

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

October 4, 2007

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

In Attendance

Chair Kristen Schwenkmeyer

Commissioners Catherine Aguilar, Allen Davenport, Sean McNally, Robert B. Steinberg, Darrel
"Shorty" Thacker

Executive Officer Christine Baker

Not in Attendance

Commissioner Angie Wei

Call to Order / Minutes of Previous Meeting

Kristen Schwenkmeyer, 2007 CHSWC Chair, called the meeting to order at 10:10 a.m. Chair Schwenkmeyer requested a vote on the Minutes of the previous meeting.

CHSWC Vote

Commissioner Thacker moved to approve the Minutes of the August 9, 2007 meeting, and Commissioner Aguilar seconded. The motion passed unanimously.

**Presentation on the Estimates of Workplace Injury Underreporting in California
Les Boden, Ph.D., Boston University, School of Public Health**

Les Boden stated that the study on workplace injury underreporting in California was funded by CHSWC and the National Institutes for Safety and Health (NIOSH). The study used individual workplace injury reports by state workers' compensation agency data from the Workers' Compensation Information System (WCIS) and the Bureau of Labor Statistics (BLS) to measure underreporting. At each step, conservative estimates were made. The goal was to get the lower-bound measure of underreporting. At this time, the study results are almost final and may change only by a couple of percentage points.

Mr. Boden stated that the reason for the study is that workers' compensation is the main source of replacement for lost earnings of injured workers. In addition, workers' compensation may provide employer safety incentives. Mr. Boden stated that if the reported number and the cost of work-related injuries decline, the data could represent the actual number of injuries. However, he stated that this might actually be underestimating the true number of injuries. Still another conclusion that could be drawn from the data might be that prevention efforts have been more successful than they have been and, therefore, that prevention efforts may appear to be less important than they are.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

Mr. Boden discussed several factors that influence whether or not an injured worker files for workers' compensation including that: workers may not know that they are entitled to workers' compensation benefits; workers may feel that accepting workers' compensation benefits brings a stigma of fraud and malingering; expected workers' compensation benefits, including claim acceptance, benefit levels and medical care coverage, may be difficult to get; stoicism or pride may lead some workers to continue to work after injury; and some workers may be concerned about job security, even fear of deportation.

Mr. Boden stated that the study looked at seven states: California, Minnesota, New Mexico, Oregon, Washington, West Virginia and Wisconsin. Data sources for the study included the states' workers' compensation databases, which focus on lost-time injuries and the BLS Annual Survey of Injuries and Illnesses, which provides a stratified probability sample of employers. The BLS sample is drawn in a way to estimate the total number of injuries and illnesses and is based on OSHA 300 injury reports by employers, which are required by OSHA and Cal/OSHA.

Mr. Boden reviewed the study methodology which included collecting BLS and workers' compensation injury data for California, using both sources together to improve injury estimates by matching individual records and getting the number of injuries reported to both sources and to either source, as well as estimating the number reported to neither source because they are not considered by the physician or the worker as work-related.

Mr. Boden stated that conclusions based on the study are that under the most conservative assumptions, 75% of California injuries that qualify for workers' compensation are reported and that California is in the middle of the states studied. The remaining question is why the numbers in the WCIS are low, whether it is because injured workers are not getting compensation or whether they are getting compensated and the cases are not being reported. Still another question is whether unreported injuries are being compensated.

Mr. Boden stated that implications of the study include: that benefits equal 0% benefit adequacy for 25% to 42% of workers' compensation injuries; safety incentives are being reduced; evaluations or policies based on workers' compensation data may be flawed and difficult to evaluate; the priority on occupational safety and health prevention is diminished; and under-compensation may be greater among already marginal workers who are not in a good position to find a new job after injury.

