audit procedure did not include all insurers within a reasonable period of time, did not focus on the worst performers and concentrated penalties on relatively inconsequential violations.

The study participants concluded that although much time and effort was being expended by the DWC Audit Unit in performing audits of workers’ compensation insurers, a redirection of these activities would produce more effective outcomes.

The Commission is recommending revisions to the audit function, in order to:

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

RECOMMENDATIONS FOR LEGISLATIVE ACTION

Under current DWC audit procedures, locations are rarely subject to random audits and almost never subject to targeted audits. The Commission recommends the replacement of current audit procedures with the following:

- Simplified audit, focusing on key violations.
- Auditing of all locations on a five-year cycle.
- Electronic monitoring of key performance indicators where possible.
- Increased use of targeted audits to identify poor performers.

The results of the routine audits should be used to:

- Identify poor performers for an in-depth review.
- Verify data integrity.
- Benchmark performance on key indicators.
- Rank performance of adjusting locations.

For further information...



'CHSWC Report on the Workers' Compensation Audit Function' (1998)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 5

Revise Labor Code Section 78(b) to change the funding mechanism for the Commission on Health and Safety and Workers' Compensation.

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

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

Recommendation for Legislative Action – L 6

Reconsider the presumption of correctness for treating physician reports.

Before 1993, whenever a medical issue arose in a workers' compensation case, many medical reports were involved in the resolution. In addition to the reports of the treating physician, the applicant and the defendant were each entitled to procure a medical-legal evaluation and report, in each appropriate medical specialty.

In the 1993 reforms, the role of treating physician in evaluating disability was increased in the workers' compensation process. They were required by legislation to report on all medical issues necessary to determine eligibility for compensation. In addition, whenever another medical evaluation is obtained, the findings of the treating physician are presumed to be correct. This gives a much greater weight to the findings of the treating physician, which required rebuttal by preponderance of evidence. The intention was that this would reduce cost of medical-legal reports and give less biased opinions.

The workers' compensation community raised a number of concerns about the presumption. Many people felt that the reports submitted by treating physicians were, in the main, unratable, leading to much duplicative action by both the DWC Disability Evaluation Unit and by insurers. Second, even when the reports were ratable, many felt that these reports were of poorer quality than those supplied by forensic doctors -- qualified medical evaluators appointed and regulated by the Industrial Medical Council. Therefore, giving these poorer quality reports a presumption of correctness caused additional problems for the insurer, the employer and the worker. And finally, because the treating physician has a presumption of correctness that has to be overcome, there was a feeling that parties might 'shop' for a doctor at the time the forensic report was going to be issued.

The Commission contracted with the University of California for a project to evaluate the role of the treating physician, the quality of treating physician reports, and the cost-benefit of the presumption of correctness of treating physician reports. The study utilized a random sample of closed files was drawn from four different WCAB offices. The Commission worked with the IMC and the Disability Evaluation Unit to develop a set of criteria upon which to judge the quality and adequacy of these reports. These reports were then evaluated by the Disability Evaluation Unit managers and raters, against the set of criteria that were developed. Finally, the WCIRB Rating Bureau's Permanent Disability Claim Survey was used to evaluate the impact of the presumption on the frequency of reports and the total cost of medical-legal reports.

The project report concluded that

- Primary treating physician reports compare poorly with reports completed by Qualified Medical Examiners (QME), even when the treating physician was a QME.
- Most of the problem is with reports by primary treating physicians who are not also QMEs.

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- There is no evidence to demonstrate reductions in medical-legal costs result from the 'presumption'.
- Consideration should be given to eliminating the 'presumption' or replacing it with a lower standard.

In addition, there seems to be consensus within the WCAB that the presumption has increased litigation and curtailed the discretion of the Workers' Compensation Judges to craft reasonable decisions within the range of evidence.

The report recommends that the standard be set at a different level which gives great weight to the treating physician but allows the judges to use judicial discretion and to award based on the range of evidence.

In May 2000, the Legislature requested that the Commission update its study report on the presumption of correction for treating physician reports. An updated report is expected by the summer of 2000.

For further information...



See the CHSWC Project Section of the complete 1999-2000 Annual Report:
'Update of Treating Physician Report and Presumption Study'



CHSWC Report: 'Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician' (1999)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 7

Consider revising the workers’ compensation pharmaceutical cost structure for potential savings.

The 1993 reform legislation amended Labor Code Section 5307.1 to require that the Administrative Director of the Division of Workers’ Compensation include ‘drugs and pharmacy services’ in the Official Medical Fee Schedule (OMFS).

In response to that mandate, the 1993 Official Medical Fee Schedule included a “Pharmaceuticals” section which provides that reimbursement for the dispensing of all pharmaceuticals shall be the lesser of

1. The provider’s usual charge, or
2. The fees established by the formulas in the OMFS for brand-name and generic pharmaceuticals.

The formulas for establishing fair and reasonable fees and charges for brand-name and generic pharmaceuticals are specified in the Official Medical Fee Schedule:

Brand Name Pharmaceutical Formula:

Average Wholesale Price (AWP) times 1.10 plus a \$4.00 dispensing fee.

Generic Pharmaceutical Formula:

Average Wholesale Price (AWP) times 1.40 plus a \$7.50 dispensing fee.

When a generic pharmaceutical costs more than a brand name pharmaceutical, according to these formulas, the fair and reasonable price will be the brand name equivalent, as calculated by the formula.

At the request of the Commission, staff performed initial research, which indicated that California’s workers’ compensation system has high reimbursement rates for pharmaceutical bills relative to Medicaid, employer health benefits, and other states’ workers’ compensation systems reviewed.

At its meeting in November 1999, the Commission voted to engage in a new project to assess workers’ compensation pharmaceutical costs and identify potential savings. The key question of the study is to determine changes in pharmaceutical costs within workers’ compensation under different fee schedule structures.

