MINUTES FROM CHSWC PUBLIC MEETING

March 18, 2022
Physical Location When Applicable – online during Covid-19
Elihu M. Harris State Building
Oakland, California

NOTE: In accordance with Executive Order N-29-20, and Executive Order N-33-20, the physical meeting location was cancelled for March 18, 2022. The meeting was publicly held via online teleconferencing with publicly provided link.

In Attendance (via online video)

2022 Chair: Mitch Steiger
Commissioners: Doug Bloch, Martin Brady, Martin Brady, Shelley Kessler, Sean McNally, Nick Roxborough

Absent: two vacancies

Chair Steiger welcomed everyone, went over the agenda for the day and explained muting rules and related courtesies.

I. Approval of Minutes from the December 9, 2021 CHSWC Meeting
Mitch Steiger, Chair

Chair Steiger asked for a motion to approve the minutes of December 9, 2021. Commissioner McNally motioned and Commissioner Roxborough seconded and the motion was approved unanimously.

Commissioner Kessler asked for one typo to be corrected about mention of her husband in the minutes.

II. DWC Update
George Parisotto, Administrative Director, DWC Update

Mr. Parisotto greeted the Commissioners and thanked them for the opportunity to present a DWC Update.

DWC Educational Conference

Mr. Parisotto began with the announcement of the DWC Educational Conference to be held virtually on March 23-25, 2022. He expressed hope that this would be the last virtual conference due to COVID-19. He said that the conference currently had 770 participants registered. He explained that all of the Commissioners are invited to participate and he said that he hoped that they would join in as DWC has some excellent sessions planned.

Mr. Parisotto continued with a discussion of COVID-19 data.

COVID-19 Data

- Up to March 10, 2022, 248,699 COVID-19 cases were reported to the Workers' Compensation Information System (WCIS), and among them, up to February 7, 2022, 1,684 were death cases.

- Currently, COVID-19 claims account for 17% of all claims since the pandemic started. Last January, with the rise of the Omicron virus, COVID-19 accounted for approximately 55% of all claims filed. There were over 47,300 COVID-19 claims filed that month; 85,600 overall claims. Largest month since the pandemic began, but there has already been a significant drop off. In February 2022, DWC had 3,751 COVID claims reported.

- Public safety and government workers account for a third of all COVID-19 claims, with the health care sector following with around 18%. Retail and transportation are about 9% each.

- Most of the COVID-19 claims come from Southern California: Los Angeles County has 25% of claims; Inland Empire/Orange region 24%. The Central Valley region follows with 20% and the Bay Area 14.5%.

- COVID-19 claims still have a significantly higher denial rate than non-COVID-19 claims. Their denial rates are 30% versus 15% for other types of claims, and there has been no change to that denial rate during the pandemic.

- 6725 COVID-19 applications filed with the Workers' Compensation Appeals Board (WCAB); seems low, but over time may change, especially with the unknowns about long COVID-19 claims. Difficult to predict how these will be litigated; so far, not many have been litigated.

    - Supplemental paid sick leave helped keep litigation down.
    - Cal/OSHA health and safety rules had a significant effect.

In-Person Hearings

- DWC resumed in-person trials at district offices on October 1, 2021. Paused in January and went back to all virtual hearings due to the surge of the Omicron variant. Now, with positivity rates remaining low over the past month, DWC will resume in-person trials at all DWC district offices except for three or four satellite offices (Eureka and Bishop, Marysville, Chico and Ukiah), on March 21, 2022.
- District activities will involve trials, lien trials, expedited hearings and special adjudication unit (SAU) trials only.

- DWC will continue to telephonically hear all mandatory settlement conferences, priority conferences, status conferences, and lien conferences via the individually assigned judges' conference lines.
- Parties can agree, subject to the approval of the judge assigned to hear their case, to hold all hearings virtually.
- Other program areas will begin to return employees to the office in April, although telework, which has proven effective for the Division, will still be available for our employees.

Medical Treatment Utilization Schedule (MTUS) Update

- Last year, the Division adopted additional treatment guidelines from the American College of Occupational and Environmental Medicine (ACOEM). These include:
    - COVID-19 Guidelines (June 28, 2021)
    - Anxiety Disorder Guidelines (July 19, 2021)
    - Low Back Disorder Guidelines (November 23, 2021)
    - Pharmacy and Therapeutics Committee will be meeting in-person for their quarterly meeting next month (in April).
- Electronic Records – mandated electronic DFR (Doctor's First Report) to be sent to DWC via EDI. Working with healthcare providers, DWC will be testing with physicians. Pilot program will follow before making it mandatory.
    - First step of a big process shift with other forms (Permanent and Stationary forms, Request for Authorization forms) next with the aim towards efficiency/reducing administrative burdens and to bring more physicians into the system with such improvements.

Medical-Legal Program

- Med-Legal Fee Schedule based on a flat fee system has been in place for almost one year, on April 1, 2021. DWC is reviewing its effect on the system to determine what adjustments need to be made. Much feedback has been received from the public.
- Electronic Service of Records – Initially an emergency regulation in 2020; permanent regulations in process.
- Telehealth – Emergency regulations readopted in January for Omicron; discussions about whether telehealth is appropriate for Med-Legal. DWC may make telehealth regulations permanent.
- Process Regulations of QMEs – Qualifications, Continuing Education requirements, Reappointment process, and Discipline procedures.
- Copy Service Fee Schedule – second hearing last month (February 2022). Still reviewing excellent public comments to see if any additional changes are needed before sending to the Office of Administrative Law.

IMR and IBR Update

- Regarding Independent Medical Review (IMR) and Independent Bill Review (IBR), the procedures are operating without any delay. Applications have been down, due to the pandemic but also due to the new treatment guidelines and the formulary. Currently, decisions are issuing within 10 days of receipt of medical records, far below the 30-day deadline.

  2021 Apps – 178,927 – 136,828

  2020 184,099 – 139,436

  2019 222,236 – 165,610

  2015-2018 250,000

  Pharmacy 45 % - down to 1/3

  IBR – 2021 – 3,159

  2020 – 1,849

- From about 2015 to 2018, DWC saw about 250,000 IMR applications processed per month. IMR applications went down in 2019 to 222,000 and then in 2020 continued down to 184,000. In 2021, there were 178,000 applications. I think the pandemic probably had an effect on that, but I also think our treatment guidelines did as well. Our formulary has had an effect on reducing the number of applications. Currently, pharmaceutical disputes are about 1/3 of all IMR applications, down from about 45% from a couple of years ago.

EAMS Modernization

- Working with the DIR IT Unit and the Department of Technology to update the electronic adjudication management system (EAMS), which is over ten years old and in need of an update.
  - Requires comprehensive review at many levels, and receiving funding for that.
  - New system expected within the next several years.

Commissioner Questions or Comments

Commissioner Roxborough expressed appreciation for the progress at DWC on the QME and Med-Legal issue. He asked about the copy service second hearing and the relationship to the copy service fee schedule study by the Berkeley Research Group eight to ten years ago, and the role that study will play on the proposed rates this time around. Mr. Parisotto said that that study was mandated back in 2013 and a study by the Berkeley Research Group was used to inform the initial fee schedule, but that there has not been a follow-up study. Mr. Parisotto said that this is the first time the fee schedule has been updated since the initial fee schedule was put in place. Commissioner Roxborough asked if the plan was to at least increase the fees to keep pace with inflation from what it was five to ten years ago. Mr. Parisotto explained that DWC proposed a 25% increase over the current rates. He said DWC believes that the amount is sufficient given how the

industry has progressed over the years, the efficiencies made – especially with electronic records in the system. Commissioner Roxborough asked how that compared to what the Berkeley Research Group recommended. Mr. Parisotto indicated that he had not consulted that report. Commissioner Roxborough suggested that it may be useful to take a look at that report.

Commissioner Bloch indicated that he remembered the copy service fee schedule issue from the past and that it was one of the more controversial things they had seen from the last set of workers' compensation reforms. He said that he appreciated Commissioner Roxborough's comments. Commissioner Bloch said that he remembered being very concerned about the copy services fee schedule, and included Commissioners Brady and McNally in this collective experience and memory of the fee schedule issue.

Commissioner Bloch expressed interest in Mr. Parisotto remaining for the meeting's later discussion of the (COVID-19) presumption. Mr. Parisotto said he believed the presumptions had a positive effect. He said that despite a 30% high rate of denial of COVID-19 claims, that rate is much lower in the public service and healthcare fields, to about 24% or so and he believes that is a positive effect. Mr. Parisotto said that they could look at specific industries for accepted or denied claims, but since DWC does not track claims covered under the presumption, it is difficult to track the specific effect.

Commissioner Brady asked about the number of denials due to a negative COVID-19 test. Mr. Parisotto said that the data collected does give the reasons for the denials. He said that CWCI has produced some data which indicate about 60% of denials were based on negative COVID-19 tests – a large percentage.

Chair Steiger asked about the 55% of claims being COVID-related in January 2022, due to the Omicron variant. Mr. Parisotto said that month there were 85,000 claims, of which 47,000 were COVID-19 claims. 47,000 claims that month overall represented 18% of all COVID-19 claims. Mr. Parisotto confirmed those break-downs, including the 1684 deaths figure since the beginning of the pandemic up to February 7, 2022.

Chair Steiger asked about the electronic forms in workers' compensation and what was the practice compared to group health. Mr. Parisotto said that anecdotally physicians in group health have electronic medical records, and they use EPIC and other (electronic data) systems. He said that data is usually provided and input at the time of the appointment, that information is submitted, and he surmised that information is transferred to the patient's insurance company. He said in workers' compensation they use (paper) forms but that the forms do not provide sufficient data in order to move the claim forward. Accordingly, he said that he believed the forms could be improved in order to collect the needed information. Also needed, he said, is improvement on how the information is transmitted from the physician to the claims administrator. Chair Steiger said that he assumed it was easier to use an electronic form and that the process is quick and simpler, and asked for confirmation. Mr. Parisotto replied that he would hope so, and answered yes.

Chair Steiger asked about long COVID and whether the treatment guidelines adopted in June 2021 cover that condition in the workers' compensation context. Mr. Parisotto said that he did not

specifically know the answer but can certainly inquire. He did say that ACOEM does review and update guidelines regularly and would hope that would be an area that they would cover.

Chair Steiger asked about the concern in the labor community about how long COVID would play out in workers' compensation. He said that even if there is a presumption and the worker recovers, gets better but then later long COVID symptoms present or never go away, or sometimes there is an asymptomatic case, and all of a sudden the brain fog sets in. He continued describing the concern that the brain fog lasts six months or never goes away; maybe one is not able to work because it is so severe. Chair Steiger said it sounds like there is some confusion because the symptoms are so hard to pin down, and physicians are not always even sure that it is long COVID. He said that he assumes there are a lot of workers out there who are really struggling at work with long COVID symptoms and probably struggling to get the medical or maybe even indemnity benefits that they need. He asked if Mr. Parisotto had heard of any such scenarios.

Mr. Parisotto said that he had not heard much discussion of this and any related problems. He said that he understands the confusion that may be out there and hopefully DWC can work to try to head off any of that confusion. He said if somebody is suffering from long-term COVID symptoms, the hope is that they will be able to get the treatment they need without having to jump through many hurdles.

Public Comments or Questions

Charles Rondeau asked if the DWC has determined that a 25% increase in the copy service fee schedule is appropriate now, and if there was a market study done for the original copy service fee schedule in the past, what is the reason that there was no new commissioned market study to validate whatever increase is now being given to copy service providers, in connection with the new regulations.

Mr. Parisotto replied that he did not believe this was a Q&A Forum, rather a venue for public comment.

