

**California Commission
on
Health and Safety and Workers' Compensation**

MINUTES OF MEETING

Meeting Day and Date: Thursday, April 16, 1998

Meeting Location: Junipero Serra State Building
107 So. Broadway
First Floor Auditorium
Los Angeles, California

Commission Members Present:

Chairman Tom Rankin
Commissioner Leonard C. McLeod
Commissioner Gerald O'Hara
Commissioner Kristen Schwenkmeyer
Commissioner Robert B. Steinberg
Commissioner Darrel "Shorty" Thacker
Commissioner Gregory Vach

Commission Members Absent

Commissioner James J. Hlawek

Commission Staff

Christine Baker, Executive Officer

I. Call to Order

The meeting was called to order by Chairman Tom Rankin at 10:00 am.

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Agenda Revision

Items IV (Presentation of Proposals for Potential Research Projects) and V (Update and Discussion Regarding Commission Studies and Projects) were brought up first on the agenda in order to accommodate a Commissioner who had to leave before the conclusion of the meeting.

Adoption of Minutes

Chairman Rankin requested that a small correction be made to the minutes of the Commission meeting on March 12, 1998, which had been submitted for approval by Christine Baker. The applicants' group name was corrected to 'Applicants' Alliance'. Commissioner O'Hara moved that the revised minutes be adopted and the motion was seconded by Commissioner McLeod. There were no objections and the minutes were adopted as corrected.

II. Presentation of Proposals for Potential Research Projects

Christine Baker stated that the main focus of the meeting is to discuss the Commission's strategic research plan for the next several years. She asked for the Commission's approval to proceed with a request to the Legislature to augment the Commission's budget by \$1.2 million in one-time funds and establish two additional staff positions. The augmentation is for the study proposal developed as the next phase of the permanent disability project. She requested that the Commission approve the next step in the process to allow her to prepare the necessary documents under Chairman Rankin's signature that will propose the allocation of funds for this purpose from the Workplace Health and Safety Revolving Fund.

RAND Proposal

Ms. Baker reported that the RAND proposal was reviewed by the Commission's Permanent Disability Policy Advisory Committee. At the committee's request, project milestones were drafted and distributed to the Committee members and the Commission. The next meeting of the PD Policy Committee is set for Friday, June 12, 1998 in San Francisco.

Bob Reville of RAND then gave a brief overview of the proposal. He reviewed the following goals that were established by the CHSWC Permanent Disability Policy Committee:

- To efficiently decrease uncompensated wage loss for disabled workers in California.
- To increase the number of people promptly returned to sustained work.
- To reduce transaction and friction costs, including costs to injured workers.

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With these goals in mind, a three-part proposal was drafted.

- 1) Research intended to provide a better estimate of the importance of return to work programs for injured workers. This will also assist the policy makers in coming up with ways to improve return to work in California by determining the effective policies adopted in other states and the effective practices of California employers.
- 2) A project to improve disability ratings in California. The idea is to improve the targeting of benefits to disabled workers by ensuring that the disability rating is more closely tied to the actual disability. And also, to insure that the relative ratings are more in line with the long-term economic loss or wage loss of injured workers.
- 3) A proposal to study wage losses of workers in other states and compare it to the wage losses of injured workers in California. This proposal will help to explain the differences across states and therefore provide some guidance for policies for California.

RAND Project 1

The project to reduce uncompensated wage loss through return to work policies was motivated by the findings in the RAND report. RAND determined that injured workers sustained wage losses of 20% to 40% for four to five years after the injury. However, only approximately 40% to 50% of these losses were replaced by workers' compensation benefits including VRMA, PPD and TTD benefits.

One of the primary causes of these large wage losses is the large amount of time at work lost by injured workers after the injury. In response to this finding, the Policy Committee and staff developed a proposal that would first of all estimate the long-term impact on workers of returning to work at their employer sooner. Most of the studies of return to work have focused on the short-term effects, namely the reductions in TTD benefits paid.

Given the findings about subsequent time out of work, there is reason to suspect that getting people back to their at injury employer sooner is likely to lead to long term gains beyond the initial wage losses associated with the time that they received temporary disability. It may ensure that the injured worker's relationship with the employer and connection with the labor market are maintained and, as a result, there would be significantly less wage loss five years after the injury.