Mr. Boden stated that issues to consider include a comparison of WCIS claims with claims reported to the Workers' Compensation Insurance Rating Bureau (WCIRB) to see if this reveals injuries that should be compensated but are not currently being compensated. Another issue is that over one third of cases reported by employers either do not have a valid Employer Identification Number (EIN) or have no EIN number, and that makes research more difficult. It also makes it more difficult to identify which companies have high injury rates and to identify trends. In addition, Mr. Boden stated that there is no state unemployment identifier that could reveal the relationship with state disability insurance.

Mr. Boden stated that the next steps would be to develop estimates for post-reform reporting to see if the reforms have influenced injury reporting. He stated that a report would be provided in

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

the spring of 2008.

Questions from Commissioners

Commissioner Davenport asked whether there is any indication of whether companies that have liberal sick-leave policies and good health care coverage are among those that are not reporting workers' compensation. Mr. Boden responded that although that sounds logical, he has no information on that area.

Questions from the Public

Michael Nolan, president of the California Workers Compensation Institute (CWCI), stated that the states that had better percentages of reporting were monopolistic states, specifically Washington and West Virginia, and asked whether that factor affected the study. Mr. Boden responded that he noticed the same trend. The time period for the study was done before West Virginia became a monopolistic state. It is difficult to know if the reasons for the differences in the data are due to the exclusive state fund and that there are fewer steps to go through to report a claim.

Ed Walters, Praetorian Financial Group, asked whether the reporting criteria for monopolistic states Washington and West Virginia were looked at and if so, whether the process was different than in non-monopolistic states. Mr. Boden responded that the reporting is done by the payor, after the process has been gone through, and it will be the employer or the insurer or the third-party administrator (TPA). Mr. Walters stated that in monopolistic states, there are fewer reporting steps and this makes reporting more likely to happen. Mr. Boden responded that that is one possibility.

Debbie Weinberg from AIG Insurance stated that in California, the primary factor that she sees affecting workers' compensation filing is education; employers often do not report because they do not understand reporting requirements and criteria for reporting. She also stated that her experience indicates that employers do not understand the difference between first aid and further medical treatment. Employers do not distinguish between needing medical treatment and going for medical treatment; therefore, if an employee declines medical treatment, the employer does not report the injury. Mr. Boden responded that the study did not look at medical-only cases because there is no clear data on the workers' compensation side and the BLS side; it has only looked at cases where there are indemnity payments to the worker. Ms. Weinberg stated that there are still a lot of lost time cases that are not reported, and Mr. Boden stated that those are cases which are going uncompensated.

Update: Electronic Adjudication Management System (EAMS) Project in DWC
Keven Star, Court Administrator, DWC

Keven Star stated that the Division of Workers' Compensation (DWC) is overhauling a 30-year system and is in the process of putting in place the Electronic Adjudication Management System

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

(EAMS) system. The system goals of EAMS are to: better serve injured workers and employers in resolving disputes; streamline the process of creating files, setting hearings, and serving decisions, orders and awards; improve access to case records by more than one party working on the case while preserving confidentiality; gather system information to help guide policy decisions and better distribute resources; and increase work efficiency. These features will greatly minimize delays, as files will be retrievable within two hours, and will minimize stress experienced by users of the current system.

Mr. Star stated that it is expected that EAMS will have benefits for all parties in the system, including attorneys. Benefits include: automation of tasks; more control over calendars; no cost, online and extended hours for access to file documents and other information; easy transferring of case information between district offices; no waiting for files to be shipped from one office to another; less paper file storage and retention; a secure environment for files; and the ability for multiple users to review files at the same time.

Mr. Star stated that document flow in EAMS will cover both represented and unrepresented cases and will include submitting either an E-form online or a paper form which is received at a district office and then scanned into EAMS and stored electronically, after which EAMS will read and process the data. In addition, under EAMS, there will be only one number for a case, which will simplify the process, especially for the injured worker.

Mr. Star stated that EAMS provides case management for the following: adjudication cases (court cases); vocational rehabilitation cases; return-to-work/supplemental job displacement benefit cases; Disability Evaluation Unit (DEU) cases; Uninsured Employers Benefit Trust Fund cases; and Subsequent Injuries Benefit Trust Fund cases. He stated that "legacy" files, or those files in existence before July 1, 2008, will be scanned into EAMS as the case comes up on calendar. The legacy case number will be kept along with the EAMS number.