The research team has made recommendations to the Commission on which fee schedule structures are most consistent with reasonable reimbursement to pharmacists and reasonable costs to employers.

Consideration should be given to resetting the fee schedule. In considering reducing the fee schedule reimbursements, thought should be given to improving the efficiency of the process. This could be accomplished by increasing employers’ ability to negotiate network agreements with pharmacies. In addition, insurers and employers should

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consider guaranteeing payment for at least the initial prescription when the doctor indicates that the injury arose out of work, even if the claim has not been processed or accepted.

There was consensus that a requirement to issue generic drugs when available, except when the medical provider specifies “dispense as written”, would improve the system. In practice, generics are already dispensed in 90% of the situations.

For further information...



See the CHSWC Project Section of the complete 1999-2000 Annual Report:
Pharmaceutical Costs Study



CHSWC Report: Study of the Cost of Pharmaceuticals in Workers' Compensation (2000)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 8

Consider increasing incentives for returning permanently disabled workers to jobs with the same employer.

The Commission study of permanent disability, conducted by the Rand organization, has found that permanently injured workers who return to work at the same employer have reduced levels of uncompensated wage loss over a five-year period.

The Commission's study of the vocational rehabilitation program also found that injured workers have greater success at rehabilitation when they return to alternate or modified work with the same employer.

The Commission is also convening a Task Force to look into creative possibilities in alternate or modified work for the construction industry. Often injured workers in the construction industry are released by the doctor for modified work, but they cannot go back to the construction site. The Task Force, whose members have been dealing with this issue, will provide insight from the worker's and employer's perspective about what works and what does not.

For further information...

-  See the CHSWC Project Section of the complete 1999-2000 Annual Report:
 'Task Force on Alternate or Modified Work in the Construction Industry'
 'Vocational Rehabilitation Study'
-  CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)
-  CHSWC Report: 'Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)
-  CHSWC Report: Permanent Disability Study Report (RAND, 1997)
-  Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 9

Clarify Labor Code Section 5814 regarding penalties for “unreasonable delays”

Labor Code Section 5814 provides when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the ordered decision and award shall be increased by ten percent. The question of delay and reasonableness of the cause thereof shall be determined by the Appeals Board in accordance with the facts.

The purpose of the statute, adopted as part of the 1945 reforms, was first to provide incentive to claims administrators to pay benefits promptly by making delays costly, and secondly to some extent, to compensate the injured worker for the hardships resulting from the delay. Except for a minor amendment as part of the 1965 reforms transferring the jurisdiction of the Industrial Accident Commission to the WCAB, Section 5814 has not been modified by the Legislature.

As early as 1959, however, the appellate courts began a continuing series of decisions interpreting and reinterpreting the section. Some of the results of the judicial interpretation can find no direct support in the language of the statute. The problems that the workers' compensation community continually encounters with Section 5814 have been discussed over the years but no serious legislative efforts have been made to resolve them.

In October 1998 the Commission issued a 'call for information', requesting input from the workers' compensation community and the public for an issue paper on the Section 5814 penalty provisions. Responses were received from throughout the community. There were general criticisms of the statute that it was confusing, difficult to interpret and complicated to apply. Specific criticisms from the insurer and employer community indicated there was no clear standard of what constituted unreasonable conduct and that penalties imposed were disproportionate and unfair. Concern was also expressed regarding the possible effects of the Stuart and Moore decisions by the California Supreme Court. Applicants and the applicants' attorneys view Section 5814 as ineffective as indicated by the number of penalty claims filed and imposed, and also that whenever an unreasonable delay occurs and continues, there is no further sanction.

These various responses indicated a need to study Labor Code Section 5814 with an aim for providing an adequate deterrent against unreasonable delay or refusal, but at the same time providing penalties that bear some relationship to the claims administrators' culpability.

At the Commission's direction, the project staff reviewed workers' compensation proceedings at the district office, reconsideration and appellate levels to determine the frequency that delay issues were raised and penalties assessed. A draft report was prepared containing proposed findings and recommendations. The most significant finding was that penalty petitions are raised in one out of four cases – indicating the possibility of substantial delays to injured workers, unnecessary expenses to employers and carriers, and a litigation cost to injured workers, to employers and to the system

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itself. It was also apparent that there is a higher number and frequency of penalty claims in Southern California than in Northern California.

In December 1999, the Commission released the draft report for public comments. The Commission also offered to serve as a clearinghouse for any suggestions for legislative language to revise Section 5814. The Commission convened an Advisory Committee to review the public comments and submit recommendations.

At its April 2000 meeting, the Commission decided to approve the findings of the Issue Paper but to defer to the Legislature and the workers' compensation community with respect to recommendations on the Labor Code 5814 penalty provisions.

For further information...



CHSWC Report: 'Issue Paper on Labor Code Section 5814' (2000)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 10

Consider increasing options for injured workers entitled to Vocational Rehabilitation

Vocational Rehabilitation (VR), a mandatory workers' compensation benefit established in 1975, is intended to return qualified workers to "suitable gainful employment". VR provides for vocational counseling, training, and "return to work" services.

The legislature enacted a series of reforms in 1993 meant to improve the workers' compensation system. A major component of the legislative package was a set of reforms to the Vocational Rehabilitation benefit, aimed at reducing the cost of VR while maintaining or improving the outcomes for these seriously injured workers.

The 1993 workers' compensation reform legislation made major changes affecting the level and delivery of the vocational rehabilitation benefit:

1. A \$16,000 cap was placed on the vocational rehabilitation benefit.
2. A cap was placed on the total cost of services supplied by a qualified rehabilitation professional (QRR).
3. A qualified injured worker was not eligible to receive rehabilitation benefits if an employer made an offer of modified or alternate work that met certain conditions.
4. A worker was not eligible to receive more than one rehabilitation plan except under special circumstances.
5. The assignment of the QRR at 90 days was eliminated.