The study will attempt to estimate the impact of this on long-term economic consequences for workers in order to provide us with an estimate of to what extent improving return to work by some percent -- say a 10% increase in workers returning to their at injury employer -- will reduce uncompensated wage loss by a certain percentage. Although it is hard to tell what the answer will be, the study will provide information that will allow policy makers to adopt the appropriate

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mechanisms to improve return to work. Once the estimates are determined, the next question is: 'Given an understanding of the benefits of return to work programs for the long term consequences for injured workers, how does California come up with policies to improve the situation?'

The first project consists of two parts:

- A study of employers practices for return to work in California.

This will involve some interviews with employers, unions and doctors to find out the practices used followed by a survey of employers. The data from the survey will be attached to the individual level of wage loss data that was developed for each of the firms in the survey and will be able to estimate the short-term and long-term benefits. It is essentially a study of best practices that can provide guidance to employers on how to improve return to work and how to reduce uncompensated wage loss.

- A study of return to work policies used by other states.

This is essentially a literature review and some discussions with policy makers in other states that will allow for a summary of the effective policies used in other states. Combined with the effective practices and sense of the value of return to work programs, it is hoped that this study will suggest some concrete policy proposals for ways to improve return to work in California.

RAND Project 2

The second project is a proposal to improve disability ratings. The original RAND report found that for the vast majority of injured workers -- those with disability ratings of approximately 1% to 25% -- the wage losses were approximately the same even though the disability ratings were very different and, as a result, the benefits were very different. This indicated that there is a need for the disability ratings to be more accurately targeted to the long-term economic consequences of work place injury.

The purpose of the disability rating is to essentially sort workers by their loss of ability to compete in the labor market. Since long-term wage loss is the best measure of the loss of ability to compete in the labor market, Dr. Reville explained that a larger loss of ability to compete in the labor market should automatically lead to larger wage losses. Since it currently does not, there needs to be some revision of the disability ratings that is in line with long-term economic consequences. The proposal will develop ways to achieve that end.

There are two kinds of analysis planned.

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- 1) The first analysis involves differences across injury types. Disability ratings in California have largely been developed from expert opinion and political compromise over the last hundred years. There has never been an analysis that attempts to determine whether or not the different injuries are ordered appropriately. For instance, an individual with a loss of sense of smell and taste receives a 10% rating under the current disability rating schedule as does a worker who has a loss of ability to do very heavy lifting. But do they have the same long-term wage losses?

This proposal will explore the ordering of injuries and impairments by wage loss. This will allow RAND to suggest recommendations about how they can be reordered to ensure that the ratings received, and therefore the benefits received, are in line with the long-term losses that the injured workers experience.

- 2) The second part of this project will examine the issue of the variability of ratings. Inconsistent ratings lead to difficulty in targeting benefits to injured workers and inability to predict wage loss. It also leads to increased costs to employers and increased litigation. For that reason, RAND proposes to explore ways in which the consistency of ratings can be improved in order to improve the targeting of benefits. They have developed a number of ways in which this can be done and are exploring others. Among the planned analytical methods is working with the DWC Disability Evaluation Unit in various ways. The DEU is doing an evaluation of inter rater reliability that will allow for an examination of how inter rater reliability differs across different parts of the schedule. That will allow RAND to target areas of the schedule where there are problems with inter rater reliability and therefore areas where improvements in the disability rating are possible.

Rand Project 3

The third project looks at the wage loss experience of other states. A number of states will be identified that have characteristics that would be informative for California such as a similar industry mix or interesting return to work policies. RAND will attempt to replicate the wage loss study done in California on the other states' data. This information can then be used to identify return to work programs that are effective in other states. It can also be used to identify other sorts of workers' compensation practices that can assist in reducing the uncompensated wage loss of injured workers.

Questions and Answers

Commissioner Steinberg expressed some trouble in understanding why the third project is a separate subject since it is so closely related to the first project. Bob Reville replied that all three of these projects are very complimentary. The information learned in the third project will be

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very informative for the first project. It provides information about effective return to work programs in other states and allows RAND to actually evaluate those programs on other states data and come up with something that is more rigorous than simply the perceptions of state administrators.