Mr. Rondeau replied that he finds it distressing that there are regulations being propounded where there is no empirical data to support the apparent increases that are being put in, adding that he reviewed the 2021 initial ISOR (he explained the acronym as the Initial Statement of Reasons) which noted that the Berkeley Research Group study set in 2012 or 2015, one or the other, $252 would be an appropriate rate for services, which is less than what the administration and division is now proposing as the increase. He said that there's no data to support it, nothing empirical. He said it seems purely anecdotal and that he finds that to be very distressing. He said his comment about the fee schedule is that there doesn't seem to be any empirical data to support it. He said that he has heard that it may not go into effect on April 1st, 2022, but that is another problem.

Mr. Rondeau continued with a different comment. He said that it doesn't appear that the Commission or the DWC have done much in the way of looking at the work of the (WCAB) Commissioners in dispensing justice vis-a-vis deciding petitions for reconsideration, writs and so on. He said that there is a huge problem with something called grant and study, where the board will just grant a petition for reconsideration to preserve their jurisdiction - at least ostensibly - and then park it for

two or three years and do nothing on the case. He said this leaves the applicant and the insurance company defendant with nothing to do but wait around and hope that someday, eventually, the board will get around to making a decision. He said that it is clear that through information that has been provided that this is a big problem. There was a California Privacy Rights Act (CPRA) public records request that was honored by the board which indicated that over 500 cases were involved in this process in a period of three years. He said that doesn't seem to be consistent with the constitutional mandate of expeditious dispute resolution. He said that the answer that is being given by the board is they do not have sufficient resources to do this. He said he suggests that the Commission should exercise its oversight and look at what is going on at the (WCAB) Commissioner's Office and see if some additional resources ought to be provided to these folks so that they can timely decide these cases and move them through the system.

Ms. Edna Tougher said that she owned a copy service and that they were struggling. She said the biggest copy service in our industry, Med Legal, has now gone out of business because they could not afford to keep their doors open. She said minimum wage has gone from $9 to $15 and to $16.50, depending on each particular city. She said that there have not, as DWC knows, been any studies (on copy service fees) in the last eight years or so. She said that she has reached out to the DWC, as Mr. Parisotto knows, and that there is no 25% increase that they have received. She said that all that has happened was juggling from one set of the money that we were getting and putting it on the first set of records. She said that it is not fair that the DIR is able to have medical insurance when they cannot afford to even provide their staff medical insurance to be able to take care of them and their family. She said that they are struggling badly. She said that she had reached out to DWC's office and that she begged DWC for help. She said that Mr. Parisotto has heard her cry to him, begging him to do something and still to this day there has not been any study. The DIR is able to charge a dollar a page to sit at their desk to make copies. We get $0.10 after 500 pages. She said that $0.10 goes, per Labor Code 1563, to the medical facilities. She said that they are living below the poverty line; not one line on any other lines has been increased in the last seven years. She said that they have not gotten any; if anything, she said DWC is taking things away, asking (telling) them that they don't get paid if they do not get a certificate on that, no record. She said that they are not allowed due to HIPAA guidelines; medical facilities will not tell them if there are records or not due to confidentiality; they are struggling. She said that she does not know how much longer they can survive. She said the proposed rate is not reasonable. She said she does not understand why in seven years they have not gotten the study which they are entitled to. She said that she has cried to Mr. Parisotto so many times begging him to help them. She said that what is being offered, $225, is not what they are getting. She said that she would appreciate if DWC can take a look. She said that all they (DWC) are doing is juggling oranges, taking from second set that they were getting - $30 - and putting it on the first set from the $180. She said it is $3 to get in (obtain) imaging records. She asked how anyone can afford to do that. She said that she would appreciate if Mr. Parisotto's office can reach out (to her). She said that she would be happy to help DWC with a study. She said that she has sent DWC what other states charge per page. She said that she spent three days doing that and she has still have not heard back from DWC on that. She said that this is not an attack, Mr. Parisotto (George), but this is her livelihood. She said her employees need medical care and it is not fair. She said that they are living below poverty. She

said that she hopes that DWC is able to do this before they also are out of business, just like Med Legal. Thank you.

Commissioner Steiger thanked the commenter for the comments. He asked whether there were any other members of the public who would like to make a comment on this agenda item. He said that it looked like no, thanked everyone and the Administrative Director for the very helpful presentation. Someone then spoke up on the phone.

Julius Young asked Mr. Parisotto about the Kim Card presentation about a year or a year and a half ago to CHSWC in which she said there was going to be a study done on the Subsequent Injuries Benefits Trust Fund (SIBTF). He said that he was not aware of whether the study is being done by DIR or by DWC, or what the status of that is. He explained another part of the question is the concern among some people that there could be an effort to do some policy changes with the SIBTF via a budget trailer bill as opposed to some sort of regular legislative process. He asked if the DWC and DIR are committed to doing any changes with the SIBTF via the regular legislative process instead of by some budget trailer bill maneuver.

Commissioner Steiger said that he would leave it open to George whether he would like to respond to questions from members of the public; but if he would like to respond to that question, to please feel free. Mr. Parisotto said that just briefly, DIR is proceeding with the study on the SIBTF program and have issued an RFP for that. They are waiting to see if there is an independent researcher or organization out there that would want to take on that study. They are going through the regular contract process with that. With the latter issue, he cannot comment. He said that he cannot comment on the legislative process, but that Mr. Young knows that they are looking at that program (SIBTF) to see how they can improve the processes, whether that is through statute or through regulation. Mr. Parisotto said that it is being looked at; they want to make sure that injured workers who are eligible for benefits under that program receive those benefits in a timely manner. To the extent that DWC can improve that process, they would like to do that.

Ms. Edna Tougher asked whom she could contact within the Department for the copy service fee schedule to hear them out. She said that she knows this is just public commenting, but obviously she is not getting anywhere and she would like to know who she can contact to be able to help them.

Chair Steiger asked if Mr. Parisotto would like to answer that question he could do so, but that he is not obligated to answer. Chair Steiger said that he guessed that this will be the CHSWC policy for now.

Mr. Parisotto said that the DWC is under the Department of Industrial Relations and that people can contact the Director or the Chief Deputy Director and that they could probably offer some guidance.

Darcy, (no last name) the office manager at Hard Copy (self-identification), said that she did not mean to beat a dead horse, but that she is also extremely concerned about what's going on with the copy service fee schedule. They have heard from more than one source that it is not going to be passed on April 1st. She said that this has kind of just been lip service to keep them quiet. She said

she wanted to say that in the time period that they have had to wait for a raise - which was July 1st, 2015 to date, as stated earlier - their minimum wage has gone from $9 to $15 on July 1st in the city and in some cases it goes to $16. She said that they are facing extinction and something has to be addressed. She said that what is proposed is a start, but certainly not enough and that she shares the feelings of Edna; she said she would like to know when something happens, how they can be involved to get this settled reasonably.

III. Report on SB 1159 Study of COVID-19 in California's Workers' Compensation System
Michael Dworsky, Ph.D. and Denise Quigley, Ph.D., RAND

Drs. Michael Dworsky and Denise Quigley presented a high-level summary of important findings from the many findings in a broad-based study that RAND conducted of COVID-19 claims and the COVID-19 presumptions in the California workers' compensation system. Dr. Dworsky acknowledged the efforts of their co-authors Nabeel Qureshi, Shannon Prier, and Courtney Gidengil. Dr. Dworsky continued that in March 2020 at the start of the pandemic, there were some unprecedented changes in society, such as stay at home orders, and instantaneously a recession, and job losses. In the workers' compensation system prevalent infectious diseases circulating in the community usually were not covered. A doctrine called ordinary diseases of life would make diseases such as the flu or cold typically caught at home or in the community not compensable workers' compensation cases. It became very clear early in the pandemic that COVID-19 was different, especially in the context where many were staying at home but many workers had to face the public. It was clear just from casual empiricism that these workers faced a much higher risk of infection. California responded in several ways. First, Governor Newsom signed Executive Order N-62-20 in May 2020 and created a temporary presumption that broadly covered most essential critical infrastructure workers and others working outside the home during that initial phase of the pandemic. That Executive Order expired in early July 2020, but at the end of the legislative session the legislature enacted and the governor signed Senate Bill (SB) 1159 which is the focus of this presentation. SB 1159 codified that temporary presumption from the Executive Order N-62-20 after the date the executive order expired. SB 1159 created two new presumptions that would cover two broad groups of workers who were working outside the home during the pandemic. SB 1159 created Labor Code section 3212.87 and it covered health care workers as well as non-patient care workers in health care facilities. It also covered public safety workers, peace officers engaged in active law enforcement, and active firefighters. In this presentation, frontline workers meant healthcare and public safety workers, and the presumption created by Labor Code section 3212.87 was referred to as the *frontline presumption*.

The frontline presumption is defined by the Labor Code on the basis of the worker's job title, occupation and in the case of the healthcare workers, the industry or the type of facility they work in. Generally, if a worker was working outside the home and there was a positive PCR test then the COVID-19 infection is presumed to be work related and therefore compensable and eligible for workers' compensation benefits. Dr. Dworsky noted that, although WCIRB had priced out a conclusive presumption in the early months of the pandemic, the presumptions adopted by the state are rebuttable. The California COVID-19 presumptions can be rebutted with evidence that

the worker contracted COVID-19 outside the home. It covered health care and public safety workers.

Other workers who were not working from home but were working at a job site outside the home, were potentially covered by Labor Code Section 3212.88, which the RAND team referred to as the *outbreak presumption*. Generally, the conditions for the outbreak presumption to take effect or be applied to a worker's case are that the worker had to be working outside the home at a job site that was experiencing an outbreak. There was legislative wrangling over this, but the definition the legislature settled on is that an outbreak is defined as four or more cases within a rolling two week period at a job site; or for larger employers with 100 or more employees, four percent of workers having cases within a job site within 14 days. The definition of a case is that it was confirmed with a positive PCR test.

SB 1159 included many other changes to the system besides establishing the presumptions. It meant the COVID-19 claims would be handled slightly differently and be eligible for slightly different benefits, reporting and claim timelines. COVID-19 cases are eligible for full workers' compensation benefits, but with two small changes to the temporary disability (TD) benefits. First, the three-day waiting period before TD benefits were paid was eliminated for COVID-19; when workers tested positive and filed a claim they would get benefits on the first day of the work absence. However, in practice that probably did not happen often because there was supplementary pandemic sick leave both from federal mandates and from some state mandates which Mr. Parisotto mentioned in his presentation. SB 1159 required that workers use pandemic specific sick leave before TD benefits started paying out. This kind of coordination with sick leave was not something that typically happened in other parts of the workers' compensation system. The second is that the timelines for claim investigation and an initial denial decision were dramatically shortened. Typically, claims administrators will have 90 days after putting the claim on delay to investigate it or to make an acceptance or denial decision. That was shortened to 30 days for the frontline worker presumption and 45 days for workers covered by the outbreak presumption. The qualitative findings, presented later by Dr. Quigley, will discuss how the system was able to cope with these changes and those dramatically shortened timelines. Finally, in terms of the outbreak presumption, the applicability of the presumption depends on what was happening at the job site potentially including the presence of COVID-19 cases among workers who did not file workers' compensation claims. This additional requirement for the presumption to take effect was fairly novel. SB 1159 required employers to report positive tests to claims administrators for outbreak tracking.

In SB 1159, the legislature also mandated that CHSWC conduct a study meeting some broad objectives. RAND met these high level objectives by posing a number of more specific research questions, all of which are addressed in the report. The study took a mixed methods approach using both qualitative and quantitative research to address the research questions. Qualitative analysis relied primarily on 32 key informant interviews that included workers who had contracted COVID-19 and filed workers' compensation claims or made inquiries about filing a workers' compensation claim because they felt it was work related; public health officials; claims administrators; and employers from industries covered by the different presumptions, this included public safety

employers and healthcare employers. Employer interviews in the health care sector included hospitals, home health agencies, and nursing homes. Employers in the rest of the economy were also included and were selected based on high COVID-19 rates to represent industries which they refer to as the outbreak industries.