The Commission contracted for a study to help evaluate the impact of the workers' compensation reform legislation on the vocational rehabilitation system. The study is assessing whether the reforms reduced the cost of the rehabilitation benefit for employers and determining how those changes have affected outcomes for injured workers qualifying for the benefit. The Commission's study is ongoing, but preliminary results are available on the impact of the reform.

The study finds that as a result of reforms, the cost of the Vocational Rehabilitation benefit was cut in half. Nearly three-quarters of the saving was a result of the cap placed on total cost, the cap placed on QRR services and the limitation placed on the number of plans. Over one-quarter (28%) of the savings resulted from shifting workers from use of vocational rehabilitation services into modified and alternate work with the at-injury employer.

While the cost of the rehabilitation benefit was reduced substantially, the outcomes for workers did not change. Both the level of post-injury employment and the level of post-injury earnings were comparable pre and post-reform. The reforms reduced costs without a negative impact on injured workers.

RECOMMENDATIONS FOR LEGISLATIVE ACTION

The outcomes for workers qualifying for the rehabilitation benefit are comparable to those injured workers with similar permanent disabilities but who are able to return to their at-injury occupation.

However outcomes for these seriously injured workers remain poor. Much remains to be done to improve post-injury employment outcomes for all seriously injured workers, especially for particularly hard-hit segments of this group. The preliminary results from the Commission's study highlight substantial problems for older workers, seriously injured workers, and workers who suffer injuries that result in substantial levels of chronic pain.

The Commission recommends that consideration be given to increasing options for injured workers entitled to the Vocational Rehabilitation benefit. Such options could include, but are not necessarily limited to, increasing opportunities and incentives for return to work, alternative and/or modified work, or providing cash settlements in lieu of vocational rehabilitation.

For further information...



CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)



CHSWC Report: 'Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 11

Establish requirements to identify illegally uninsured employers and bring them into compliance

Employers that are not covered for workers' compensation impose a burden on injured workers, on employers that comply with the workers' compensation insurance requirements, and on the state's taxpayers.

The Department of Industrial Relations and the Division of Workers' Compensation have implemented ongoing procedures to identify illegally uninsured employers and bring them into compliance, based on the Commission's successful pilot projects. These activities involve data matching and coordination among DIR, the Employment Development Department and the Workers' Compensation Rating Bureau of California.

The Commission recommends that these activities be mandated in the Labor Code to ensure their continuation and has drafted proposed legislation to carry out that goal.

The proposed legislation will:

1. Require the Division of Labor Standards Enforcement to establish a program for targeting industries with a high incidence of failure to secure the payment of compensation, to identify employers with payroll but no record of insurance coverage, to follow up with contacts and inspections, and to report annually to the Legislature on the effectiveness of the program.
2. Require the Labor Commissioner to include enforcement of the statute requiring employers to secure the payment of compensation as one of the priorities of the field enforcement.

For further information...



CHSWC Report: 'Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring them Into Compliance' (1998)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 12

Require workers' compensation anti-fraud notices or warnings be given to employers and insurers, similar to those given to workers.

Various laws are on the books prohibiting workers' compensation fraud by all parties and requiring that anti-fraud warning notices be given to employees. However, there are no statutory provisions that anti-fraud notices or warnings be given to other parties, such as employers or insurers.

In order to broaden the campaign against all types of workers compensation fraud and to promote a more evenhanded approach to the problem, CHSWC recommends that information about consequences for noncompliance with workers' compensation law and regulations be conveyed to all parties, especially at the time they are requesting services or reimbursement.

The Commission is recommending legislation to require notices or warnings be given to employers and insurers, similar to those given to workers. Such notices or warnings could either be specifically targeted toward employers and insurers or could be combined with the existing notices and warnings and disseminated to all parties and the public.

Employers would be notified of the requirement to provide workers' compensation coverage, of their responsibility to report accurately on their workforce when procuring coverage and to report injuries timely. Services providers would be informed of the requirement to keep proper records and the consequences related to falsifying claims for equipment or services rendered.

For further information...



CHSWC Report: 'Report on the Campaign Against Workers' Compensation Fraud' (2000)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 13

Consider streamlining provision of benefits by paying indemnity benefits at a single weekly rate.

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

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

The Commission recommends that consideration be given to the proposal that an injured worker receive payment for all types of workers' compensation indemnity benefits at a single weekly rate. Under this proposal all workers' compensation benefits would be paid at the Temporary Disability rate regardless of the type of benefit.

It is important to note that this would not change the total amount of benefits, only the rate at which they are paid out.

For further information...



'CHSWC Report on the Division of Workers' Compensation Audit Function' (1998)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 14

Consider establishing statutory limitations on the filing of liens on workers' compensation cases.

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

The DWC responded by directing staff resources to deal with the influx of lien claims. Two special units of workers' compensation referees -- one in Santa Ana and the other in Van Nuys -- were specifically set up to handle these medical lien disputes in an expedited manner. The number of lien decisions grew from just over 3,000 in 1990 to over 33,000 in 1995 and 1996. In 1998, the special units were closed and the workers' compensation referees reassigned. In 1999, the DWC issued 17,585 decisions on lien claims.

DWC also instituted a Uniform Lien Policy, which mandates that a good faith effort be made at the mandatory settlement conference to resolve all lien issues. Separate proceedings are not allowed unless a bona fide dispute remains after a good faith effort to resolve it.

Commission staff reviewed this increase in lien filings, and found that in many instances, liens were being filed regarding payments made over 10 years ago for workers' compensation cases.

Despite the diligence and perseverance of the DWC district office staff who are making great efforts to deal with this workload, there appears to be an ongoing lien problem in the Division of Workers' Compensation and a potential for continuing backlogs.

The Commission recommends that statutory limitations be established on the filing of lien claims on workers' compensation cases.

For further information...