Commissioner Steinberg asked if RAND were looking for something different in the third project or just complimenting the efforts of the first project which is essentially to improve return to work or do anything else that will have an impact on uncompensated wage loss. Bob Reville replied that the third project is broader than the first project.

Commissioner Steinberg asked what RAND was trying to find. Bob Reville replied that he wasn't sure exactly what he might find. He said that he doesn't know what he'll find that other states do that's different and might lead to larger uncompensated wage loss or smaller uncompensated wage loss other than return to work practices. But if differences are found across states, then the work begins to find out what are the differences and what might be useful for California to adopt. At this point, there are no preconceived expectations. The data will tell the story.

Commissioner O'Hara expressed reservations about undertaking a study of other states when there is still so much to look at in California. Studying other states is an expensive proposition and perhaps RAND should ask those other states directly. He asked what RAND will be bringing home that will be useful enough to justify the cost. Christine Baker replied that the information from other states could be very useful. They may have policies and practices that can be useful in California. Bob Reville added that studying only within California is problematic because it is still the same system no matter when you look at it or how you break it down. The only way to really look at how differences in systems can lead to different results is by looking at other states. That's the analytical advantage of examining other states.

Commissioner Steinberg said that he understood the assistance that information from other states can provide but added that the third proposal sounded like a fishing expedition. It sounds as if RAND is not sure what they have in mind other than looking at other states and see what they are doing in terms of return to work programs and other ways of reducing uncompensated wage loss. Bob Reville agreed that RAND is not sure what information it will gather and thus cannot predict how the proposal will be fleshed out.

Christine Baker mentioned that there might be other funding mechanisms other than the Commission. Bob Reville explained that the National Institute of Occupational Safety and Health (NIOSH) has expressed an interest in studying the economic consequences of workplace injuries and may be a good potential funder for the third proposal. He said the third proposal was included largely because of its complimentary nature with the first and second proposals, but at this point, RAND will probably approach NIOSH for funding rather than the Commission. Chairman Rankin asked what the price is for the third proposal. Christine Baker replied that the cost would be approximately \$500,000.

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Chairman Rankin observed that a separate component to look at other states was included in the return to work study. Bob Reville replied that it was to make it possible for them to be stand-alone projects. It would provide guidance about what policies are used in other states through a literature review and through interviews with policy makers in other states.

Commissioner Vach noted that the timelines indicated that the third project, wage loss in other states, RAND had a background report due to the Commission in six months. In that portion of the return to work study designated for other states, a report was due at 12 months which suggests that obviously some of this is going to go on contemporaneously. But what would be in the background report in six months that would then be developed further in the other states section report at 12 months? Bob Reville replied that the background report on the other states study would be simply the selection of states that they will be approaching to receive data. It would be the identification of those states that have a similar industrial mix or interesting policies and to get the Commission's input on whether or not that seems to be an appropriate choice of states.

Commissioner Vach asked if the Commission could make a "go" or "no go" decision at that point. For instance, four states may be identified as good candidate states but the wage loss information is poor. Maybe they have the same industrial mix as California that the Commission wants to study but getting the data is too tough and pursuing it may put the study over budget. Bob Reville replied that if the Commission wanted to put into the contract that they want to know the selected states before they fund the rest of the project, that it could certainly be done. Commissioner Vach stressed that the feasibility and related costs of data collection are also issues.

Chairman Rankin asked Ms. Baker to review the contract and budget process to assure the Commission that if an overall budget to fund these studies is adopted, that they can be cut off if necessary. Ms. Baker replied that the purpose of her request was to try to encumber \$1.2 million from the Legislature at this time. The return to work project is \$393,000 and the disability rating project is \$888,000 for a total of \$1,281,000. The proposals have not been costed out in detail yet. They are just ballpark figures so that she can go to the Legislature this next week and request to encumber that amount. The anticipated cost of the other states study is \$515,845.