Dr. Dworsky stated that for the quantitative analysis, claims data from the WCIS for 2019 were used through injury dates ending June 30, 2021. The data were collected in August 2021; and the many limitations that Mr. Parisotto mentioned about it being too soon to see results due to litigation and permanent disability benefits applied especially to the data they examined. The data described are high level claim rates, outcomes, meaning benefit receipt and claim denials and associated costs. Dr. Dworsky stated that they were going to break the data down by presumption that potentially applied to different groups of workers. What was unusual about the analysis was that they worked with occupation description data in the WCIS to assign occupation codes. When they looked at workers covered by the frontline presumption, they tried to isolate people in specific occupations within the healthcare industries or state and local government that can give a more detailed look than typically available in workers' compensation data within the industry level of what COVID-19 claim volumes were. In the presentation, RAND reported rates of cases by industry and occupation as rates per 10,000 workers of claims filed with injury dates from July 6, 2020 through the end of June 2021.

The study was also informed by two Technical Advisory Group (TAG) meetings. RAND convened a group of stakeholders and experts. Stakeholders included worker advocates such as unions, and employers as well as claims administrators, applicant and defense attorneys. The TAG members met to provide input into the design and approach of the study and to address any issues at the start of the study. At the second TAG meeting held last October, they received feedback on preliminary findings.

Dr. Dworsky stated that the outline for presentation of findings was as follows. He would start with a description of the COVID-19 claims, outcomes and costs. Then would examine factors that affected workers concerning COVID-19 claims. Following that, Dr. Quigley would present the qualitative findings and the experiences of different parties in the system as well as discuss findings on some of the mechanisms that cannot be measured in the claims data.

The first question was how many COVID-19 claims were there. As noted in Mr. Parisotto's presentation, there were 250,000 COVID-19 claims to date from the beginning of the pandemic to the time of the Commission meeting. At the time RAND extracted the data in August 2021, that number was a little bit lower. They only saw about 142,000 claims but their data ended when the Delta variant was starting to circulate and well before Omicron and it was important to bear in mind that things may have changed since this study.

Dr. Dworsky stated they have covered claim volumes that closely followed case surges in the state of California among the general population. They had a smaller spike in cases in June and July 2020. Then they had a much larger spike, the largest one in the data peaking in December 2020. In that month there were just over 40,000 COVID-19 claims filed. The December 2020 surge had

actually been surpassed in January 2022 during the Omicron surge. Generally, covered claim volumes seem to move together with case volumes in the state.

Non-COVID-19 claims in the workers' compensation system, all the types of injuries and illnesses that existed before the pandemic, saw a very sharp drop in claim volume bottoming out in April 2020. There was about a 25% drop relative to what they saw in the previous year. Those claim volumes dropped because people were working from home, but also because a lot of people lost their jobs in the very fast recession that occurred. Cases rebounded somewhat. They could see them drop again during the second 2020 surge. It seemed that the non-covered claim volumes were moving in tandem with some of the public health stay at home type orders as well as people's activity limitations independent of government action. Non-COVID-19 claim volumes were still about 6% lower than what was seen in 2019. Looking at total claim volumes, it was about 6% lower in 2020 than what we saw in 2019. In December 2020, there were over 80,000 workers' compensation claims filed with injury dates for December 2020 and a slight majority of those were COVID-19 claims. Over the past ten years there has never been a month where more than about 68,000 claims have been filed. Even though the average claim volumes in the system were down, the kind of volatility and the number of claims that have to go through at one point in time has really been dramatically changed by COVID-19.

The study looked at the composition of claims by potential coverage by the presumptions. This was similar to the industry level. Again they used occupation as well as industry to say what presumption workers were potentially eligible for. They split workers into frontline presumption occupations and other occupations. Other occupations was just everybody else who could be potentially covered by the outbreak presumption. Before the pandemic, there were only non-COVID-19 claims. Workers in these frontline presumption occupations accounted for approximately 15% of claims in the system, a little under 10,000 per month. When they looked at claims for COVID-19 filed over the entire course of the pandemic, again through July 2021, overall about 42% of those were filed by workers in the frontline presumption occupations. Again for context, those occupations and industries make up roughly 10% of the California labor force, at least as measured before the pandemic. This was consistent with some of the data that Mr. Parisotto presented that the claims have been very heavily concentrated among workers who were likely to be covered by the frontline presumption, both health care workers and public safety workers. There are explanations that would illustrate this pattern. An important one is that there were job losses, reduced hours, and stay at home orders affecting workers and many other occupations. That was not the case for workers covered by the frontline presumption. In fact, many of those workers were working extended hours throughout much of the pandemic, even relative to how much they were working before. Part of the story here would likely be increased exposure just in terms of increased work hours. Part of the story is that workers elsewhere, some large proportion of them, may not have been working outside the home and may not have been exposed or filing COVID-19 claims. There was not a sharp drop off of non-COVID-19 claim volumes of claims filed per month among frontline workers, but there was a very sharp drop off in the number of non COVID-19 claims per month for workers who are not frontline workers potentially covered by other occupations.

Looking at the year when the frontline outbreak presumption had been in effect from July 2020 to June 2021, there were about 35,000 claims filed by healthcare workers as well as other workers in health care facilities. There were about 7,000 from peace officers and about 4,500 from firefighters. That means that these workers, who are only about 10% of the California workforce, were the most exposed workers and filed claims at fairly high rates. The bulk of the claims in the system were coming from workers who were potentially covered by the outbreak presumption and nearly 70,000 over that first year when the presumption was in effect.

Dr. Dworsky said the industry level was going to be slightly different where there were counts of claims without trying to adjust for the number of workers. What he did in the report was to merge data about the level of employment prior to the pandemic. These were employment estimates from the Bureau of Labor Statistics (BLS) by industry and occupation based on data collected in the period ending May 2020. It was a snapshot of COVID-19 claims per 10,000 workers who were employed at the start of the pandemic and how many claims there were in that first year when the presumptions were in effect, and state and local government had the highest rate of claims per 10,000 workers. Of course, that included public safety workers and after that was health care and social assistance. The state and local government rate in 2020 had about 270 COVID-19 claims per 10,000 workers, health care and social assistance came in at 130 claims per 10,000 workers.

When they looked at the private sector industry that was not covered by the frontline presumption, the highest rates of COVID-19 claims per 10,000 workers were seen in transportation and warehousing at slightly above 100 claims per 10,000. Workers in retail trade were at about 80 claims per 10,000 workers and in manufacturing about 60 claims per 10,000 workers. There was a mix of other industries that have lower overall claim rates such as industries with a lot of work from home. These industries were more white-collar such as finance and insurance. Some were industries such as accommodation and food services where there were job losses, and were very heavily concentrated, and some stayed on the payroll at home or had reduced hours. There were low claim rates in some industries like agriculture, where there were outbreaks among the workers, but it did not seem as if claims were filed.

They do not have much to say about what proportion of workers who fell ill actually filed claims, but highlights of some of the industry occupation statistics in the report might point to areas that they wanted to look at more closely in the future. Turning to an occupation breakout within industries, among the workers who were covered by the frontline presumption, outside of healthcare, they saw fairly high claim rates by public safety workers. For a claim rate per 10,000 workers, there were almost 800 claims per 10,000 firefighters and about 700 claims per 10,000 peace officers. Rates in healthcare facilities were somewhat lower, but still very high compared to the rest of the California workforce.

The RAND team split COVID-19 claims per 10,000 workers into industries and then looked at occupations within industries and there were two patterns to highlight. The first is that generally in hospitals, skilled nursing facilities and home health agencies, they do see substantially higher rates of COVID-19 claims in healthcare support occupations. This is going to be health aides and some of the nursing assistants as well. Those healthcare support occupations have higher COVID-19 claim rates than healthcare practitioners and technical occupations. The majority of people in

healthcare practitioners and technical occupation categories were going to be nurses, physicians and other more technical occupations within healthcare. Within skilled nursing facilities, maids and housekeeping cleaners who should have been covered by the presumption had exceptionally high claim rates and these are the highest ones that were on the chart. Almost 900 maids and housekeeping cleaners filed claims for COVID-19 in skilled nursing facilities per 10,000 employees during that first year. RAND noted that many further descriptive tables are available in the report, and that they were preparing a more comprehensive public-use version of the data that was used to generate those tables because they did not have enough space to cover every single industry and occupation combination that might be of interest to the community and policymakers.

Dr. Dworsky said he wanted to highlight that in some industries, occupations not covered by a frontline presumption had very high COVID-19 claim rates. Health care facilities were under the frontline presumption since the frontline presumption specified a certain level of continuous nursing care that is not provided in assisted living facilities. But those assisted living facilities had claim rates that were very similar to skilled nursing facilities. In the data, those claims were also accepted at similar rates to what they saw in skilled nursing facilities. Based on their interviews, many claims administrators were approving those claims even though they had some sense that they could have fought them early so that they may not have been covered by the frontline worker presumption. There were very high rates in assisted living facilities; selected retail industries, especially building materials and supplies dealers, such as hardware stores that were staying open. They had fairly high industry level claim rates in health and personal care stores, which is drug stores and pharmacies. The other industries highlighted were animal slaughtering processing. They have heard terrible stories about outbreaks in slaughter houses and other types of animal processing facilities. It was the machine operators who had very high claim rates in those industries, next was transportation and warehousing, which had the highest sector level rate outside of healthcare and public safety. The COVID-19 claims in transportation and warehousing were driven primarily by laborers and material moving occupations. There was significant detail about these workers and more than they could discuss in this presentation. They did have detailed tables on occupation breakdowns within the report that will be useful for policymakers and stakeholders.

Dr. Dworsky stated that the initial denial rates for COVID-19 claims were very high before presumptions. The presumptions may have been associated with changes in denial rates. During this very short period during the first few months of the pandemic before the Governor's Executive Order, there were very high claim denial rates for COVID-19. That was especially true for workers who would later be potentially covered by the outbreak presumption. But it was also true for workers in public safety and healthcare who would later be covered by the frontline presumption. When the Executive Order took effect and during this period from March to July 2020, they saw claim denial rates drop substantially. That was true both for the outbreak occupations and for the frontline occupations; even though they dropped substantially, they were still above what was seen as non-COVID-19 claims. Those denial rates stayed fairly stable throughout the pandemic. Finally, once the presumptions in SB 1159 took effect and there was a bifurcation into frontline and outbreak occupations, they saw opposite patterns. For frontline workers, the COVID-19 claim denial rate was essentially the same; it was one percentage point lower. For workers potentially covered by the outbreak presumption, it was a rebound from a low 30% range to about 45%.

COVID-19 claim denial rates must be interpreted with caution. There was useful input they received from the TAG and from some of their interviews, which looked at workers who were potentially covered by different presumptions. They did not know in any of these individual cases if they actually had a diagnosis or positive PCR test, which is a requirement for the presumption to take effect. Probably a large fraction of claims identified as potentially covered by the presumption (based on the worker's industry and occupation) were not covered by the presumption due to the lack of a positive PCR test. For the outbreak presumption, they did not know if the job site had an outbreak when a claim was filed. Data from a survey by CWCI about the reasons for claim denials noted close to 60% of the claim denials were driven by the fact that a positive PCR test was not submitted. It does not necessarily mean the same thing as a negative PCR test and it could also mean that a test was not performed or a test was performed and it did not make it to the claims administrator. They did not have more detail about this. A public sector entity that dealt with claims shared some data and indicated that there was a nearly perfect relationship between a positive PCR test and initial acceptance of claims. At least for public safety workers, that strongly suggested that people with positive PCR tests had their claims accepted. People without positive PCR tests were having their claims denied.