See the System Performance section of the complete CHSWC 1999-2000 Annual Report:
Chart: 'DWC Lien Decisions'

RECOMMENDATIONS FOR LEGISLATIVE ACTION

RECOMMENDATIONS FOR ADMINISTRATIVE ACTION

Recommendation for Administrative Action – A 1

Evaluate the judicial function of the Division of Workers' Compensation.

California's workers' compensation system, since its inception during the early 1900s, has been the subject of ongoing discussions and negotiations between California employers and employees. Legislation is periodically enacted to address system difficulties, including rising costs and premiums, benefit adequacy, benefit delivery, and agency performance.

Perceptions of rising costs, stagnant benefits and of rampant fraud emerged in the late 1980s resulting in significant reforms in 1989, and then again in 1993. Some of the 1993 changes sought to reduce judicial discretion and increase the consistency of case outcomes. While many of the measures were successful in reducing costs, some changes may have had unintended consequences which have made the system increasingly complicated to administer. The perception remains that the system is still too complicated and inefficient.

The Division of Workers' Compensation/Workers' Compensation Appeals Board (DWC/WCAB) judicial function has been the focus of criticism by all parties in the system. Lack of uniform policies and an inadequate infrastructure have led to serious system problems. This prompted a legislative proposal to make major changes to the organizational structure of the workers' compensation trial courts in Senate Bill 320 (1999). This proposal contemplated that a "Chief Judge", appointed by the Governor with the powers of the head of a department, would be responsible for the supervision of the judges, support staff, and the rules of court.

At the November 1999 CHSWC meeting, DWC Administrative Director Richard Gannon proposed that a study be conducted of the DWC judicial function by an independent group with the credibility and expertise, such as the Commission. The study would identify possible statutory and regulatory changes to make the system work more efficiently and look at rules and practices that other judicial jurisdictions follow to address problems such as calendaring, casefile movement, proper staffing ratios among judges, secretaries, and clerical staff.

As requested, a draft proposal for a study of the DWC judicial function was prepared by CHSWC staff and submitted to the Commission for their consideration. At the CHSWC meeting in December 1999, staff made a presentation on the draft proposal and noted that the Commission did not currently have the funds in its budget to carry out this project. CHSWC would have to go to the Legislature in the form of a Finance Letter to request funds to complete the study. The Commission voted unanimously to request the funds from the Legislature so that it may engage in the proposed study of the DWC judicial function.

RECOMMENDATIONS FOR ADMINISTRATIVE ACTION

DIR and the Commission agreed that an independent study and evaluation of the DWC judicial process would be very helpful in addressing problems. The Commission approved a study proposal to identify possible statutory changes to make the system work more efficiently and look at rules and practices of other jurisdictions that have addressed problems such as calendaring, casefile movement, proper staffing ratios, and other issues of concern. The goal of this effort is to assist in meeting the Constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...”

The Commission has requested additional funds to carry out this study.

For further information...

↳ See the CHSWC Project Section of the complete 1999-2000 Annual Report:
'Study of DWC Judicial Function'

Recommendation for Administrative Action – A 2

Standardize WCAB judicial operations by eliminating ‘local’ forms and procedures.

Disputes regarding workers’ compensation claims are resolved through the services of judges and staff in the 26 district offices of the Division of Workers’ Compensation throughout the state. However, concerns have been expressed that forms and procedures can vary from office to office, which can cause confusion to the parties and delays in case resolution.

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

At the May 1999 meeting, CHSWC voted to initiate a ‘call for information’ to the community regarding local forms and procedures. The Commission invited the workers’ compensation community and interested members of the public to submit any positive or negative information they might have on the subject of the effectiveness of and compliance with Labor Code Section 5500.3.

A task force was established by the Commission to review the ‘call for information’ findings and each office’s individual procedures, for the purpose of developing proposed revisions to existing forms and procedures for use statewide. The ‘call for information’ responses fell into three categories:

- (1) Local rules adopted in the absence of controlling Appeals Board Rules, local rules that may be contrary to DWC/WCAB policies and procedures, and use of forms that have not been "established by the appeals board."
- (2) Policies and forms of orders used by individual workers’ compensation administrative law judges that are either matters within their judicial prerogative or subjects for further training or discipline.
- (3) General complaints about the way the workers’ compensation dispute resolution system is being operated.

The Commission is pleased to note that as of February 1, 2000, new uniform forms and procedures went into effect at all DWC/WCAB district offices statewide. This was the result of an initiative by DWC Administrative Director Richard Gannon to achieve uniformity in practices and procedures at the different district offices. A panel of workers’ compensation judges developed the documents and a task force of workers’ compensation community representatives reviewed them.

RECOMMENDATIONS FOR ADMINISTRATIVE ACTION

The forms include a new Pretrial Conference Statement to be used after a mandatory settlement conference, and a form that guides the minutes of hearing, continuance requests, taking a case off calendar, and other outcomes subsequent to a hearing. Guidelines for the type of information that should be submitted or requested with settlement requests were also issued to the judges. Training on the guidelines and new forms has already been completed. The new forms are available on the Division's web site.

The Commission recommends that the DWC Administrative Director continue his task force, enforce existing rules, and educate WCJs.

The Commission recommends that the WCAB consider revision of its rules as soon as it gets a chairman to avoid the necessity for local rules.

Recommendation for Administrative Action – A 3

Consider utilizing technology to support and manage office operations.

Recent advances in office support technology would assist DWC, DOSH and the other various work groups in the Department of Industrial Relations. The Commission recommends that consideration be given to innovations that may include, but are not limited to, the following:

Implement electronic filing of documents

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

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

CHSWC also recommends that consideration be given to an automated, simplified benefit notice system with initial key indicators to be submitted electronically to the State of California.

Consider concept of 'paperless office'

Last year, the State Compensation Insurance Fund conducted a walk-through of the operations of their Sacramento office for CHSWC members and staff, who were very impressed with SCIF's 'state of the art paperless claim file system'. The Commission believes that this approach may be helpful to the DIR and particularly to DWC in the management of their many case files.