Questions

Commissioner Steinberg asked if the conversion to EAMS is actually happening and what the timeline is. Mr. Star responded that they are definitely implementing EAMS and the timeline for implementation is July 2008. At this time, the project is on time and within budget. There are seven milestones in the project; two milestones have been met and there are no issues.

In response to a question if there would be data interchange between WCIS and EAMS. Mr. Star replied that there would be and that the details are being worked out right now.

Peggy Sugarman from the Grancell, Lebovitz, Stander, Barnes and Reubens law firm asked how EAMS would affect the EDEX project. Mr. Star responded that EDEX would probably adapt. He stated that EDEX generally provides the same information that EAMS will provide. He then stated again that there is no cost to the user with EAMS, except for Internet connection or DSL cost.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

Linda Atcherley from the California Applicants Attorneys Association (CAAA) asked whether all the supporting documents would be filed electronically in EAMS, and Mr. Star responded that they would.

Commissioner Aguilar asked whether EAMS would help distribute the workload more efficiently and effectively with the Disability Evaluation Unit (DEU) and how soon improvements to the rating timelines could be seen. Mr. Star responded that the current system spreads the workload among DEU offices. EAMS allows managers in the DEU to assess the workload and distribute it more efficiently among offices. Only parties on a particular case would have access to the file. Rating notes would be available only to internal DEU users. Commissioner Aguilar asked if the final rating would be able to be seen online and whether it would be delivered that way. Mr. Star responded that it is his understanding that the rating would be visible when the judge prepares the final document, unless it was a consultative rating which would be published out and served on the parties in the case by fax or U.S. mail, according to how the parties asked it to be served.

Chair Schwenkmeyer stated that several CHSWC studies had contributed to the conversion to EAMS including the RAND Judicial Study and the Feasibility Study. Mr. Star concurred and indicated that he had spoken to CHSWC Executive Officer Christine Baker several times about the new system.

Project Update: Do Employer Return-to-Work Programs Improve Long-Term Employment of Injured Workers?

Robert T. Reville, Ph.D., Research Director, RAND

Seth A. Seabury, Associate Economist, RAND

Mr. Seabury stated that reducing time off from work after injury is a key policy goal in workers' compensation, particularly in California, and is a win-win situation providing improved employment outcomes for workers and lowering costs, both direct and indirect, for employers. The study focused on return-to-work (RTW) programs, specifically how effective employer practices to improve sustained RTW are and how much employers and workers benefit in the long-run. Mr. Seabury acknowledged that it was important to do a full evaluation of RTW policies to be sure that there were no negative effects, such as fostering RTW too quickly for there to be recovery from injury.

Mr. Seabury stated that the study looked at data from a survey of 40 large, private self-insured employers prior to the recent workers' compensation reforms. Information about efforts to improve RTW, such as the nature of policies, the actions taken and coordination with medical providers, was matched with data on outcomes for injured workers.

Mr. Seabury stated that the survey results included that: many more firms used a RTW written policy with specific guidelines, with an implementation cost of upwards of \$500,000 a year, than firms using an informal program or a written policy without specific rules; and the most frequently used methods for transitioning injured workers back to the workplace were modified work tasks (77.5%), modified work station/equipment (55%), and a different job in a the same

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

department (52.5%), while reduced time/work schedule change and a different job in a different department were used much less frequently, 42.5% and 32.5%, respectively.

Mr. Seabury stated that evaluation results of the study show that a formal policy with written rules reduced time off work in the short-term and the long-term including reducing: the weeks of temporary disability (TD) benefits by almost 20% on average; the number of weeks until RTW by 16% to 17%; and the number of weeks until sustained RTW (covering two consecutive quarters) by at least 16%. Looking at the period from the second quarter after injury up to five years after the date of injury, there is an increase each quarter in the likelihood that someone will be working. Mr. Seabury stated that although there is evidence of short-term improvement of reducing earnings loss, sustained long-term improvement is not evident.