Dr. Dworsky highlighted a pattern which was that medical benefits were not being paid on the large majority of COVID-19 claims. So for typical claims in the workers' compensation system, over 70% of claims that were filed resulted in some paid medical bills. For COVID-19, that proportion was below 20% in the outbreak occupations. Similar patterns were there for front-line occupations in terms of temporary disability receipt, and there were lower rates of disability receipt among workers potentially covered by the outbreak occupation presumption; they saw higher rates of temporary disability receipt among workers who were likely to be covered by the frontline presumption. As a result of both the higher denial rates but also lower costs on lower medical spending, lower rates of medical bills being submitted to workers' compensation as well as some differences in disability duration, the paid benefits on the average claim filed were much, much lower for COVID-19 than they were for non-COVID-19 claims, at least over the pandemic through June 30, 2021. What was interesting was that COVID-19 claims were associated with a higher rate of hospitalization being billed to workers' compensation but there were enough no medical and low severity claims to outweigh the cost impact of those hospitalizations, at least so far.

Dr. Dworsky stated that Dr. Denise Quigley would discuss the qualitative input of the study which provided additional insight into people's experiences and the mechanisms driving the quantitative findings. Dr. Quigley restated a few facts about the qualitative methods including that the study included a total of 32 interviews across a very diverse set of key stakeholder perspectives. The qualitative work aimed to gain understanding of workers' experiences surrounding COVID-19 and their claims and what would happen to that claim. Besides interviews with injured workers, they also spoke to California public health officials, claims administrators, insurers, and employers across several impacted industries such as public safety, health care, and industries with high levels of reported outbreaks. The interviews were during a six-week period in the summer of 2021. During that time frame the RAND team aimed to understand issues about a newly emerging, and very complex situation. Typically, qualitative data collects in-depth experiences, viewpoints, and perspectives to identify the range of issues and develop or deepen understanding of an issue. The

qualitative findings were meant to be complementary to what would be known from the claims data.

Dr. Quigley first discussed the factors that impacted workers' decisions to file a workers' compensation claim and then discussed factors that impacted employers. For workers, one of the biggest influences that impacted their decision to file a claim was the state and federal response to COVID-19. After contracting COVID-19, a worker could go to various locations and gain access to medical care as there was universal access to medical care either through employee health, urgent care centers or primary care facilities. For insured workers, insurers covered any needed co-pays and deductibles for COVID-19. Insurers also waived out of pocket costs for hospitalizations. The interviews were throughout the summer of 2021 and many of these cost sharing waivers did expire in the fall of 2021. For anyone who was uninsured, HRSA, a federal agency, paid providers for COVID-19 medical care. This is a very different circumstance than any other case for a workers' compensation injury, because with COVID-19 a worker was able to get immediate access to medical care for their injury without the WC process involved. Since there was an ability to gain medical care access, there were lower costs incurred by injured workers. Because workers were able to get timely medical care and were not getting medical bills for that medical care, for very minor medical care, workers did not have the need to put in a workers' compensation claim for payment. They heard from workers that workers with COVID-19 did not necessarily need to put in a claim to be able to gain medical care or pay for costs and in many cases they did not incur the costs. Those workers that had non-minor medical care that included many times hospitalization or prolonged symptoms were choosing to file. If an injured worker was hospitalized, most of the time they filed a claim even if the hospitalization was only a day or two. Also, they heard this from employers about their own workers and the employers knew they were getting workers' compensation claims that included hospitalizations. They also heard from employers that claims were filed for COVID-19 fatalities. Dr. Quigley said that the claims data also indicated there were large percentages of claims that did not have medical bills.

Dr. Quigley indicated that there were several other factors that affected the worker's decision to file a claim, aside from medical care, and that was the need to have more than 80 hours of paid leave. That was pertinent because SB 1159 indicated that an injured worker had to exhaust any other paid leave first before gaining WC benefits. So if an injured worker needed to be off work to quarantine or because they were sick and it was a minor sickness where you did not need more than 80 hours of paid leave, the injured worker would use federal and state paid leave and not necessarily workers' compensation. So having the federal and state paid leave did play into people's decision to file a workers' compensation claim and whether they needed more than 80 hours of paid leave because of the provision from state and federal policies. The injured workers did report having questions about claims of COVID-19 exposure. To figure out if COVID-19 would be covered by workers' compensation, a common question that employers needed to understand was if the injured worker was really exposed at work and that was not always completely clear to the worker or the employer. Also, we heard from injured workers that they were unsure about the process of filing a claim if they were exposed to COVID-19 at work. There was also some confusion expressed among workers about what constituted being a frontline worker. Workers had an impression that if you were an essential worker, meaning you were

working outside the home, that you automatically were covered by the frontline presumption. There were questions about the presumptions, especially early in the pandemic. RAND interviewed people during the summer of 2021. Interviews uncovered that there were issues around what defined a workplace outbreak and employers needing to know details about the specifics of the workplace. In a rolling two-week period, many times there was COVID-19 exposure and many times that was very obvious and other times it was not. So there were questions that workers had about whether to file a claim regarding an outbreak. Dr. Quigley added there was a need to understand the documentation and evidence that was needed for any workers' compensation claim such as the Doctors First Report of Injury (DFR). It was different for COVID-19 to have not just doctors confirm the injury through the DFR but also to have the added need of claims administrators probing and asking questions of workers about circumstances outside of work to know whether they should be filing. In a couple of industries, there were a few workers who were afraid of potential retaliation.

Dr. Quigley said it was true that the federal and state COVID-19 paid leave policies impacted employers, but mainly through their human resources functions. Most of the employers indicated paid leave was pretty easy to implement and it was managed largely by payroll. However, they had to make significant changes to policies and practices that they had in place because it was not typical for workers' compensation to interact with determining if someone had already received 80 hours of paid leave. So there was coordination between payroll and employee health around the positive tests or between payroll and workers' compensation in terms of the amount of paid leave that was needed and when it was taken. There was more coordination required across various departments and that did incur costs to employers in many cases. They had to update human resource systems to be able to input different types of information. They had to hire more staff. Many times the added staff was for compliance or coordination issues or sometimes to implement the new policies.

Dr. Quigley discussed that there were some policies related to SB 1159, such as Assembly Bill (AB) 685 and also the Cal/OSHA Emergency Temporary Standard; these other policies were those that really impacted employers in terms of the data and reporting tasks that they had to take on. Most of the employers discussed the administrative burden related to COVID-19 data collection and reporting. Some employers had existing tracking systems at the very beginning, but most did not. So the employers had to build these tracking systems into their departments over time. They had to create these new systems very quickly and also had to coordinate between departments to gain needed information. One of the quotes was "it was like drinking out of a firehose" due to all the information that they were being given about all of the various laws. It was very hard for employers of different sizes to be able to take in all that information and make all the necessary changes as quickly as needed. Because of the amount of information, it did raise confusion about some of the reporting rules, and all of the employers did talk about that and the differences about what Cal/OSHA might demand from them in terms of reporting and what was happening within workers' compensation. The legal departments were involved. When employers and even claims administrators were talking about the reporting and tasks that they had to take on, there were concerns raised about preserving employee privacy when notifying employees of exposures. It was not something that was typically happening within workers' compensation for other injuries. In

this case, because of trying to calculate outbreaks, there was a need to know that other employees were exposed and out. It was hard to maintain employee privacy, and that was an aspect of workers' compensation that normally was not dealt with for other types of injuries.

Dr. Quigley said that employers' claims administrators also discussed the many changes they had to make to handle the volume of the claims, particularly when it was as volatile as Dr. Dworsky mentioned. For several months they had high records of many claims, and to process them they reassigned staff in most cases; so if they were self-insured, they could move people off of the non-COVID-19 claims to be able to help with COVID-19 claims. In many cases, the claims administrators were able to hire staff. All of the claims administrators needed to change processes and work-flow to be able to gather the additional evidence for COVID-19 claims such as a positive test, an employee interview, and other workplace information. That was different that non-COVID-19 claims because information for non-COVID-19 claims came in through the Doctor's First Report (DFR), but claims administrators for COVID-19 claims needed to investigate and had a shorter investigation window for a COVID-19 claim. A positive test was needed as well as conducting extensive employee interviews. When employees were sick and if they were hospitalized, it was very difficult to talk to an employee in that situation, and the claims administrator only had the 30 day or the 45 day window to talk to an employee. Employees might be very sick with COVID-19 and could not speak because of respiratory issues. There were issues also about gathering information through the workplace to be able to know if it was an outbreak. Additional information was needed by claims administrators, not just about the workplace, but also about how an employee interacted in their home environment to be able to understand whether it was a work related exposure. Most of the claims administrators and employers also documented whether a worker was exposed at work and required an intense investigation.

Dr. Quigley stated as was mentioned and is in the law, that there was the 30- and 45-day timeline rather than the 90-day timeline for being able to make decisions on a claim and that did affect the workers' compensation process. The shorter timeline affected the process and possibly the claims outcomes. From the WCIS data, COVID-19 claims were denied much faster than non-COVID-19 claims. They had faster processing according to the timelines that were put forth for the frontline industries rather than the non-frontline industries. The interviews raised that the shortened timelines were not necessarily helping workers because access to medical care for COVID-19 was universal. It resulted in shorter timelines in making decisions in the 30- and 45-day window; it pushed claims administrators to have to do an intense investigation in a shorter period of time. Many of the claims administrators indicated that they accepted more claims because of the shortened timelines, since disproving COVID-19 claims was hard.

Dr. Quigley summarized the information that they were able to gather in their mixed method study of examining the volume and outcomes of claims as well as talking to a diverse set of key stakeholders to better understand this complex and newly emerging issue. The overarching conclusions were: COVID-19 surges and claim volumes were really volatile and in certain months it would put a large stress on the workers' compensation system. The workers' COVID-19 claim filing was heavily influenced by federal and state policy context, which was unique and changed dramatically since the summer of 2021. We could not address how the changing federal and state

policy conflict context is impacting claims today versus when we were speaking to people in the summer of 2021. However, for medical care, temporary disability and paid time off those policies impacted claim filing. The processing timelines were challenging for claims administrators and potentially lead to lower denial rates. Claims administrators tried to adapt quickly to the unique aspects of the intense process that was needed to be able to interview employees. Lastly, the benefits paid to date were modest largely because the volumes have declined, the volume of low severity claims, the number of claims that did not have medical bills because medical care costs were low or because claims were not filed, and many claims were filed for non-minor medical care.

Dr. Quigley said this study also raised some important questions that could not be addressed in the report and calls for further research: 1) what other non-workers' compensation benefits did injured workers with COVID-19 use, 2) how have claim filing and costs to workers' compensation changed as other state and federal benefits are withdrawn and lastly 3) how will long-COVID be handled in the workers' compensation system. We know that as the state and federal benefits are being withdrawn or as they have changed dramatically since the summer of 2021, it would be good to examine again more up-to-date claim filing costs for workers' compensation in the system. There is also need for research on how long COVID-19 is going to be handled in the workers' compensation system, both for permanent disability benefits, determining future medical treatment and even death. Also, the question remains were vulnerable workers able to access workers' compensation as well as non-vulnerable workers.

Commissioner Questions or Comments

Commissioner Kessler stated that the important aspects of the study were how the federal and state support had helped people who had COVID-19 get financial assistance as well as access to medical care. The long-term policy response was needed since long-term COVID-19 impacted people and was going to last for a while. The study recognized the need for long-term pandemic responses and policies and the need to look at the safety and protection of workers at the work site. It was also important to look at why people filed.