CHSWC recommends that the DWC continue its efforts to develop and implement the electronic storage of paper files. This could result in significant savings in State Records Center charges and DWC storage space. The Commission recommends that the Workers' Compensation Appeals Board review the applicable statutes and regulations and recommend changes to eliminate unnecessary retention of paper documents while retaining full legal protections for all case parties.

Consider using 'bar coding' and scanners to track WCAB files

CHSWC recommends that DIR consider the use of 'bar coding' and scanners to track casefiles and other documents.

Recommendation for Administrative Action – A 4

Improve DWC information systems

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

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

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

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

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

RECOMMENDATIONS FOR CONTINUED EFFORTS

Recommendation for Continued Effort – C 1

Permanent Disability

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

The Commission has entered into a long-term study of permanent disability, assisted by the Rand organization (under contract with the Commission), to assess the adequacy and distribution of the PD benefit. The Commission is also assisted by the CHSWC Permanent Disability Policy Advisory Committee, comprised of representatives from the workers' compensation community.

Due to the cooperation and strictly controlled data sharing among public agencies and private organizations, the study compiled and analyzed information heretofore unavailable and has yielded important and unexpected findings. For example, the study has determined that permanently disabled workers of both insured and private self-insured employers sustain significant uncompensated wage loss.

The Commission commends the community and the Advisory Committee for its cooperation and involvement in this project and urges the continuation of this collective effort to develop an empirically-based permanent disability rating tool, so that the injured worker gets compensated according to the economic losses he or she has sustained.

For further information...



See the CHSWC Project Section of the complete 1999-2000 Annual Report:
'Permanent Disability'



CHSWC Report: Permanent Disability Study Report (RAND, 1997)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 2

Occupational Health and Safety

The California workplace is changing rapidly: the economy is shifting from manufacturing to services; new materials, processes, and equipment are introduced every day; work weeks are longer; job insecurity and temporary work have increased. The California workforce is also changing, becoming older and more diverse. These changes present new challenges to improving worker safety and health and reducing the impact of work injuries on workers, their families, and society.

The Commission and the community recognize the importance of occupational health and safety and have demonstrated commitment to its furtherance.

The Commission is working with the International Association of Industrial Accident Boards and Commissions (IAIABC) to address occupational safety and health issues nationwide. The CHSWC Executive Officer is Chair of the IAIABC Loss Prevention and Safety Committee and conducted a presentation at the IAIABC Annual Conference.

The Commission is pleased to participate with the community in several activities to promote workplace health and safety.

For further information...

-  See the CHSWC Project Section of the complete 1999-2000 Annual Report:
 - 'Evaluation of Targeting Methods – High Hazard and Loss Control'
 - 'California Occupational Research Agenda (CORA)'
 - 'California Forum for Workplace Health and Safety'
 - 'California Study Group on Young Worker Health and Safety'
-  CHSWC Report: 'Protecting and Educating California's Young Workers – Report of the California Study Group on Young Worker Health and Safety' (1999)
-  Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 3

Focus on efforts to help injured workers return to sustained employment.

It is commonly believed that significant numbers of injured workers in California do not return to work as early as feasible, nor do they return to work with appropriate work restrictions. These workers experience unnecessary and often permanent losses in their functional capacity and their ability to work.

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

CHSWC concurs with the IMC and recommends that the workers' compensation community focus on returning injured workers to sustained employment at the same employer as soon as medically feasible.

Because of the serious physical, financial and personal problems confronting workers with permanent disability, the Commission recommends continuing efforts to promote injured workers' prompt return to work at sustained employment. With the participation and support of the workers' compensation community, the Commission has engaged in several projects in pursuit of those objectives.

For further information...

-  See the CHSWC Project Section of the complete 1999-2000 Annual Report:
 - 'Policies and Strategies to Help Injured Workers Return to Sustained Employment'
 - 'Primary Treating Physician Effectiveness in Return-To-Work After Low Back Injuries'
 - 'Task Force on Alternate or Modified Work in the Construction Industry'
 - 'California Forum for Workplace Health and Safety'
-  CHSWC Report: 'Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?' (1997)
-  Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 4**Improve the Workers' Compensation Benefit Notice program**

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

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

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

The Commission has contracted with the Labor Occupational Health Program to assess the needs and explore methods for improving benefit notices to injured workers. The project team will review and make recommendations on streamlining the Benefit Notice process, clarifying requirements, and ensuring that notices accurately and effectively communicate with injured workers in a format and language that is understandable. As with all CHSWC projects, an Advisory Committee will assist the Commission and project team in this endeavor.

CHSWC also recommends that consideration be given to an automated, simplified benefit notice system with initial key indicators to be submitted electronically to the State of California.

The Commission recommendation for legislation specifying information for injured workers is described in "CHSWC Recommendation for Legislative Action L 3 - Establish requirements for the provision of information to injured workers".

The Commission's next efforts will focus on simplification.

For further information...



See the CHSWC Project Section of the complete 1999-2000 Annual Report:
Benefit Notice Simplification



CHSWC Report: 'Recommendations: Information for Injured Workers' (2000)



CHSWC Report: 'Navigating the California Workers' Compensation System: The Injured Workers' Experience' (1996)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Efforts – C 5

Protect and educate young workers.

A national report called ‘Protecting Youth at Work’, commissioned by the National Academy of Science, called on the states to take a number of steps to take a coordinated approach to protecting young people in the work place.

California is on the forefront due to the California Study Group on Young Workers Health and Safety, sponsored and funded by the Commission. The Study Group is charged with coordinating strategies to protect young people from work-related illness and injury. The study group is composed of groups and individuals dealing with California youth employment and education issues. The members represent all of the state agencies that have a role to play in protecting and educating young people in terms of safe work practices. These include the Labor Commissioner, Cal-OSHA, the Department of Education, Apprenticeship Council, EDD, as well as other representatives such as the Chamber of Commerce, Private Industry Councils, Labor Unions, school representatives, and the statewide PTA.