Questions from Commissioners

Commissioner Davenport asked if the measure of RTW was whether the injured worker is still on the job or whether the injury had an effect on whether the worker was still on the job. He stated that the longer an injured worker is out, the less likely it is that the worker will return to the same job. Mr. Seabury responded that the approach was controlling to the fact that the injured worker is matched to the non-injured worker who is still working.

Mr. Seabury stated that in terms of cost-effectiveness for employers, the fewer number of weeks on TD suggests as much as a three-week reduction in benefits on average, which saves about \$2,100 to \$2,200 per injured worker (assuming that the worker is making enough to qualify for the maximum weekly benefit). In addition, just under \$2 million per year on TD are saved by employers. These cost savings do not factor in any indirect costs which employers incur when a worker is injured. Mr. Seabury stated that the study showed that investing in a formal RTW program with written guidelines was beneficial for injured workers and cost-effective for employers.

Questions from the Public

Michael Nolan, president of the California Workers' Compensation Institute (CWCI), asked whether the study survey asked about any negative effects from the written program guidelines, especially the concern about returning an injured worker to work too soon. Mr. Seabury responded that the survey did not ask about that, but that there might have been some medical oversight in the employers' RTW programs. Mr. Reville confirmed that the survey was structured to capture the organization and intensity of the RTW program but that no specific information was gathered about specific rules.

Mr. Seabury was asked if the data used were workers' compensation data from 2003, and he responded that it was. When asked if the data were on a national basis, Mr. Seabury responded that all the employers were in California. A different RAND study has compared RTW in California to other states.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

Commissioner Davenport asked if the data pre-date Senate Bill (SB) 899, and Mr. Seabury responded that it did. A new RAND study will look at the effects of reform legislation on employers to bring workers back to work.

Commissioner McNally asked if the impact of the interactive process or dialogue between employer and the injured worker was taken into account. Mr. Reville responded that the new study would look at the impact after SB 899. Commissioner McNally stated that the mandate for employers is to institute early dialogue with the injured worker about RTW and that it would be important to focus more on the employee's contribution to the process. He stated that a lot of programs that were studied would be obsolete because of this change and because of programs incorporating both industrial and non-industrial injuries. Mr. Seabury responded that part of the new work is to update the survey to find out what employers are doing now in the post-reform period. Commissioner McNally said that he would like to see the focus be on what employers are required to do, what they are doing, and what they should be doing based on the requirement.

DaMuu Jones from the Employment Development Department stated that the study results showed that there was 20% improvement in RTW rates prior to reform. He asked whether the new study would measure how RTW rates post-reform would be doing. Mr. Seabury stated that Mr. Reville would address that question.

Mr. Reville stated that the Commission has funded a number of studies which provided a lot of the useful information on permanent disability (PD), especially on wage loss. A new RAND study for CHSWC is examining RTW in California after SB 899. The study will include an examination of recent policies and programs, evaluation of outcomes for injured workers, and development of new methods and data sources to provide better information on disabled workers after their injuries. Previous RAND studies of five states, California, New Mexico, Washington, Wisconsin and Oregon, found lower RTW in California compared to other states.

Mr. Reville stated that RAND studies also showed that there was successively considerably less earnings loss for injured workers by disability rating group who had returned to work within one, two, and three years after injury. These results indicate that RTW significantly lowered earnings loss for injured workers who returned to work.

Mr. Reville stated that recent reforms have included multiple RTW innovations: a two-tier permanent disability benefit ("bump-up bump-down"); a subsidy program to pay for workplace modifications by small businesses; and the RTW/supplemental job displacement benefit (SJDB) voucher program replacing vocational rehabilitation. He stated that it is important to understand RTW outcomes to evaluate the impact of the reforms on injured workers.