Ms. Baker explained that should the Legislature approve the encumbrance of \$1.2 million, the Commission could fund the first two proposed studies. The Commission could explore funding from the IMC, Self-insureds, and other mechanisms within the state to fund the 'other states' proposal or assist in funding the first part, which would give us enough money for the second part, or vice versa. Another option is to use the Commission's own funds over the next few fiscal years. For example, \$500,000 would be encumbered one year, \$200,000 the next, \$200,000 and \$100,000 in the last year. She emphasized that a contract is not being developed at this point and would not be developed until July when the \$1.2 million would come into the budget. At that point there would be time to review the proposed contract and decide whether or not the

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Commission desires to proceed with the \$555,000 proposal. At this point, the Commission is not voting on that at all. They are voting on whether to request that the Legislature encumber \$1.2 million for the Commission's budget. Chairman Rankin thanked her for the clarification.

Chairman Rankin then asked about a question raised in the Policy Advisory Committee regarding the adequacy of the data in the DWC Disability Evaluation Unit (DEU) to provide a sufficient basis for the empirical study. Frank Neuhauser of the Survey Research Center spoke to that issue. He said that the researchers don't expect the DEU data to be perfect. But in fact, the DEU data is quite well designed for this. Some preliminary work was done after that meeting in discussions with the DEU about some concerns raised and the research team is happy with their analysis of the data and how well it can be used for defining different impairments. One of the major concerns was whether information about subject add on was an effective tool to get at the issue of how California, which is unique in compensating pain, whether that unique characteristic of the California system is being used accurately. Apparently, it is an effective tool for that. Another major concern was whether secondary impairments to the same body part would confuse that set of data, but apparently that is not the case.

Commissioner Vach asked for clarification of the staff issue. Would the two positions requested for the Commission staff be permanent? Christine Baker replied that the positions are not totally related to the PD study. Given all of the meetings of the Advisory Committees and the staff work necessary for each of the various projects, she is in pretty desperate need for ongoing, permanent positions to support and carry out the work of the Commission.

Public Comments on RAND Proposal

Chairman Rankin asked for public comments on this proposal.

Frank Russo of the California Applicants' Attorneys Association distributed a letter that was faxed to Commission members on April 15, 1998. He said that basically CAAA supports a properly done study on return to work and believes it will have some value. The most intriguing question and challenge is why do individuals not return to work and that is something that the study really has to be focused on.

CAAA agrees that there is a need for further study in that area but has some questions about the feasibility of the study on the Permanent Disability Rating Schedule and about the DEU data in particular. He said that they have had a meeting with the research team concerning the nature of the study but do not have any idea from the DEU about the availability of this data. This concern is addressed in their letter. Mr. Russo said that CAAA believes that it is premature to request funding before the study is fleshed out a bit more and they would be glad to work with the committee on that. He said that CAAA believes it is very important to reduce the uncompensated wage loss.

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Mr. Russo then said that there was another letter to the Commission from CAAA indicating that what they really think the Commission ought to focus its limited resources on is a study of the insurance industry and the somewhat dismal results of the audit findings on the delivery of benefits. Benefits are not being delivered at all to many workers when there is no question that they are entitled to it. Benefits are being delivered late to injured workers. CAAA believes that this is an area that cries out for study.

Mr. Russo said that the most important point he has to make is that with the RAND study's unprecedented findings of the amount of wage loss that injured workers have and the inadequacies of the permanent disability system, the Commission ought to support an increase in the permanent disability schedule and the compensated amounts.

Mr. Russo concluded that CAAA feels that the Commission should take action on the study that has been completed. That's a need that just cries out for action. These studies presumably aren't taken for academic interest but for policy and for doing something. There are a lot of people out there suffering and they deserve to have some justice. These studies will not be completed for years and they should not be used as an excuse for inaction or delay.

Chairman Rankin asked if there were any other comments from the public on this specific issue.

Injured worker Uros Jelcic stated that the Commission must establish a goal of what they want to recommend to the Legislature. He said those changes should be small due to the legislators' unwillingness to adopt large, sweeping changes. He said that the Commission should identify four or six basic things to put before the Legislature and establish goals of what the Commission wants to achieve and work from there. Chairman Rankin thanked Mr. Jelcic for his comments and replied that the goal of the study is to come up with some defined recommendations that can hopefully get to the Legislature and get passed.

Chairman Rankin asked for any other public comments. None were given.