In the first year the group prepared a report listing recommendations to better protect young people in the work force. In the second year, the group assigned priorities to four areas, including improving the student work permit process, developing an interagency working team to identify interagency strategies, proposing a ‘Safe Jobs for Youth Month’, and developing a network of resource centers.

In 1999 and again in 2000, Governor Gray Davis issued a proclamation designating that May is “Safe Jobs for Youth Month.”

For further information...

-  See the CHSWC Project Section of the complete 1999-2000 Annual Report: ‘California Study Group on Young Worker Health and Safety’
-  CHSWC Report: ‘Protecting and Educating California’s Young Workers – Report of the California Study Group on Young Worker Health and Safety’ (1999)
-  Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Efforts – C 6**Continue anti-fraud activities in the workers' compensation system.**

The Commission and the workers' compensation community recognize that fraud can occur at every stage and in every sector of the workers' compensation system.

CHSWC recommends that anti-fraud efforts be directed at all types of fraud and that the community continue to identify and reduce fraudulent activities perpetrated by anyone and everyone in the system, including but not limited to employers, employees, insurers, and providers.

CHSWC recommends that concept of the 'anti-fraud' warning on workers' compensation claim forms be extended so that that information about consequences for noncompliance with workers' compensation law and regulations be conveyed to all parties, especially at the time they are requesting services or reimbursement. Employers would be notified of the requirement to provide workers' compensation coverage, of their responsibility to report accurately on their workforce when procuring coverage and to report injuries timely. Services providers would be informed of the requirement to keep proper records and the consequences related to falsifying claims for equipment or services rendered.

CHSWC recommends that the penalties for noncompliance with requirements be appropriate and proportionate to the offense. For example, an employer who is illegally uninsured is subject to a misdemeanor, whereas employers who buy insurance but underreport wages or misclassify payroll in order to lower premiums are facing a felony.

CHSWC recommends continued efforts to identify illegally uninsured employers and bring them into compliance. Employers that are not covered for workers' compensation impose a burden on injured workers, on employers that comply with the workers' compensation insurance requirements, and on the state's taxpayers. CHSWC is pleased to note that DIR and DWC have implemented ongoing procedures to identify illegally uninsured employers and bring them into compliance, based on the Commission's successful pilot projects.

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

For further information...



CHSWC Report: 'Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring them Into Compliance' (1998)



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



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Efforts – C 7

Evaluate the Workers' Compensation Anti-Fraud Program.

The workers' compensation anti-fraud program is in the Department of Insurance (CDI) and comprises all CDI Fraud Division investigations statewide. Through this program, the Fraud Division presents criminal cases to local and federal prosecutors, provides assistance to law enforcement agencies, and conducts fraud detection training for insurers and employers. Each county in the state is eligible for program funding to prosecute workers' compensation fraud cases.

Dedicated funding for this program was provided by statute in 1991 and is split equally between the Fraud Division and participating county prosecutors. The funding level for this program is set annually by the Workers' Compensation Fraud Assessment Commission (WCFAC).

By statute, each district attorney seeking a portion of the funds must submit an application to the Insurance Commissioner setting forth in detail the proposed use of any funds provided. Any district attorney receiving such funds must agree that the funds will be used solely for investigating and prosecuting cases of workers' compensation fraud and must submit an annual report to the Insurance Commissioner with respect to the success of the district attorney's efforts. The allocation of funds among the district attorneys who apply is made by the Insurance Commissioner with the advice and consent of the Fraud Division and the WCFAC.

The sources of Fraud Division investigations include referrals by insurance companies and self-insured employers, citizen complaints and Division-initiated cases. The types of complaints or cases investigated include

- Fraudulent workers' compensation claims, including claims made by workers, medical providers, pharmacies, attorneys and others.
- Fraudulent denial of workers' compensation benefits, and
- Workers' compensation premium fraud by employers.

Funding for the program is derived from an annual assessment on employers. The assessment applied to insured employers is based on the dollar amount of their workers' compensation insurance. The assessment on self-insured employers is based on payroll. The annual assessment, initially set at \$3 million, increased to \$25 million in 1994 and to \$28.5 million in 1998. The current assessment is approximately \$30 million.

The Commission noted that concern has been expressed in the community about the way that the Workers' Compensation Anti-Fraud Program was being administered and about the millions of dollars per year expended on anti-fraud activities.

For further information...



CHSWC Report: 'Report on the Campaign Against Workers' Compensation Fraud' (2000)



Check out www.dir.ca.gov/CHSWC/chswc.html for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 8**Review statutorily-required safety efforts**

California has been a leader in developing several models for cooperative safety efforts involving management and labor and for targeting regulatory efforts and resources at firms where they are most likely to improve workplace safety.

Loss Control

A major initiative by California is the regulation of insurer loss control efforts, that is, those efforts by insurers aimed at improving their insured employers' safety experience. During reform, the Legislature enacted requirements dictating certain aspects of insurers loss control effort and assessing fees on employers to fund the effort.

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

This Loss Control effort is often attacked by opponents as interference by government while being lauded by proponents as an efficient way to improve safety. Consequently its future has been the subject of debate within the community.

The Commission recommends that the regulatory oversight function of workers' compensation loss control be reviewed.

High Hazard

In the early 1990s, federal OSHA began an effort to target its resources and interventions where they would have the most effect on workplace safety. The method of targeting and the design of the intervention were largely left up to the states to determine. These programs are generally referred to as "High-Hazard" programs because they target the most hazardous industries, employers, workplace conditions, or a combination of all three. In addition, many states introduced programs that regulated loss control efforts by private insurers and employers, attempting to increase resources these parties focus on the most hazardous work sites.