Mr. Reville stated that research questions in the new RAND study will include: how often the bump-up/bump down benefit is applied and what the effect is on benefits and RTW; how often small businesses use subsidies and make workplace modifications and what the effect of that is on RTW; and whether SJDB vouchers are used and to what effect. Additional overall questions include whether RTW in California has improved in terms of what has happened to the duration of TD, to employment at one, two and three years after injury, and to the at-injury employer, given the incentives to have injured workers return to the workplace. Mr. Reville stated that

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

special attention will be placed on the fraction of cases on long-term TD with no PD, looking into whether the number of cases has increased, how soon this group returns to work, and to what extent injured workers in this group participate in RTW programs, as many of the programs are targeted to PD cases.

Mr. Reville stated that the study will also look at whether there has been an increase in the number of California employers adopting RTW programs as a result of the recent reforms. He stated that another study with Les Boden links workers' compensation data for California to social security administration data to look at claims for social security disability insurance (SSDI) data, as well as earnings reported to the Social Security Administration (SSA), to determine if permanently disabled workers in California are more or less likely to receive SSDI which is targeted to workers who are expected never to return to work.

Mr. Reville stated that the research design would include: an Internet survey of employers; a repeat survey of the 40 self-insured employers of the earlier study discussed by Seth Seabury; linking of WCIRB data to Employment Development Department (EDD) data for permanent partial disability (PPD) and long-term TD cases; and linking of WCIRB data to SSA data.

Mr. Reville stated that data collection and linkage are underway, as well as design of the Internet survey and an updating of the self-insured survey. An analysis of employer policies will be provided in a draft report of the information presented by Seth Seabury in 2007, and a draft monograph will be provided in early 2009.

Questions

Roger Dillon from the Senate Labor Committee asked if the study would ask open-ended "if not/why not" questions about use of the SJDB or the workplace modification subsidy program. Mr. Reville responded that the survey would not include those types of question, but there might be supplemental qualitative interviews to find out what could be causing a lack of utilization.

Linda Atcherley, CAAA, asked if the study would ask employees what particular policy of the employer was helpful in getting them back to work. Mr. Reville responded that RAND has never done a survey of injured workers, but that they could consider having a focus group with injured workers to discuss some of their experiences. Ms. Atcherley stated that RAND could send a check-the-box type of survey form for applicants' attorneys to send to their clients to complete. This would help engage both employers and employees, and employers might learn about something they could do to make RTW more effective. Mr. Reville agreed that that was a good suggestion.

Commissioner Steinberg asked if RAND is still working on wage loss data going forward or just looking at RTW. Mr. Reville responded that one of the primary measures of RTW is proportional earnings loss and that they would be using proportional earnings loss as one of the key estimates in the analysis of RTW. Commissioner Steinberg stated that people are always concerned about current data and the fairness of future earning capacity (FEC) factors and that it would be quite a wait to get data until 2009 when the study would come out. Mr. Reville stated

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

that the study would include estimates of replacement rates but not a full analysis of the rating schedule as was done in the past. He stated that they will look at replacement rates and that they could provide information to the Commission in draft form at an earlier time. He stated that he would discuss this with Christine Baker.

Update on Permanent Disability

Lach Taylor, Workers' Compensation Judge, CHSWC

Judge Taylor stated that CHSWC research shows that since the 2005 Permanent Disability Rating Schedule was adopted, the schedule appears to be reducing dollar awards by more than 50%, which may not be what everyone expected. A number of variables have been considered to fine tune the schedule. CHSWC adopted recommendations in February 2006 for revision of the Permanent Disability Rating Schedule. The Administrative Director (AD) of DWC has released three published studies:

- Return-to-work (RTW) rates under the 2005 Schedule.
- Wage loss for injured workers with PD ratings.
- Uncompensated wage loss for injured workers.

Return-to-Work Rates

Judge Taylor stated that the RTW study released in January 2007 examined RTW rates at an average of 12 months after the date of injury for workers who received PD ratings within 18 months after date of injury. It covered dates of injury from the 4th quarter of 2000 through the 2nd quarter of 2005.