Commissioner Kessler asked if employers must report and if employers were not reporting because of fear that it would increase their workers' compensation insurance. She added what were the reasons they did not file and did it come up in the interviews. Dr. Dworsky replied that he did not believe they heard much about an increase in workers' compensation and that one really important thing about COVID-19 claims was that the incentives for claims suppression that result from experience rating should not have been present in the case of COVID-19. Dr. Dworsky said his understanding was that the WCIRB made the decision to exclude COVID-19 claims from the base of claims experience used for experience modifiers and he believed that decision has continued. Given that the pandemic is not over yet, it is possible that the WCIRB might someday factor COVID-19 into rates in a way that is tied to an individual employer's experience. However, this was not the case at the time of the briefing. Dr. Dworsky noted that the WCIRB's rationale was in part that, if they were trying to set rates for the workers' compensation system after the pandemic, and if they looked at the COVID-19 claims experience, it would make the data uninformative about the rest of the risks faced, but that should have had the side effect of removing the incentives

for claims suppression that they would worry about with experience ratings. Dr. Dworsky asked if Dr. Quigley had heard about non-reporting of diagnosed cases and she replied that she did not. When Dr. Quigley mentioned the employers that they spoke to and when she talked about employer data and reporting tasks, that was what she was referring to. There were reporting rules for reporting positive tests to claims administrators with self-insurance within the same organization and with their TPA, they were about coordinating that and there were third party administrators that work in certain industries such as the healthcare industry and other industries they were helping support. There were new systems for data tracking that needed to be put into place. They were not told employers were not reporting. It was more that they were trying to figure out how to put all the tracking in place. Commissioner Kessler replied that she had heard that they did not report to the county health system that they were supposed to, so she was glad to hear that.

Commissioner Kessler stated she had always advocated that there needed to be engagement with workers. In addition, with worker representative organizations, she was very concerned that for the Post Traumatic Stress study that RAND interviewed only 13 workers. This time RAND contacted 32 people statewide for this study, 11 employers, eight claim administrators, four public health officials and only nine workers. She does not see any contact with any worker organizations, such as unions that represent an advocate though they did say that there were advocacy organizations contacted through the TAG, but the report did not state who they were. She was deeply concerned because this was a well-funded statewide study. RAND did not talk to the workers who were the most impacted in the discussion about what workers thought when there were only nine people interviewed. Commissioner Kessler wanted the ability to have more accurate information. She was not claiming that it was inaccurate, but she was saying detailed information is missed by not going to the workers or their advocacy organizations. The other concern she had was a script was used: Commissioner Kessler alleged that the workers were told that RAND was working with their employers to conduct this study, and that there was no mention in the script that CHSWC asked for the study and contracted with RAND. Commissioner Kessler stated that she would like to see a copy of the script because she was very concerned about how workers were contacted and what they were told because that could impact the way they responded. She also wanted to know for the TAG meetings who were the worker advocates and the unions they were referring to.

Dr. Quigley replied the scope of work and budget for the study were set to allow for 32 interviews across key stakeholders. She said they could have had included more interviews if they had better response from workers and from employers. We did not turn away any workers that wanted to be interviewed. But the scope of work for this study was to have a small number of interviews to capture diverse perspectives across several industries to make sure that the study was informed by claims administrators, employers and workers from the industries most affected, such as healthcare, public safety and the industries with the COVID-19 outbreak. RAND only had the nine workers who contacted RAND for an interview and we could have taken more. RAND talked to some workers that did not file to understand why they did not file. In that six-week period, in the summer of 2021, there were some issues with timing that decreased the ability to gain interviews. She stated that they had done outreach in three different ways to gain workers and there is additional detail in the report. This did include outreach to unions and worker representatives.

Dr. Quigley added that the script was reviewed by RAND's institutional review board and designed consistent with basic research ethics to make sure there were no risks in how RAND contacted people for the key informant interviews and including the process for workers. Dr. Quigley explained that, in the script that was used, RAND gave the official name of the study and stated that RAND was asked by DIR/CHSWC to conduct it. When RAND described the study being conducted, it was also stated that participation by workers was voluntary, and would be anonymous. To protect anonymity, the participants were given an 800 number by RAND so they could call about the study and if interested set up a time for an interview. Names were not sent to Dr. Quigley without consent.

Regarding recruitment, Dr. Quigley also noted that recruitment was not conducted exclusively through employers. RAND worked with TAG members (including applicant attorneys) to identify workers and worker representative organizations to help, and then RAND provided information and scripts to advertise the study that included information for the interested workers to contact RAND. If names were provided to RAND as possibly interested parties, RAND did not let the referring parties know who they contacted or not. So it was anonymous for workers to be able to call and conduct an interview with RAND without anyone knowing the interview was conducted. Human subjects approval is only given when there cannot be any risk of harm from study participation to the worker, whether employment or any other risk. All procedures for the study were approved by RAND's institutional review board.

Dr. Quigley further clarified that the interviews were voluntary for workers and included an incentive only for the workers who completed an interview. The incentive helped with recruitment because during the summer of 2021, agricultural workers were in the field as it was the height of growing season. We had a difficult time recruiting workers in agriculture, grocery and even construction given that it was the summer. Even with the three different mechanisms for recruiting workers, recruitment was challenging due to the short time frame available for qualitative work and because many of the workers affected by COVID-19 were extremely busy at this time. For instance, there were also staffing issues in grocery stores and in construction during that time where it was also very difficult to keep staff employed. The workers that were working or had claims just had a difficult time during that period in summer of 2021 to be contacted and be available to talk to the RAND team.

On the employer side, the timing in the health care industry was also tough, as it was when initial staff vaccinations were rolling out and so it was also much more difficult to gain access to nursing home health care employers. This was due to the same issue; that many nursing homes were overloaded during the summer of 2021 and were hard to recruit. The RAND team also because of the legislative deadline had a short window for conducting all of the interviews, and RAND had some challenges trying to get some of the types of workers and employers that they aimed to speak to. However, we were able to gain the number outlined in the scope of work, which was a small sample of interviews intended to learn from frontline experiences.

The TAG was the other avenue for input and discussion from stakeholders. At the first meeting RAND discussed the design and approach of the study with them. Some of the TAG members actively helped as our recruiters for being able to gain interviews. RAND is not able to disclose

the names of the TAG members in the report: RAND recruits members for a technical advisory group, in consultation with DIR, with a promise at the time of TAG recruitment that RAND will not release their names. The TAG included stakeholders from agriculture, occupational health and safety representatives, peace officers, healthcare workers, unions, hospital workers, and nursing home workers. The study also included employer organizations across counties and cities, public safety and risk management, and claims professionals from different types of insurers. RAND also included an applicant attorney and a defense attorney on TAG. The TAG also had an epidemiologist, and a couple of public health officials to make sure that the TAG had some rounded broader views of COVID-19 to be able to have input and discussion both for their findings as well as what they were hearing in the interviews. RAND was aiming to understand more of the emerging situation and context of COVID-19 claims. It is standard practice to use qualitative information to gain information on emerging, critical issues, experiences and viewpoints that are not able to be captured in the quantitative data. RAND felt that was possible with a small sample of 32 interviews. They would have preferred to conduct more interviews, but that was not part of how the study was constructed or funded; the scope of work also budgeted for 32 interviews.

Commissioner Kessler asked if RAND used any unions to contact any workers and did any unions get involved helping find workers to interview. Dr. Quigley said she talked to six types of union representatives mostly across the health care industry. For health care and a few other industries, the unions did publicize this study with recruitment materials that included the 800 number to contact the RAND study team. RAND provided a one page sheet for recruiting where the front was in English and the other side was in Spanish. You could also have an 800 number where you would directly be contacted by a bilingual Spanish Rand trained interviewer to be able to conduct the interview and ask questions about the study in Spanish.

Commissioner Kessler responded that that was what she would like to see. However, if interviewees received gift cards then they should not be from Walmart. It was one of the most anti-union employers among brick and mortar retail places in the country. She said they were one of the worst. Dr. Quigley added that they chose Walmart because there were more Walmart stores than Target stores in the Central Valley. They were trying to give a gift card that anyone could use. They did not want to use Amazon because it would require a computer. However, they were trying to make sure that someone did not have to drive over 200 miles to access the store.

Commissioner Roxborough asked about the methodology used to interview the 32 people. Dr. Quigley replied that it was a phenomenological study. Commissioner Roxborough asked if it was based on a random sample so that the data obtained was meaningful evidence, as opposed to anecdotal. She said when you conduct a survey or collect data that is typically more quantitative the aim would be for a representative sample, however that was not necessarily how you approach gathering qualitative information. With qualitative data, you create your samples in a way where you gain a broad perspective. RAND used purposive sampling, which is a mechanism of including key people that are willing to talk to you. The qualitative component of the study was not designed to yield a representative sample of interviews. Instead, it was supposed to be a set of individuals with important perspectives on the issue at hand, which was why you call them key informant interviews. RAND knew that they wanted to talk to workers who had contracted COVID-19, who

had inquired about it or filed a claim. Of course, we developed a couple of screening or eligibility questions for the interview. When RAND got a worker on the phone, the first thing they asked was if they had asked or inquired about a claim for COVID-19, we wanted to know if they had just inquired about a claim or if they filed a claim. RAND utilized sources to find people who would know of or advertise to workers. That was why there were three different strategies to try to gain access to workers who had potentially contracted COVID-19 and filed a claim. The recruiting mechanisms were different for public health officials or claims administrators, or for employers. RAND built different sampling pools of each type of stakeholder and recorded industry, location (i.e. northern or southern CA) to be able to balance the input across industries and geographic location with a small set of interviews. We aimed to gain perspectives and experiences and wanted to do that across various categories. They were looking for interviews from claims administrators and employers. For example, they wanted different types of claims administrators, so they tried to balance having self-insured and third-party administrators within claims administrators. The methodology and approach for the interviews is purposive with targets to balance the overall set of interviews; this aims at gaining a broad perspective of experiences. Commissioner Roxborough asked if limited data may be referred to as anecdotal information. Dr. Quigley replied that all interviews in the small sample of 32 can be considered anecdotal.

Commissioner Roxborough said that there were 142,000 COVID-19 claims. Dr. Dworsky affirmed that was the total number that came in the WCIS at the time that they extracted the data. Commissioner Roxborough replied that the RAND Corporation interviewed nine injured workers who were not randomly selected. Dr. Dworsky said he would like to clarify that they were not doing any statistics or calculating any averages from the qualitative analysis. The purpose of that qualitative research was different from what you would want to have an actual random sample for but would need to explain more about that. Commissioner Roxborough said that he did not need an explanation because researchers sometimes conduct focus group studies that may be used to generate a hypothesis to be evaluated in a larger, more definitive study. He asked why they were not doing that. He was not saying the conclusions were not of value. They were logical but as an employer, he had five people with COVID-19 out of 22 employees, none were work related and that was anecdotal information from a law firm. With people not working in the office very much, getting COVID-19 at the office he was not sure what value CHSWC gets from this information. Listening to Commissioner Kessler, he would be interested to know whether further study from the RAND Corporation was warranted. His understanding and expectation about conducting a study was that it must be consistent with industry standards to be valuable for CHSWC to make recommendations to the legislature or to draw hypotheses. The information CHSWC received was six months old since the study ended as of August 2021 and now it was March 2022. He said the world looked different and some of the comments may have value if COVID-19 came back in any form. It was important for this work to be done, but it was equally important that this was an academic process that CHSWC paid a lot of money for. He wanted to get something of value and rely on these conclusions and policy implications. He asked fellow Commissioners about expectations of how studies were being conducted. Commissioner Kessler added that she asked for a meeting to have a discussion among the Commissioners about how studies were done and as Commissioners look at the way studies were done; what they would like or dislike so that they can

have a conversation about it rather than just reports that they respond to. She said Commissioner Roxborough's questions were good and thanked him for raising them.

Commissioner Bloch commented that he is most familiar with the transportation and warehousing sector and it was covered in the report. Dr. Dworsky did talk about the subset of workers within that sector with the highest incident rates and those were doing the manual work in warehouses. Commissioner Bloch said it did not surprise him. He said it would be very interesting to overlay injury rates for that group with Cal/OSHA injury rates. In his experience, this was directly related to the explosion of online shopping and he singled out Amazon which has high injury rates and high COVID-19 rates. Workers were in an environment where they were being supervised just as much by artificial intelligence as by actual humans who could be looking out for worker health and safety. He was glad that Dr. Quigley did not buy the Amazon gift cards; instead he would encourage her towards Safeway or Albertsons, which are good union employers who they worked with cooperatively to stop a COVID-19 outbreak. He agreed with his fellow Commissioners that this study raised more questions than answers around the intersections of policy, particularly paid sick leave and the rebuttable presumption. He asked if they had an estimate of how many employers tried to rebut these claims and sectors where they were successful.