Despite nearly a decade of efforts and resource expenditure, no systematic assessment of the effectiveness of these programs has been undertaken. There has not even been an effort to describe how various states implement either the targeting or intervention. Consequently, there is no way to assess what characteristics make targeting most accurate and what interventions have the greatest effect on workplace safety. Neither can policymakers determine whether resources are best focused through state regulators or by private insurers and employers.

RECOMMENDATIONS FOR CONTINUED EFFORTS

The reform legislation directed the Division of Occupational Safety and Health to begin a program targeting especially hazardous employers for consultations and inspections, to be funded by assessments upon employers with higher than average workers' compensation costs. The targeting method to identify high hazards was based on the experience modification (x-mod) on the employer's workers' compensation history. But with the elimination of the minimum rate law for workers' compensation premiums in California, the x-mods do not necessarily target unsafe employers. The x-mod may go up, but in an unstable market, this does not necessarily affect the premium price or identify lack of safe conditions.

Evaluating the effectiveness of these programs is important given the limited resources for occupational injury and illness prevention. The Commission has initiated a study of these statutorily-required safety efforts, including the federal OSHA mandate for implementation of targeting and intervention directed at the most hazardous employers. In conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC) and in consultation with the Occupational Health and Safety State Plan Association (OSHSPA), the Commission is undertaking an evaluation aimed at improving the way labor, management, and government target resources to improve health and safety in the workplace.

The Commission recommends ongoing evaluation and research to identify unsafe conditions and improve the targeting methodologies.

For further information...

 See the CHSWC Project Section of the complete 1999-2000 Annual Report:
'Evaluation of Targeting Methods – High Hazard and Loss Control'

Recommendation for Continued Effort – C 9**Monitor medical care and costs**

During the 1990s, medical care under workers' compensation was modified in a number of ways.

Legislation enacted as part of the 1993 workers' compensation reforms was intended to expand the use of managed care in workers' compensation as a means of reducing medical costs and facilitating better management of workers' compensation cases. Other reform innovations include a pilot project to test the feasibility of merging occupational and nonoccupational medical care into one insurance product offering '24 hour' coverage. The reforms also mandated revisions to the Official Medical Fee Schedule and the development of a hospital fee schedule.

The Commission recommends continuing and further evaluation of the impact of such changes and other cost containing mechanisms on the quality of care and access to appropriate care.

Pharmaceutical Cost Structure

The Commission is recommending that the workers' compensation pharmaceutical cost structure be revised, which would necessitate appropriate revisions to the OMFS. (See Recommendation for Legislative Action – L 7.)

Official Medical Fee Schedule

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

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

When a revised OMFS is adopted, the Commission recommends that DWC, with the assistance of the IMC, continue with its statewide educational training efforts to inform all parties on the appropriate use of the OFMS. The Commission will follow the IMC studies and the adoption of a revised schedule by the DWC Administrative Director and provide whatever assistance appears warranted from time to time.

Inpatient Hospital Fee Schedule

The Inpatient Hospital Fee Schedule (IHFS) was developed to meet the mandate of the reform legislation to establish maximum fees for inpatient hospital services. DWC has received letters from hospitals and doctors expressing dissatisfaction with the HFS,

contending that it results in negative fiscal impacts. The Commission recommends that any proposed changes to the IHFS be based on empirical data rather than anecdotal reports of perceived underpayments using the current Inpatient Fee Schedule.

CHSWC Areas of Interest for Possible Further Study

The Commission is exploring the feasibility of engaging in further research in the following areas pertaining to workers' compensation care:

- Managed Care: Outcomes for workers and Employers
 - Identification of the issues and the best model for workers' compensation
 - A look at other states
 - The California experience with regulation and deregulation of managed care programs.
 - The appeal process for managed care coverage decision making.
- Utilization patterns in occupational and non-occupational injuries.
- Cost shifting in health care coverage
- Medical costs in workers' compensation vs. non-work injuries
- Consistency in physician evaluation of disability
- Incentive effects of workers' compensation fee schedules and physician practice
- Adequacy of occupational injury reporting
- Treatment pattern of doctors in workers' compensation cases
- Use of and adherence to treatment guidelines
- Patterns of care among employer-based physicians
- The implementation of RBRVS in workers' compensation
- Medical benefit adequacy in compromise and release settlements
- Medical treatment in denied or delayed claims.

RECOMMENDATIONS FOR CONTINUED EFFORTS

ABOUT CHSWC

The California Commission on Health and Safety and Workers' Compensation

Serving all Californians...

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

CHSWC Members Representing Employers



Jill Dulich

Appointed by: Governor

Jill Dulich is Regional Director responsible for management of workers' compensation and general liability for Marriott International, Inc., operations in California and Hawaii. She also serves in high-level positions with several organizations, including the California Self-Insurers Association, the Alliance of Workers' Comp Professionals, the Californians for Compensation Reform, the Self-Insurers Security Fund, and the Easter Seals Society of Southern California. Jill Dulich received her law degree from Western State University, College of Law in Fullerton, California. Ms. Dulich also received a Bachelor of Science Degree and Masters Degree in Education from California Polytechnic State University in San Luis Obispo, California.