Judge Taylor stated that in order to do a study by early 2007 that included workers with dates of injury in 2005, it was necessary to limit the study to workers who reached PD ratings within 18 months. In general, more severe injuries take longer to reach PD rating, so these are probably less severe cases; however, for an early analysis, these injuries were all that could be studied.

Wage Loss for Injured Workers with Permanent Disability

Judge Taylor stated that the first of the DWC wage loss studies was an update of the RAND study using injuries occurring from 1991 to 1996. DWC used injuries occurring from 2000 through 2003. Both studies compared the post-injury earnings of injured workers who received summary ratings to the earnings over the same period of their uninjured co-workers. The results, according to DWC findings, are similar:

- Three-year proportional wage losses went up from an average of 14.25% (RAND study) to 14.93% (DWC study).
- PD ratings went up from an average of 15.58% to 17.38%. That may be misleading, because DWC used final ratings where RAND used standard ratings. Those may not be comparable. The adjustments for age and occupation probably increased the average ratings in the DWC study more than apportionment reduced them.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

- The ratio between ratings and earnings losses was similar overall, but there could be shifts among different types of injury moving in different directions.

Uncompensated Wage Loss

Judge Taylor stated that the third study will probably be the starting point for the next revision of the PD rating schedule. In the Uncompensated Wage Loss report, DWC used a substantially different analysis of the data. DWC used both summary and consult ratings for injuries occurring in 2002. The advantage of this approach is that it looks at the whole cross section of cases, rather than just the cases of workers who are not represented by attorneys. The attorney-represented cases tend to have higher wage losses and higher ratings, not necessarily in the same proportions. A disadvantage is that the ratings in attorney-involved cases are not as closely tied to the eventual amount of PD compensation, which is why RAND decided to analyze only summary-rated cases, which are a better indication of the actual award that will be given.

Judge Taylor stated that based on DWC published studies but without any changes that DWC may make in the future, the process for developing a rating schedule could include the following:

- Workers with spine injuries in 2002 lost an average of \$40,300 in earnings after three years following injury compared to their uninjured peers; however, they received an average of \$10,700 in TD benefits. With the improved RTW rate and the increase in TD rates, their losses may be down by an average of about \$4,000, and due to the TD rate increase, the average losses are probably down by about another \$300. Excluding PD payments, their average uncompensated losses are probably about \$25,300, which is about 23% of the \$107,900 that their uninjured peers would have earned. The average final rating under the 2005 schedule is 19.5%, so the ratio of ratings over uncompensated losses is 0.84.
- Workers with knee injuries in 2002 lost an average of \$15,800 compared to their uninjured peers over three years following injury; however, they received an average of \$10,200 in TD benefits in that time. Thanks to the improved RTW rate, their losses may be down by an average of about \$1,500, and due to the TD rate increase, the average losses are probably down by about another \$300. Excluding PD payments, their average uncompensated losses are probably about \$3,800, which is about 3.5% of the \$109,400 they would have been expected to earn if uninjured. The average final rating under the 2005 schedule is 12.8%, so the ratio of ratings over uncompensated losses for knees is 3.66 and for spines is 24.

Judge Taylor stated that with this method, the conclusion would be that knees are very over-compensated compared to spines, or spines are under-compensated compared to knees, and that the multipliers should be re-arranged so that knee ratings go down or spine ratings go up or some combination of the two.

Judge Taylor stated that this summary serves as background so that if and when the AD proposes a revised schedule, the concepts will be familiar and discussion of broad policy issues can be held.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

Public Comment

Les Boden asked why the focus was on uncompensated wage loss rather than replacement rates. If there is 20% uncompensated wage loss on average, injured workers could have no compensated wages. When the RAND study was done, the replacement rate was used, which involves how much was lost and what proportion was paid by workers' compensation, and that seems more appropriate when thinking about the rating schedule. Judge Taylor responded that in the DWC report on uncompensated wage loss, they looked at how much of entire wage loss over three years was replaced by TD benefits and how much by PD benefits. When you look at just the wage loss for three years, it does not indicate what the wage loss is. The effort to back out what was paid through TD benefits was done to get a better idea of permanent wage loss.