Commission Vote

Chairman Rankin said that before the Commission entertained a motion on the budget question, it should adopt the proposal. He also said that he thinks that another motion is in order regarding the need for an immediate benefit increase so that we don't become tools of those who might not want to see injured workers get what they need and what the RAND study clearly says they need while the issue is being studied for three years. He said that he had a prepared motion on that but would bring it up after the Commission has a motion on the question of adopting the study budget. He asked if there was a motion.

Commissioner O'Hara moved that the Commission request that the Legislature encumber \$1.2 million and 2 positions for the Commission budget. Commissioner Thacker seconded the

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motion. Chairman Rankin asked for a vote. All agreed there was no opposition, and the motion carried.

Chairman Rankin then read a motion he had prepared for discussion and vote.

'Notwithstanding our commitment to conduct long term studies designed to produce recommendations for a more equitable system of adequately compensating California's permanently disabled workers, and we've just made that commitment, the Commission, in accordance with the findings of the RAND study on the issue of uncompensated wage loss suffered by permanently disabled workers, recognizes the need for the legislature to enact an immediate benefit increase to at least begin to remedy the problem documented by RAND.'

Commissioner O'Hara moved that the motion be adopted and Commissioner Thacker seconded the motion. Chairman Rankin asked for discussion.

Commissioner Vach stated that he would like to indicate on the motion that the net benefit increase should be truly net. Raising permanent disability levels also raises attorney fees. There has been an attorney fee increase through permanent disability increases in the last two reforms. However, there is no current study by either the board or any of the judges as to whether or not the permanent disability attorney fee is adequate, excessive, or not adequate. At this point, since there is no study, there is no information about the adequacy of attorney fees related to the work performed, that any benefit increase be net to the employee 100%.

Chairman Rankin stated that if there is no further discussion on the motion already before the Commission, that it could be voted on and a further motion made by Commissioner Vach if he wished. Chairman Rankin asked for a vote. By a vote of Ayes: 6, Nays: 0, Abstain: 1, Absent: 1, the motion carried.

Commissioner Vach then moved that any benefit level increase be targeted 100% to the injured worker in the light that there are no current studies indicating the adequacy of attorney fees. Chairman Rankin asked for a second and none was given. The motion died for lack of a second.

Chairman Rankin then asked Ms. Baker to present her update of Commission projects, then move on to people here for presentations.

III. Update and Discussion Regarding Commission Studies and Projects

Additional Proposals

Christine Baker stated that because of the budget process, there are a few proposals in front of the Commission for action for next fiscal year. However, she asked that the Commission defer

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decision on any of these proposals until the June meeting. Deferred would be an augmentation to the Injured Worker study that would allow the Commission to do the Rehab component and make sure that it meets all of the labor code requirements so they can be distributed to employers, a possible new project on the feasibility study regarding the establishment of a California Resource Center on Young Workers Health and Safety, and extension of the medical/legal project. Postponement of a decision would allow the Commission and public sufficient time to review these proposals.

Legislative Request for Audit Study

Christine Baker then addressed the request from the Senate Industrial Relations Committee and Assembly Insurance Committee that the Commission undertake a study of the DWC audit program created in 1989. The audit program was created in response to complaints that too many insurers had trouble making workers' compensation benefit payments on time. These legislative committees are concerned that recent reports from the Division of Workers' Compensation in a February 1998 hearing of the Senate Committee of Industrial Relations indicate that the problem continues. The committees are interested in recommendations by the Commission to:

- make the audit program more effective,
- to determine whether or not the program is adequately staffed,
- to determine whether or not the penalty levels are adequate and appropriate to deter violations,
- to make the \$100,000 civil penalty for a pattern in practice of poor claims administration more effective,
- to consider whether or not the unfair claims settlement practice act -- Section 790.03 of the Insurance Code should apply to workers.

Ms. Baker reported that she and Frank Neuhauser met with consultants from these committees. They believe that the Commission can address these concerns in an objective and systematic way. Ms. Baker suggested that Commission staff put together a proposal based on its current project model that includes a research component and an advisory committee or round table composed of members of the workers' compensation community. The consultants advised that they are looking for both short-term and long-term solutions. Christine Baker estimated that the project would take from 4 to 6 months to complete at an estimated cost of \$15,000 to \$20,000. The cost includes staff time, research time, meeting rooms, and bringing in Mr. Swezey as a consultant. She said that if it is the Commission's wish then staff will submit a proposal outlining the course of the study for action in June. Chairman Rankin stated that unless there is objection from any Commissioner, the Commission should go ahead with that.