Dr. Dworsky replied that they did not have any data on how many employers tried to rebut claims. Where it was tricky, which he was trying to describe earlier, is that there was not information in the claims data if the presumption applies because they did not have a record of whether the PCR test was positive and submitted to the claims administrator. It would be very possible to do analysis, working with claims administrators or for example, the data that CWCI gets from doing extra surveys of additional information from the claims administrators, to get some record of that. Based on what was in the records in the WCIS that was part of managing the claim, he does not see that information. Commissioner Bloch responded that anecdotally, having this presumption in place, having collectively bargained sick leave, having supplemental sick leave, these were policies that our members and workers in our industries benefited from. A consistent theme over the years was looking at cost shifting between the workers' compensation system and the group health system. His second question was if having the presumption in place, looking at the claims data, was there an estimate of how much savings there were in the group health system because people were getting their COVID-19 treatment covered through workers' compensation, which he believed was the right policy. Dr. Dworsky replied they did not have an estimate, given the timeline of the study, and they did not look beyond workers' compensation data. It was not clear that there was a good data source that existed that would be comprehensive for the state of California. The state was in the process of developing an all payers claims database, so if there was an ongoing pandemic in a year or two it would be fairly straightforward to answer that. In the short term, if they were interested in specific industries or employers working with them directly for example, trying to ask CalPERS to link their group health data with state employees' workers' compensation data could be a more fruitful way to go, but they did not have the time or the resources in this study to get into that.

Commissioner Kessler stated that issues were going to be raised again as COVID-19 variants emerged. She said that in the presentation RAND noted that some workers were afraid of

retaliation and she asked whether people did not file a claim because they felt it was too bureaucratic and they would not be able to get through in a timely fashion and did that come up. Dr. Quigley said that fear of retaliation was part of some decisions but in a different way than that. They heard from workers that they did not need to engage in the workers' compensation system because they were able to get their medical care already. If you were able to obtain your medical care without having to file a claim and you were able to get paid time off without having to file a claim because you had the federal or state COVID-19 leave, then those factors influenced whether a worker was going to move forward with a workers' compensation claim. Commissioner Kessler asked about after they had exhausted federal or state funds but became reinfected or had to take care of a family member. Dr. Quigley replied that they talked to frontline workers that got infected more than once and if they exhausted their 80 hours of paid leave and had nothing else, then they would file a claim for temporary disability. They would be able to take leave from work because they knew the exposure was from work. Commissioner Kessler asked whether there was any discussion about the return-to-work fund so people could have received money during the time when they left and came back to work and that would help to bridge the financial gap. Dr. Quigley replied that in interviews, employers and claims administrators and even among the workers no one talked about the return-to-work fund. Dr. Quigley said the discussion was about what claims administrators or employers would raise and not when workers would come back to work. When to come back to work was constantly changing due to exposure or no longer exposing someone else. People did not raise return-to-work financial implications. Commissioner Kessler stated she was referring to the return-to-work fund. Dr. Dworsky replied that the fund was established after SB 863. Currently the return-to-work fund was regulated and that eligibility started once somebody was permanently disabled and they separate from the employer. The data used in this study was extracted in August 2021 to complete the study by the end of 2021 and showed almost no one received permanent disability benefits. He suspected that will change. For non-COVID-19 claims that were followed at the same time in this study, there were extremely low rates (less than one percent of all the claims that were filed over the 2020 to mid-2021 time period) of permanent disability. The return-to-work fund seems like it will be important in the future, but at least when they conducted the study, it was too early for that. Commissioner Kessler added there will be a long term impact of COVID-19 for some individuals and that meant they could not do the work they were doing prior to getting COVID-19.

Commissioner Kessler said she had heard that over time employers were citing HIPAA as a reason why they could not tell employees about what was going on. She asked if there was any reporting by employers to their unions when an employee had been infected. Privacy is understandable except when other people can get infected as a result of not knowing that they had been exposed to COVID-19. She asked if there was any discussion about how to inform co-workers so that they could get tested or quarantined. Dr. Quigley replied that when they spoke to employers, employers indicated that they were required to track exposure. And this was over rolling periods to figure out if there was an outbreak. Obviously, if you were an employer of public safety workers or healthcare workers, it was all of your workers. So they did have to notify employees of exposures, as it was exposure on a daily basis. Some of the larger counties or cities that they spoke to had 800 numbers where they could have people call in to be able to gain additional information and there were standard notifications in terms of letting people know when there were cases and exposure. They

discussed the required reporting and the coordination it took to conduct all of the tracking and reporting of the data around who was exposed to COVID-19. Commissioner Kessler said she was talking about informing the employees of their co-workers being infected, not about reporting. Dr. Quigley said yes that was part of the notification and the employers did talk about many cases in which they were trying to sort out if there was an outbreak. She said that she could send the Commissioners the recruitment script and Commissioner Kessler asked for that.

Chair Steiger commented on the outbreak definition for the outbreak presumption and he used the phrase legislative maneuvering to describe how we ended up with that definition. He added that it was a very diplomatic way of describing the process that ended with that definition. In that process, it was very hard to defend the outbreak definition that wound up in that bill. That was certainly not the outbreak definition that they would have wanted to have in that bill and the struggles that Dr. Quigley faced in measuring stem directly from the not ideal nature of that definition of outbreak that he would very much like to change. It was an important point and also within that, the structure of having this be reported to the local public health agencies by the employer, enforced by claims administrators, also contributes to this difficulty and gets into the broader issue of a lack of data in the workers' compensation system. That infects everything that they tried to do. They kept identifying these problems and they want to do something about it. However, the data that they needed was not there and this was the latest example. Hopefully, collectively as a workers' compensation minded community they can use this as another example of what they need to think through, how they design and define issues so that in the end there was more usable, more helpful data that can then be used to better protect workers because we kept running into this wall of how many outbreaks there were. They had been trying hard to find out how many outbreaks have happened. They had asked many people, including many unions and individual workers. And so far I have found one union in one industry that can point to a group of workers who benefited measurably from that outbreak presumption and everyone else in the study who was asked had no idea, and they had not heard of it and no one knew. There was no database to check, so they were all stabbing in the dark trying to figure out how many outbreaks there were, whether that definition did anything and how to fix it. This is something to keep in mind moving forward with COVID-19 and other hazards and we need to do a better job of not just collecting data but defining problems so that they could take better actions in the future.

Chair Steiger wanted to echo many concerns raised by other Commissioners regarding the limitations of the study and without describing the severe limitations of any data collected from nine workers. They would very much like to offer up the labor movement as a resource in the future if they were unable to find workers. He has fairly direct contact with millions of workers and would be more than happy to help recruit. Obviously, he has a lot of ideas on companies other than Walmart to develop incentives to help get those workers to give you the information that you need. There were many tools out there that they can offer if they need to talk to a lot of workers in that setting to try to get data from them. They would be more than happy to help with that. The last question was related to the intense investigation that was referenced that many employers felt like they had to engage in because the time to deny had been shortened. They could have a long debate about that specific question and whether the employer description of the incentives created was one that they would agree with.

Chair Steiger asked if those concerned discussed what that intense investigation is or looked like. The reason he stated this was that they were taking a very close look at worker surveillance in different contexts, but also in workers' compensation. There was a lot to be concerned about; so when the employer stated that they were given less time to deny, and that they need to do a more intense investigation to find out did they give any hints as to exactly what that involved because they were hearing many negative stories about intense investigations and figuring out if a worker actually suffered work related exposure. Dr. Quigley replied that the term intensive investigation was used because they had a series of questions that they were asking the injured worker about how they were exposed to COVID-19. They had a series of questions that several claims administrators or employers shared with them that they asked injured workers about exposure. It seemed intense was due to long lists of questions asked of every injured worker to try to determine where the exposure happened. From this line of questioning there were many more questions on the list that were asked that had nothing to do with inside the workplace because they were asking them questions about what happened once they left the workplace that day: did they go to the grocery store, and did they have any other interactions with people at home. There were many other questions that they added to the list of COVID-19 claims that they would not be normally asking a worker. They felt as if they were blurring the lines between what is considered a workplace question and a home based question or a non-workplace question. It felt more intense to ask detail about a worker's life and circumstances over a period of time to understand where and how they were potentially exposed at work. The reason it was coined as an intense investigation was because of the number of questions asked, the breadth of the questions that were required or the employers felt that they needed to ask. In many ways it was during an intense time for the injured worker where they may had been sick and hospitalized, not able to talk clearly. It was a very intense process in that regard. But in this case many of them were having difficult times with fatigue, breathing or hospitalization. It made it a more intense experience to be trying to gather this information during a short period of time in a 30- or 45-day window.

Commissioner Brady said that intense investigations are time periods where there was a lot of work that needs to get done and a lot of information needs to be collected by examiners and it puts the examiner in a position where they were waiting for third parties to deliver that work product. If the current 90 days were shortened, it will lead to a lack of medical delivery, denial of claims, and more litigation. It was going backwards, not forwards and it was going to be a disservice to injured workers to shorten the current time frames. Those were his observations after looking at this issue for about 30 years.

Public Comments or Questions

Robert Blink, occupational medicine physician, stated he was a former member of the California Occupational Safety and Health Standards Board (OSHSB) and a former president of Western Occupational Environmental Medicine Association (WOEMA). He was a consultant to many parties in workers' compensation as well as workers, employers, and government agencies. First, as others have commented, of necessity this study had a limited scope. The time period of the study was the initial wave of the pandemic from the winter of 2020 and the summer of 2021. However, in order to capture the entire pandemic, including this horrible spike in January 2022, the study

needed to continue and he hoped it would happen. He recommended that it should be strongly considered because there were many learnings that did not happen. He asked if the study was involved with the technical advisory groups and did that include any occupational medicine physicians. Dr. Quigley stated that they did have someone from occupational health and safety. He recommended an Occupational Medicine Board certified physician with fast moving events like the COVID-19 pandemic. Dr. Blink said the only way to get close to the current situation was by consulting with technical experts such as the occupational medicine physicians. They all talk to one another all across the country on a weekly basis, sometimes on a daily basis throughout this pandemic and have been tracking these two issues: workers and public health issues. It would be very advisable to have people with that kind of background involved in analysis and planning, especially when things are this fast moving. They were experts in causation analysis as well and that was what this is about. WOEMA has a standing policy that is not favorable to presumptions in general for work injuries, because they were able to look at causation from a scientific viewpoint, and took a different position with COVID-19 and had to do something. They supported the presumption for this temporary period during the chaos that we lived through and he was glad they did.

Going forward the vast majority of cases were community acquired, not work related partially due to the waning of the pandemic, but also because of mandatory vaccinations and workplace protective policies, which sadly are not in place everywhere. He added to keep up the work. He agreed with Commissioner Kessler that there was a problem of not having enough worker interviews, but similar to problems in some earlier studies, he said they needed to make sure this is addressed in the scope of the RFP from CHSWC. She had stated to ask for enough worker contribution and for the unions to contribute. He agreed. He reminded workers that the risks that were shown in some of these slides were not controlled for other factors so just because some job has a higher risk, you need to make sure what are the other factors such as living situations, socioeconomic status, and rates in that community in order to make a valid comparison. Dr. Quigley said that on the TAG itself they did have an epidemiologist and included California public health officials. They did not have an Occupational Medicine physician, but were trying to make sure that the study had experts in infectious disease and understood the change within California.

IV. Overview of DIR Contracts Process
Ed Scholte, Chief Business Services, Contracts & Procurement, DIR

Mr. Scholte presented an introduction of his presentation with a Table of Contents.