Kristen Schwenkmeyer

Appointed by: Governor

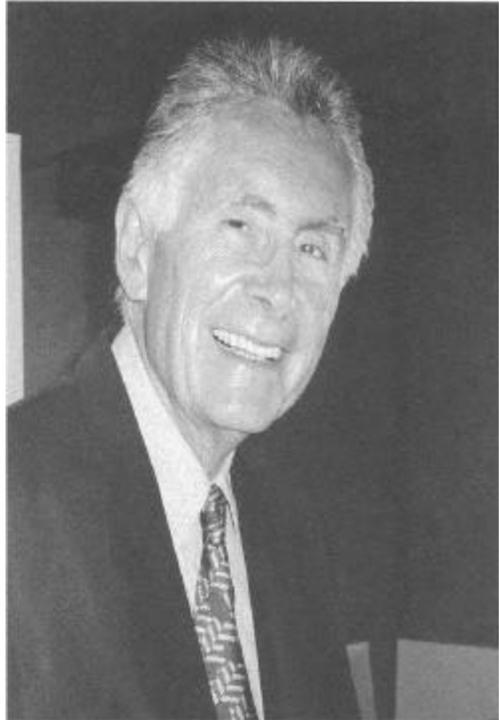
Kristen Schwenkmeyer is Secretary-Treasurer of Gordon & Schwenkmeyer, a telemarketing firm she started with Mike Gordon in March of 1985. Her primary responsibilities include overall administration of operations, budgeting and personnel for a staff of over 700. Prior to her current position, she was Political Director of the California Democratic Party from 1983-1985. Previously, she has served as staff aide to Supervisory Ralph Clark of the Orange County Board of Supervisors and Senator John Glenn in Washington DC. Kristen Schwenkmeyer received a Bachelor of Arts in Political Science from the University of California, Santa Barbara.

CHSWC Members Representing Employers

Robert B. Steinberg

Appointed by: Speaker of the Assembly

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 Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and trustee of the Asbestos Litigation Group (ALG). He is a Past President of the California Trial Lawyers (CTLA) (1985) and Past Trustee of the Los Angeles County Bar Association (1987). He is a member of the Manville, UNR, 48 Insulation, Raymark and Eagle Picher Industries Chapter 11 Creditors' Committees and a member of the Trustee Advisory committee to the Manville, UNR and the National Gypsum Asbestos Disease Victims Trusts. Mr. Steinberg received his law degree and Bachelor of Science Degree from University of California, Los Angeles.



John C. Wilson

Appointed by: Governor

John C. Wilson is the Executive Director of the Schools Excess Liability Fund (SELF). SELF is a statewide Joint Powers Authority with over 1,100 California educational agencies as members. Mr. Wilson held positions with several organizations, including the California Chamber of Commerce, Californians for Compensation Reform, California



Committee for the California Institute for the Council of the State of California. Previously, Mr. Wilson was the General Manager of the San Francisco, California, Department of Hygiene, and was the Director for the self-insurance covering the Ford and Saturn divisions. He received his Bachelor's degree in the field of Business Administration from the University of California, San Diego.



Leonard McLeod

Appointed by: Governor

Leonard McLeod is a sergeant at the California Correctional Training Facility at Soledad and has

CHSWC Members Representing Labor

**Tom Rankin
2000 CHSWC Chair**

Appointed by: Senate Rules Committee

Tom Rankin is the President of the California Labor Federation, the state AFL-CIO federation. For many years, Mr. Rankin also served as the labor member on the Governing Committee of the Workers' Compensation Insurance Rating Bureau, which recommends policy premium rates to the state insurance commissioner. Mr. Rankin's previous employment was as a union representative and organizer. Mr. Rankin received his law degree from Boalt Hall School of Law at the University of California, Berkeley.



Darrel "Shorty" Thacker

Appointed by: Governor

Darrel "Shorty" Thacker is the Senior Business Representative of Local 22, Carpenters. Mr. Thacker also served as the Director of field support operations for the Bay



REPORT

For Information about CHSWC and its Activities

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Internet:

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

- 3 Reports of CHSWC studies and projects
- 3 Information bulletins
- 3 Meeting notices
- 3 Workers' Compensation Fact Sheets
- 3 Workers' Compensation Video
- 3 Information about CHSWC members
- 3 Links to Occupational Safety internet sites

CHSWC Publications

CHSWC Annual Reports

1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-00

Audit Report

“CHSWC Report on the Workers’ Compensation Audit Function” (1998)

Baseball Arbitration

"Preliminary Evidence on the Implementation of 'Baseball Arbitration' in Workers' Compensation" (1999)

Carve-Out Report

"Carve-outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry" (1999)

CHSWC Publications (continued)

Costs and Benefits Report

“CHSWC Report on Costs and Benefits After the Implementation of Reform Legislation” (1999) (NOTE: This report is also in the CHSWC 1998-99 Annual Report)

Fraud Reports

“Report on the Campaign Against Workers’ Compensation Fraud” (2000)

“Workers’ Compensation Anti-Fraud Activities - Report on CHSWC Fact-Finding Hearing” (1997)

Illegally Uninsured Employers Reports

“CHSWC Recommendations to Identify Illegally Uninsured Employers and Bring Them Into Compliance” (1998)

“Issue Paper-Employers Illegally Uninsured for Workers’ Compensation” (1997)

Injured Worker Reports

“Recommendations: Information for Injured Workers” (2000)

“Navigating the California Workers’ Compensation System: The Injured Workers’ Experience” (1996)

Labor Code Section 5814 Issue

"Issue Paper on Labor Code Section 5814" (2000)

Medical-Legal Report

"Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey"

Permanent Disability Study Report (RAND)

Rand Report: "Compensating Permanent Workplace Injuries – A Study of the California System" (1998)

Rand Executive Summary: "Findings and Recommendations on California's Permanent Partial Disability System" (1997)

Return to Work Reports

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

CHSWC Publications (continued)

Treating Physician Report

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

Vocational Rehabilitation Reports

"Vocational Rehabilitation Reform Evaluation" (2000)

"Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of 1993 Reforms" (1997)

Young Worker Report

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

CHSWC Informational Materials

CHSWC Brochure (information overview about the CHSWC members and staff, mission, purpose, activities, projects, publications, web site)

CHSWC Fact Sheets (English and Spanish)

A B O U T C H S W C

What Every Worker Should Know

After You Get Hurt on the Job

Temporary Disability Benefits

Permanent Disability Benefits

For More Information

Working After a Job Injury

Hurt on the Job? Information Alert for Teens

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

Are You a Working Teen?

Are You a Teen Working in Agriculture?

CHSWC Video

“Introduction to Workers' Compensation”