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Chairman Rankin pointed out that the audit issue will probably come up during the Budget Hearings in the Legislature and there will be efforts to increase the staff of the Audit Unit. He said that the Commission should be cognizant that we don't want to look like we're in the business of "bounty hunting", like they call it in the Legislature. He suggested that Ms. Baker include in her thoughts other methods of funding the Commission. He said that everyone knows that there has been no effort by the Administration to renew the employer funding of the DWC, which he guessed is about \$20 million a year. He suggested that perhaps one of the things to look at in terms of the Commission is user funding of some kind. Christine Baker replied that supplementing the budget at some threshold would be workable.

DWC Lien Workload

Ms. Baker also reported that Commission staff, Charles Swezey, and Mr. Neuhauser met with the regional management of the DWC to discuss the lien problems. Although DWC seems to think it can handle the lien problems in the Los Angeles area, the Commission staff and consultants determined that 45% of the declarations of readiness in Los Angeles, Santa Monica and Van Nuys are liens. Claims are down, so they can handle the liens. However, it is taking up 45% of the court time.

Ms. Baker proposed to look at reasons for the liens and requested the Commission's endorsement to enable staff to get the cooperation of the DWC. She said that staff has a data collection form that judges who are handling liens could fill out to check off reasons for the liens. There are different reasons that are being given and it is all anecdotal. Staff would like to, over a period of time, collect information about the liens that are coming through the board. Whether they are recent or whether they are old, whether it is upcoding or downcoding, failure to pay, and track all of these different issues. Basically to collect information so that we are better informed about the reasons for the liens coming through the boards.

Commissioner McLeod made a motion for Ms. Baker to continue along the lines and for the Commission's endorsement of the project to encourage DWC cooperation. Commissioner O'Hara seconded the motion, which carried unanimously.

III. Presentation of the California Study Group on Young Worker Health and Safety

Ms. Baker then introduced Diane Bush from the Labor Occupational Health Program (LOHP) to give the Commission an update on the youth task force project.

Ms. Bush presented a report and recommendations on protecting and educating California's young workers that the California Study Group on Young Workers' Health and Safety developed over the last year. She commended the Commission and thanked them for funding the development of the study group at such a critical time stating that it showed a lot of vision. The

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education system in California is in the middle of a transformation as they are working towards trying to implement their school to career system and looking at all of the different ways that they can tie education in the schools to work issues and career issues.

As a result of what's happening out there, there has been tremendous participation on the study group by all of the key government agencies that play a role in helping to protect youth on the job. Some of the participating government agencies have been representatives from Cal/OSHA, several programs within the Department of Education, labor law enforcement agencies at both the state and federal level, the Employment Development Department, the Division of Apprenticeship Standards. Also participating are representatives from state wide organizations representing employers such as the state Chamber of Commerce, statewide PTA, representatives from both teachers unions and other educators such as the California Association of Work Experience Educators. Four meetings were held in 1997 and one meeting has been held this year.

The first meeting was spent reviewing existing information on where kids are working, where they're getting injured, existing labor and health and safety laws, and existing enforcement efforts in educational programs -- looking at what's already in place.

Having examined that, the group spent the rest of the year coming up with a set of recommendations in a number of different areas. The group developed 25 different recommendations in six areas, which are contained in the report. They looked at:

- what can be done in schools.
- improving the role of work permits. From the group's perspective, this is an underutilized point of entry for getting information to teens, parents and employers as well as providing better oversight over what kind of work kids are actually doing.
- initiatives in the workplace. For example, getting information out to employers, what kinds of information they really need and how can we get it out to them.
- strategies for enforcement agencies, how can the agencies better coordinate their enforcement efforts.
- strategies for raising the general public awareness, because it is recognized that it is not just kids and the employers, but if the community were aware what could happen to kids on the job and what the protective child labor laws are, that will help keep kids out of the most hazardous work.
- the need for further research. It is hard to get really good detailed statistics that are age specific and industry specific on where kids are getting injured so that you can really target your efforts.