1. Introduction to Contracts

2. Contracting Process

- Identifying Need
- Required Documents
- Procurement Methods/Competitive Bidding

- Timelines
- Amendments

3. Conclusion / Questions

Introduction to Contracts – Overview

- What is a contract? Civil Code section 1549 defines a contract as an agreement to do or not do a certain thing gives rise to an obligation or legal duty enforceable in an action at law.
- Contracts are used to procure services for the State
- The rules and processes regarding State contracting are described in Public Contract Code, Government Code, and others
- State Contracting Manual (SCM)
- Rules are designed to protect the State, promote fairness and competition, and ensure public funds are spent appropriately

Introduction to Contracts – General Rules

- No work should be conducted outside the scope or term of a contract
- Only pay for services in arrears. Advanced payment is prohibited except in certain cases – SCM Vol. 1, 7.32, but would be specifically indicated in the contract.
- Payment of goods or services outside the Scope of Work can be considered a gift of public funds, which is prohibited
- Contract Managers (CM) are responsible for the ongoing administration and monitoring of a contract; they approve the work, budget and invoices. CM responsibilities also include monitoring performance by the vendor, costs, progress of deliverables and upcoming expiration dates.
- Promote and do not circumvent the competitive process
- Be aware of conflict of interest and other ethics issues
- Small Business and Disabled Veteran Business Enterprise goals – 25% contract spending allocation

Introduction to Contracts – Who can sign?

- Limited to those officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority; the contract and procurement team or CMP for short
- The following people have contract Signature Authorization:
    - DIR Director, who can also delegate to:

- Chief Deputy Director
- Procurement and Contracting Officer/Admin Deputy
- Chief, Business Services, Contracts and Procurement

- **Never sign Contract documents or any contractor contract forms on behalf of DIR**

Introduction to Contracts – Contract Types (will not cover in detail during this presentation)

There are different rules and requirements based on the type of contract. Some types of contracts include:

- Interagency Agreements
- Agreements with California State Universities and Auxiliaries
- Consulting Agreements
- Agreements with Public Entities
- Legal Services Agreements
- Personal Services Agreements
- Memorandum Of Understanding (MOU)
    - Agreements are typically with another governmental entity to collaborate or provide or obtain services at no cost. If there is a transaction of funds, this should not be an MOU and it should follow the normal contracting process.
    - For MOU reviews and approvals, there is a specific email inbox to send those to for review and approval.

Introduction to Contracts – Components of a Contract

A typical contract is composed of the following components (many are the responsibility of the CMP team):

- **STD 213 or STD 210** – The standard agreement cover page
- **Exhibits** –
    - Exhibit A – Scope of Work (content provided by DIR program staff)
    - Exhibit B – Budget Detail and Payment Provisions (content provided by DIR program staff)
        - Typically contains specific boiler plat terms and conditions, e.g. insurance requirements, additional attachments or exhibits such as contract definitions, diagrams, sample forms, resume, etc.
    - Exhibit C – CA General Terms and Conditions (GIA and UTCs)

- These should never be altered, and any revision triggers mandatory approval by the Department of General Services (DGS)

- Exhibit D – Additional Provisions
- Additional Exhibits or Attachments as needed

Programs help provide content (Exhibits A & B), but preparing these documents is the responsibility of Contracts and Procurement

Contracting Process - Steps

1. Identify Need for Services

Both the need and confirmation that the services cannot be provided by existing staff will be used to justify the need for an external contractor; this step may also speed up the process if another department or public entity could possibly perform the service, because these are eligible for exemptions from the competitive bidding process.

2. Develop Scope of Work and Budget (discussed later)

3. Obtain quotes or solicit bids/proposals

Most contracts not using public entities require some form of competitive bidding. Quotes for contracts without formal advertisements are limited to small business options and fair and reasonable contract awards under $10,000. These two options can be obtained directly by program staff.

4. Award the Contract – to contractor if exempt or the winner of competitive bidding process

5. Develop Contract documents

6. Acquire Contractor Signature

7. Acquire DIR Signature – by authorized staff for contracts over $50,000; interagency agreements over $1,000,000 will have to go to DGS for approval, taking about two weeks.

8. Obtain DGS approval if necessary

9. Notify Contractor to start work

Contracting Process– Contract Requests and Amendments submitted in FI$Cal

Financial Information System for California (FI$Cal):

- Combines accounting, budgeting, cash management, and procurement operations into a single financial management system
- Requisition --> Contract --> Purchase Order
    - **Requisition – Initial request from Program for Purchases and Contract**s

    - Contract – Contains contract information and attached documents
    - Purchase Order – Encumbered funds used for payment of invoices
- Contracts and Purchase Orders are created by the Contracts and Procurement Unit after the execution of a contract
- fiscal.ca.gov
- Contracting Process - Required Documents Provided by Program

There are a variety of documents program must provide to begin the contracting process. Most importantly, Requisitions for contracts should contain the following:

- Scope of Work – Include Contract Representatives and Term Dates
- Budget Details – Contract Amount, Quotes, Cost Sheet, Rates, etc.
- Justification satisfying GC section 19130(b)
- Any additional provisions requested by Program to be included in the contract

Use the new Requisition Checklist (for program staff)

Contracting Process - Scope of Work (SOW)

SOW development is a key responsibility of the Contract Manager. Although SOWs vary by contract, the approach to writing a SOW remains the same.

Fundamental information for SOW should include *who, what, where, when, why, and how*:

- **Who** will do the work?
- **What** type of services are being performed?
- **Where** is the work to be performed?
- **When** does the work need to be performed and how quickly does the contractor need to respond?
- **Why** is there a need for this particular service?
- **How** is the work to be performed?

It is critical to be as specific as possible here. For example, in describing the different roles and responsibilities, work locations, deliverables, and deadlines and requirements and criteria for the work product, such as a research report.

Contracting Process - Contract Budget

- Contracts should contain a detailed budget and/or cost rates for all services provided
- Budget is based on quotes, cost estimates, or formal bids provided by contractors

- Complexity can vary greatly - from lump sum payments to detailed labor, equipment, item, and travel rates
- Program must also provide the detailed funding information for the contract, including the allocation of funds over multiple fiscal years (if needed) and the fund coding - All provided in the Requisition
- Contracting Process – Government Code 19130 Justification
    - Justification provided by Program for almost all services contracts – some exceptions, ex. Interagency Agreements
- Document the reasons why the contract satisfies one or more of the conditions set forth in Government Code section 19130(b) and specify the applicable subsection:

"Personal services contracting also shall be permissible when any of the following conditions are met:"

Contracting Process - GC 19130 Justification

The most commonly cited subsections are the following:

- (3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.
- (8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.
- Contracting Process - Competitive Bidding Methods
- Competitive bidding methods require public advertisement of bidding opportunities ($10K or more)
- Programs provide a SOW, minimum qualifications, and evaluation criteria to develop solicitation document
- Solicitations are posted on Cal eProcure – minimum of 10 business days
- Evaluation teams follow strict requirements to evaluate bidders/proposers
- Results may be protested (PCC §§ 10341 - 10345 and Title 2 California Code of Regulations §§ 1195 - 1195.6)
- Timeline for award can be 4-6 months or more depending on the method, complexity, number of bidders, etc.

Contracting Process - Competitive Bidding Methods – IFB vs. RFP

IFB (Invitation for Bid)

- Simple, common, or routine services – Ex. Uniform Rental, Janitorial Services, Equipment Maintenance
- Bidders must meet minimum qualifications (pass/fail) and submit cost
- No oral interviews
- Public Bid Opening
- Award - Lowest responsible and responsive bidder

RFP (Request for Proposal)

- Complex and/or unique services – Ex. Auditing, advertising, or consulting
- Often include interviews
- Proposals include timelines, goals, objectives, detailed methods and work plans
- Narrative proposals are scored - award is not solely based on cost

RFPs - Primary and Secondary

Primary RFPs are for services that are complex, but not necessarily uncommon or unique; for example, complex data collection or auditing.

- The contractor performance typically requires different methods or approaches, but not necessarily innovation or creativity.
- There is no significant difference from one proposal to another in the methods and approaches that they may propose.
- Cost is a relatively important deciding factor for making the final award.

The scope of work for this primary method is fairly well defined in terms of service and functions that must be performed, and typically there are also very specific time frames required. The cost proposal under this method are submitted in a separate sealed envelope apart from the narrative proposal. Ordinary narrative proposals are reviewed, evaluated and scored for compliance but cost proposals are not scored as part of this process. Any qualified proposals that are responsive to all of the RFP requirements will then separately have their cost and price proposals publicly opened and read. Following the opening and reading of the cost proposals, any potential socio-economic incentives like small business preferences may be applied and then the award is given to the responsible proposal that offers the lowest cost for its services.

Secondary RFPs are for services that are complex, uncommon, and/or are unique; for example, public relations and advertising or complex researching and consulting contracts.

- The performance typically requires services or approaches that are unusual, innovative or creative.

- The quality of the expertise and approaches and methodologies and innovation can be significantly different from one proposal to another.
- The scope of work typically is much less precisely defined. It may even just contain what the business needs, the goals or objectives that need to be met.
- The price can be part of the narrative proposal and it is a significant factor, but it is all part of one proposal in the same package.
- The narrative proposals are then evaluated and scored.
- Oral interviews are optional here, and passing points could be set here to determine who the finalists are. That is, there could be a minimum threshold of having to meet a certain score in order to go to the next phase.
- The cost component is either scored against criteria in the RFP or a formula is used to convert the quoted cost into a part of the score or point values. Cost proposals are not separately announced or publically read. They are also adjusted for any potential socio-economic incentives like small business preferences and then the award is given to the responsible proposal that earns the highest overall score.

In summary, the primary RFP is the two-envelope method, whoever passes the administrative and technical threshold and has the lowest cost will win the award. The deciding factor for the primary RFP is lowest cost. With the secondary RFP method, cost is one of the components that makes up the total score of the proposal and the total combined higher score wins the award. Cost is a big part of it, but it is not necessarily the deciding factor.

Mr. Scholte explained that considering all of this, one of the key takeaways for RFPs is that the evaluation criteria are really important. Any specific requirements and desirable qualifications should be considered. For example, years of experience, specific licenses or certifications, experience with projects of a certain scope and value. It is reasonable to also ask for sample work products as part of this process. It is really critical to carefully consider the evaluation criteria and also how to specify this. For example, one could receive proposals from two firms, both with 15 years of consulting experience in workplace health and safety. Maybe both of the firms also have similar experience working with other governmental agencies. On paper there may not be that much difference between the two. But perhaps one firm just completed a research project on construction workers' health and safety in the last year or so, and the other firm, again with similar total years of experience on paper, perhaps they have just focused on some kind of technology implementation projects for the last couple of years. So one could ask would or should one of these firms' total experience be rated higher than the other firm. Depending on how the evaluation criteria are worded here, that may or may not be the case. Something as simple as using verbiage like "current experience" or including something like "demonstrated experience within the last two years" as the criteria could change the way the proposal is scored and the value that is attached to it by the Department.

Three final things that Mr. Scholte wanted to share: One is that the purpose of the rules and procedures explained are for competitive processes, and they are to ensure fair competition. It is important that competition is not unnecessarily restricted and this is really key when developing evaluation criteria. These criteria should be based on the business need and not trying to match it

with a potential specific contractor. Second, all proposals and all evaluation and scoring sheets must be available for public inspection at the conclusion of the scoring process. This is specified in Public Contracts code. Finally, there is no requirement to award a contract. If, in the opinion of the Department, there are no bids or proposals received that have a reasonable contract price or if there's another business-based reason not to make an award, DIR has that option. It is not obligated to award a contract at the end of the process.