Update on CHSWC Annual Report
Christine Baker, Executive Officer, CHSWC

Ms. Baker stated that since the previous Commission meeting, the staff has been preparing the CHSWC 2007 Annual Report for review and approval. A few charts will be updated when current data are received, and then final editing will be done. Chair Schwenkmeyer stated that the Annual Report is an impressive document that shows where the Commission has been focusing and where it is going.

CHSWC Vote

Commissioner Davenport moved to approve the release of the Commission's 2007 Annual Report after final updating and editing, and Commissioner Thacker seconded. The motion was passed unanimously.

Executive Officer Report
Christine Baker, CHSWC Executive Officer

Carve-out Agreement

Ms. Baker stated that under a California HealthCare Foundation (CHCF) grant to CHSWC and UC Berkeley, the first carve-out agreement between the Service Employees International Union (SEIU) Local 1877 and Diversified Maintenance Services (DMS) is about to be signed. This agreement is the first to integrate the medical care now allowable under SB 899. Results of the process to create this carve-out will be written up and submitted to CHCF and to the Commission, and a more thorough discussion will be presented at the December Commission meeting. This is a model agreement which will be a public document. CHCF has indicated that it would fund a proposal to disseminate the information obtained through the process in the form of fact sheets, as well as conduct a forum next year on workers' compensation and medical integration. Ms. Baker stated that a proposal could be submitted to the CHCF. Commissioner Davenport asked if the study would be done by the Foundation and if there would be any conflict of interest. Ms. Baker responded that this would be informational material and that there would not be any conflict of interest.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

IAIABC Annual Meeting

Ms. Baker stated that she attended the annual meeting of the International Association of Industrial Accidents Boards and Commissions (IAIABC). Many executive officers, workers' compensation directors and staff get together annually to discuss research, legislation, and administrative remedies. This meeting is the best way to network with other states and find out what is being done. This forum assists in meeting the mandate of the Commission to look at other states in the most efficient and effective way possible. Ms. Baker stated that IAIABC has asked her to work on a special task force regarding pharmaceutical costs, as there are anticipated changes to the Average Wholesale Price that may affect all pharmacy fee schedules, including California's.

Return to Work/Stay at Work

Ms. Baker next stated that work is ongoing with California stakeholders on the return-to-work/stay-at-work (RTW/SAW) efforts that were developed from the RTW/SAW forum that CHSWC co-sponsored earlier this year. She stated that she will provide updates on the direction and progress of RTW/SAW efforts.

Insurance Commissioner's Task Force on Fraud: Worker's Compensation Fraud

Ms. Baker also stated that CHSWC continues to be an integral part of the Insurance Commissioner's Fraud Task Force, and that acting as chair of the Workers' Compensation Fraud Working Group, over 25 people were brought together to identify and make recommendations regarding insurer, employer, provider, claimant and other fraud. Areas under review include: the efficiency of the California Department of Insurance (CDI) Fraud Division; laws and regulations; industry anti-fraud efforts; current technology and use of technology; and outreach. Recommendations are being developed and will be presented to a blue ribbon committee in February 2008. The recommendations include exploring other models that focus on detection, prevention, outreach and monitoring, this being a slight shift from prosecution to more outreach and detection.

Health Care Costs and Savings in the California

Ms. Baker stated that CHCF has indicated that they will sponsor and fund a special report on California to be jointly awarded to the National Academy of Social Insurance (NASI) and CHSWC. This is an honor for CHSWC, and CHSWC will be developing a product on costs and savings in the California market.