Contracting Process - Exemptions from Competitive Bidding

- Contracts under $10,000
- Small Business/Disabled Veteran Business Enterprise (SB/DVBE) Option
- Leveraged Procurement Agreements – CMAS, MSA, etc.
- Non-Competitive Bid (NCB)
- Emergency Contracts
- Exemptions based on types of services:
    - Equipment Maintenance, Legal Services / Expert Witness, Interagency Departmental Memberships, Public Entities, Pre-Existing Non-IT Training under $50K, Proprietary Subscriptions or Publications

Contracting Process - Timelines

Whenever possible, allow the following lead times for development of a contract, from submitted complete Requisition through contract execution:

- Contracts under $10,000: 1 month
- Exempt Contracts under $50,000: 2 months
- Exempt Contracts over $50,000: 3 months
- Formal Competitive Procurements (IFB/RFP): 6+ months

Note: These are estimated timelines. Every contract is unique and can experience unforeseen delays, protests, delayed approvals etc.

Pre-planning and development of the scope of work is not reflected in the above timelines.

Contracting Process - Amendments

- Amendments can be for time, money, language clarification, changes in SOW, or a combination –
- However, there are many restrictions to amendments:
    - Amendments must be entered into before the expiration of the original contract – Submit Requisitions as soon as possible. Contracts can only be amended while they're still active. Once a contract expires, it is done. There are no more amendment options available

- Does the statute supporting the original contract award for an exempt contract also support the exemption of the amendment?
- Clearly identify sections being amended and provide the same degree of specificity as the original contract
- Amendments to contracts approved by DGS must also be approved by DGS in most cases - Amendments can also trigger DGS approval
- Amendments cannot be used to circumvent the competitive bidding process

Contracting Process - Amendments – Competitively Bid Contracts

There are strong restrictions on amending competitively bid contracts. They can only be amended in certain cases:

1. The amendment options were anticipated and evaluated during the solicitation process
2. The amendment either adds time only to complete performance up to 1 additional year or adds not more than 30% (not to exceed $250K) of the original contract (Additional restrictions apply)
3. The amendment is correcting incidental errors
4. Non-Competitive Bid (NCB) approval is required in all other cases. This is a complicated process and anything that can be done to avoid this is desired.

Key Takeaways

- There are various contract types – most require some form of competitive bidding
- Only specific persons are authorized to sign contract documents on behalf of DIR
- There are limitations to amendment options
- Contracts cannot be amended once expired
- Critical to consider process timelines and submit requisitions timely
- The Contract Manager is responsible for monitoring contractor performance, ensuring services are provided within the term and scope of the contract, and staying within the contract budget

Resources including training slides, handouts, and an FAQ are posted on the DIR Intranet page

For general inquiries, please contact Procurement@dir.ca.gov

Commissioner Questions or Comments

Commissioner Roxborough stated that he would have to leave but first asked about the minimum requirements in contracts criteria, and whether there are any considerations for social equity issues such as minority-owned businesses.

Mr. Scholte replied that certified small businesses and disabled veterans businesses typically receive preference during the formal competitive process. For example, there is a 5% preference that is applied to small businesses when they are competing with non-small businesses. There are other social economic programs out there like TACPA for contracts over a certain threshold that are also applied. He said that it is a little more complicated and he did not want to dive into too much detail but there are different options out there that do give a benefit to those type of businesses.

Commissioner Roxborough stated that he is interested in how contracts are weighted and the related criteria, and that it is not only cost which determines the best contractor, experience and quality can be very different; for example change orders are common in the construction industry where the low bidders then ask for more money (later). He said next time he would like to know what those weighted criteria are, if he could disclose it. He said California is a diverse state and if they are to practice what they preach in terms of social equity, they should do so in how contracts are awarded. Mr. Roxborough departed the meeting.

Commissioner Bloch said that he has had the privilege over the years to work with many parts of the Labor and Workforce Development Agency (LWDA), including serving on the Future of Work Commission, where they were charged with looking at what can they do in both the public sector and in the private sector to increase job quality or to promote equity, as his fellow Commissioner mentioned. He said that one of the things that he spent a lot of time focusing on was contracting. He said that because this is their chance to put their money where their mouth is as a state, they can use the money they use to contract for goods and services to promote equitable and quality jobs. He said he appreciates the detail Mr. Scholte shared. He said they should make sure that they are looking in-house first and try to avoid contracting out in the first place and use the protections within civil service. However, he did want to flag this language that comes up consistently, which is around the lowest responsible bidder. He said that he does appreciate that Mr. Scholte mentioned that cost is not always the factor. He said the Future of Work Commission actually did recommend that they look at systems to set up to make sure that when they are handing out money to employers, that they are giving it to the companies that are creating good jobs and not to the ones that are "low-road" employers.

Executive Officer Eduardo Enz said that before he presented his report he noted that some Commissioners are needing to leave the meeting, given the hour. He said that, unfortunately, they do need to vote on some action items at the end of his report and he is concerned that they won't have a quorum to do that since they have already lost one (Commissioner Roxborough had to depart) and they already have two vacancies. He said that they need at least two Commissioners on the labor side and two on the employer side. He asked the remaining Commissioners to please commit to stay for that vote; unless the other option is they could have the vote now so that they could take care of that. He said he could still proceed with his report after that. Mr. Enz said that it is up to the Commissioners how to proceed.

Chair Steiger said that he can stay to the end whenever that is depending on what Commissioner Bloch prefers. There were questions about the balance of time needed and Mr. Enz replied that his

report should be fairly brief and that he thought they could be wrapped up by 1:30 pm, 20 minutes more. Chair Steiger asked Mr. Enz, if possible, to vote on the action items first.

V. Action Items prior to Executive Officer Report

Mr. Enz said that there were three action items for their consideration.

The first is, does the Commission wish to post or feedback and comment for 30 days the draft report titled "COVID-19 in the California Workers' Compensation System, a Study of COVID-19 Claims and Presumptions under Senate Bill 1159," by Michael Dworsky and Denise Quigley at Rand. Ms. Kessler asked if Mr. Enz was suggesting posting it just on the CHSWC website or that Rand can post it on their website. Mr. Enz replied simply on the CHSWC website. Commissioners answered affirmative and the motion passed unanimously.

Mr. Enz said that the next action item was if the Commission wished to approve for final release and posting the draft 2021 CHSWC Annual Report. Ms. Kessler moved the motion and Mr. McNally seconded. The motion passed unanimously.

Mr. Enz asked if the Commission wished to approve the final release and posting the draft 2021 WOSHTEP Advisory Board Annual Report. Mr. McNally moved and Mr. Steiger seconded. The motion passed unanimously.

VI. Executive Officer Report for March 18, 2022

Mr. Enz stated that he wanted to first thank Ed Scholte for his comprehensive overview of the DIR Contracts process. He also wanted to advise that CHSWC has always legally followed the State Administrative Manual (SAM) procedures and requirements for studies, either by contract or in-house with state researchers. Every RFP and contract is reviewed by the DIR Contracts Office and the Department of General Services in Sacramento depending on the dollar amount. There are rigorous requirements for RFP's and both the evaluation process and the bidding process are also regulated by the state.

Mr. Enz thanked the Commissioners for the opportunity to brief them on Commission staff activities. He said that before he begins his briefing, he wanted to take a moment to congratulate Commissioner Christy Bouma who recently resigned from the Commission for a new opportunity in the Governor's Office. On behalf of CHSWC staff, he wanted to express gratitude for her 12 years of thoughtful and engaged service as a senior labor representative on the Commission. He said that it has been an honor and a privilege working with her and they will miss her and wish her all the best on her new journey.

CHSWC Studies Update

Mr. Enz stated that at the December, 2021 meeting, Commissioners requested that a cover letter be prepared and attached to the RAND PTSD report on behalf of Commissioners identifying areas of concern with the report before submitting it to Assemblyman Tom Daly. He wanted to advise that the RAND PTSD report, *"Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers"* was indeed submitted to Assemblyman Tom Daly's office in January along with a cover letter from the

Commission identifying concerns with the report as well as a PTSD Study Issues document from Commissioner Shelley Kessler.

Mr. Enz said that a legislative requirement based on SB 1159, Labor Code section 77.8 required the Commission to conduct a study on *COVID-19 in the California Workers' Compensation System* and submit both a preliminary draft report and a final report to the Legislature and the Governor. He said that CHSWC submitted the preliminary draft report in December of 2021 to the appropriate legislative office and to the Governor's office as required. The final draft report will be submitted by April 30th, 2022 to the Legislature and the Governor as required by Labor Code 77.8.

The CHSWC study *"Cleaning and Disinfection during the COVID-19 Pandemic: Determining Safe and Effective Workloads for California Janitors"* by the Northern California Center for Occupational and Environmental Health, a collaboration between UC Berkeley, San Francisco and Davis campuses, is underway. He said that they anticipate a draft report of preliminary findings by September 30, 2022 and a finalized report by November 30, 2022.

Mr. Enz stated that the redo of the CHSWC study *"Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles"* is in process and they will be putting together a Request for Proposal (RFP) that reflects the RFP elements adopted at the December meeting. These elements include facilitating equal access, ensuring worker participation, adhering to scientific standards and communicating findings. He said that he anticipates that this RFP will be completed and ready for Commissioner review in time for the next meeting in May.

Legislative Request

Mr. Enz stated that the Commission received a legislative request from Assembly Speaker pro Tempore Kevin Mullin in February to conduct an expedited effort to survey current park rangers and wildlife officers regarding skin cancer prevalence to be completed by May 1st. Mr. Enz said that this is a short timeline but that they are working to expedite the request. To that end, and with the support of the Assemblyman's office, Mr. Enz stated that he has contacted known worker health and safety researchers at UC Berkeley and UCLA who have experience conducting worker surveys to create the survey and contact the workers to fulfill the request. He said that they are exploring options and working collaboratively with staff from Assemblyman Mullin's office as well as with leadership of the California Fish and Game Wardens, Supervisors and Managers Association to comply with this request. CHSWC is working to meet this request in the most efficient and time-effective way possible and will keep Commissioners updated on progress.

CHSWC Projects and Activities Update

Mr. Enz stated that even though the reports were already voted on earlier, he wanted to advise that these reports were previously posted for 30 days for feedback and comment and they did not receive comments on either report.

Mr. Enz stated that CHSWC staff will be participating in the following activities in March and April. This year's annual California Young Worker Leadership Academy (YWLA) was held as a

hybrid in-person and virtual encounter due to the COVID-19 pandemic with Zoom sessions on February 25 and March 18 and an in-person day on March 5. The Academy provides a leadership development opportunity for teams of high school students, with their adult sponsors, from different communities statewide to focus on young worker health and safety. In addition, staff will take part in the California Partnership for Young Worker Health and Safety that will be meeting on March 22nd.

Staff is also currently planning the SASH Advisory Committee meeting scheduled on April 8th that will focus on updates on activities that have transpired since the last meeting and to obtain input from committee members on directions for 2022 and beyond. Staff is also in the process of planning the WOSHTEP Advisory Board meeting scheduled on April 14th that will focus on an overview of program accomplishments in the past year as well a discussion of future goals and objectives.

Mr. Enz said that since they have already voted on action items, that this concludes his report and thanked the Commissioners.

Chair Steiger said that that concluded the agenda items and asked if there was any public comment or comments from Commissioners.

Commissioner Kessler stated that she wanted to apologize for taking so much time on the RAND study, but that it was something that she spent a lot of time reading. She said that she appreciated everyone's patience. She said that the other thing is that they have talked about how to have a discussion about when CHSWC has been asked to do something to grant an RFP. She said that she was asking formally that they could put that as an agenda item, if possible, so that they can actually have an engaged conversation about what it is that they as Commissioners are trying to do or accomplish as their mission and the obligations and expectations as being on the CHSWC board. She said she makes that request so that they can have an open conversation.

Chair Steiger thanked Commissioner Kessler and said that he would definitely second that request. He said he thinks that would be a very helpful discussion to have and hopefully they can have it at the next meeting.

There were no further comments and Chair Steiger asked for a motion to adjourn. The motion was moved by Commissioner McNally and seconded by Commissioner Kessler. The motion passed and the meeting ended.

Approved:

_____ _____

Mitch Steiger, 2022 Chair Date

Respectfully submitted:

_____ _____

Eduardo Enz, Executive Officer, CHSWC Date