WCIRB Task Force on California Experience Rating Plan

Ms. Baker then stated that the Insurance Commissioner has ordered the WCIRB to create a task force on the efficacy of the California Experience Rating Plan. She stated that she has been asked to participate on this important task force, which will review all aspects of experience rating in California and propose changes, as appropriate, to the Insurance Commissioner to better facilitate the goals of promoting workplace safety and equitably distributing of the cost of workplace injuries.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

MOUs

Ms. Baker stated that CHSWC is working with RAND to establish several Memoranda of Understanding (MOUs) with various agencies and obtain data for independent work.

RAND Working Paper on Medical Care for California's Injured Workers

Ms. Baker stated that she had just received the working paper from RAND regarding medical care provided to California's injured workers. This issue paper was required by Assembly Bill (AB) 749 and was a joint project with DWC. This paper documents the medical system and its changing parts and makes some recommendations for data collection and performance monitoring. The document is ready to be made public.

CHSWC Vote

Commissioner Aguilar moved to approve the release of the RAND Working Paper, Medical Care Provided California's Injured Workers: An Overview of the Issues, and Commissioner Davenport seconded. The motion passed unanimously.

California Partnership for Young Worker Health and Safety

Ms. Baker stated that a meeting of the California Partnership for Young Worker Health and Safety was held on September 20th in San Francisco. The Department of Industrial Relations (DIR), the Labor Commissioner and DWC would like to be involved actively in this program. At the Partnership meeting, Labor Commissioner Angela Bradstreet stated that she supports the Partnership's initiatives and programs. In addition, DIR representatives said they plan to continue to support the Partnership through greater media outreach about Partnership activities and the Young Worker Leadership Academies. The Labor Commissioner's office is also focusing on small businesses and targeting restaurants, and CHSWC materials for small businesses and restaurants have been sent to the Labor Commissioner's office.

Health and Safety Research Advisory Meeting

Ms. Baker stated that a health and safety research advisory meeting scheduled for November 19th will bring together experts in the country and in California for the purposes of developing a research agenda that can be proposed to the Commission. Commissioners are welcome to attend the meeting. Employers, labor representatives, and researchers will discuss available data and where there are gaps and what research needs to be done.

Public Comment

Michael Nolan stated that he also attended the IAIABC meeting where there was a panel discussion on labor-management councils. Based on that panel and other audience discussion, he stated that CHSWC is recognized as a unique organization and is recognized as a national leader, especially in the areas of the research and stakeholder participation. He stated that he believes that the work of the Commission and its staff is very well recognized.

MINUTES OF CHSWC MEETING
October 4, 2007 Oakland, California

Linda Atcherley asked if there is any status on the CHSWC study of cost-shifting from the workers' compensation system to other social systems. Frank Neuhauser responded that an analysis of cost shifting from the workers' compensation system, specifically temporary disability (TD) benefits, to the State Disability Insurance (SDI) system is complete. He stated that the default system is SDI if the employer raises objections to the case. The insurance company will reimburse EDD and SDI. He stated that the data so far observed make it clear that SDI is subsidizing workers' compensation. Additional data are requested; however, Mr. Neuhauser stated that if the database is not maintained correctly, some of the data would be misrepresenting the actual situation. Ms. Atcherley stated that she understands that sometimes the claim is paid but that the net is important and not the gross.

Ms. Atcherley then stated that she had attended the Fraud Assessment Commission (FAC) meeting and there was discussion about identifying characteristics for workers' compensation fraud that included gender and age, but there was no discussion of ethnicity or national origin. She stated that any study that focused on suspect characteristics for workers' compensation fraud would not be of interest and that there are some U.S. and state constitutional issues around this. Ms. Baker stated that the Commission is not funding that study, if there is a study at all.

Adjournment

CHSWC Vote

Commissioner Davenport moved to adjourn the meeting, and Commissioner Thacker seconded. The motion passed unanimously

The meeting was adjourned at 12:40 p.m. The next CHSWC meeting is scheduled for Friday, December 14th, in Oakland.

Approved:

Kristen Schwenkmeyer, Chair	Date
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Respectfully submitted:

Christine Baker, Executive Officer	Date
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