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Ms. Bush stated that also enclosed in the Commissioner packets is a proposal to start to advance one of the key recommendations that the group thinks can play a role in helping with many of the needs of other recommendations, especially those in areas promoting education. She reported that the group strongly feels that they don't want to see these recommendations end up on peoples' shelves and not move ahead. She said that they are very prepared to look within their own agencies to determine how they can help distribute information and how they can participate in finding ways to develop more materials or new programs that are needed and helping to leverage resources.

Although the willingness is there, there is a need for a centralized coordination of those efforts. And so one the group's key recommendations is to explore new possibilities of setting up a resource center on young workers' health and safety. There are some existing programs and materials that could be use but they're scattered and it's hard for people to figure out where to get them. The vision for this resource center is that it could service a clearing house for materials as well as providing technical assistance to schools who are trying to set up and improve their school to career programs and integrate health and safety information. This center could also help begin to identify gaps and find ways to fund needed materials.

So for consideration in June, is a proposal for a feasibility study on the establishment of a resource center. The group would really like to see an ongoing effort. Therefore, it's important to look for similar models in other states to see how they function to really make sure that we fully understand all the possible networks that the center could apply.

Questions

Commissioner Vach stated that he believed it to be an extraordinary good product. He asked if it were LOHP's intent for the resource center to be a place where a new employer can get information and find out how to address workplace safety, for example. Diane Bush responded that was one of the purposes. The Resource Center will have things that have already been developed as well as identifying gaps and identify who most appropriately can fill the gap.

Commissioner Vach stated that there is a department in the state that specifically targets the development of trade and commerce that might be interested in helping to look at a resource center for access by new employers.

V. Presentation: An Examination of the Promptness of Payments of Workers' Compensation Benefits

Ed Woodward, president of the California Workers' Compensation Institute, said that he appreciated the opportunity to address the Commission and urge the members to undertake a study of the promptness of workers' compensation benefit delivery. Although he recalled from

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his background in sales that he should shut up after the sale is made, he wanted to make a few points to reiterate CWCI's support for the decision that CHSWC has made today.

Mr. Woodward referred to the current DWC audit report, which he said some have "tried to use as an information system. But what is it, what can we do with it, what can you say about it?" In the DWC audit report, out of 619 audit locations in the state, 55 were audited – which he said was less than 1 percent. Chairman Rankin corrected Mr. Woodward's computation, pointing out that 55 audits of 619 locations was not one percent, but just under 10 percent.

Mr. Woodward went on to say that out of the 55 audits that were completed, 18 were insurers (about a third of the total), 22 were TPAs, and 15 were self-administrators to employers. Mr. Woodward concluded that insurers are obviously substantially underrepresented, since they constitute from 2/3 to 70% of the actual total.

Mr. Woodward went on to say that the DWC report itself at this point combines data from random audits with data from targeted audits of companies with history of poor performance and complaints. Some of the 18 audits done on insurers in fact are targeted audits, which skews the results. Even though DWC randomly draws the claims, the population is not randomly selected. Mr. Woodward cited as an example that 100% of all violations in the 1996 DWC Audit report are actually on Golden Eagle and its employer from a 1995 audit that took 2 years to complete. With such outliers skewing the results, the problem is that the report as it stands is neither representative nor random. And to draw any conclusions or generalizations at this point is impossible. He said that CWCI recommends that the Commission research staff look in to the random issue.

Mr. Woodward continued by saying that the real question is "Is what we're looking at valid? Can we trust the measure?" He believes that these are really performance standards in claims handling. Most categories of infractions are in fact violations of statutory or regulatory provisions, most of which on examination are actually incapable of being consistently achieved. One of the reasons is many of the measurements are in fact measuring the process and holding one party accountable to the results of the process. He cited examples involving vocational rehabilitation and temporary disability notice requirements, where one situation can result in several assessments.

Commissioner Vach asked if it were known how many of those assessments are based on one penalty. Mr. Woodward replied that the data in the DWC Audit report is not arrayed so that can be determined. CWCI has been attempting to make various analyses, but without an access to the raw data they found it was very difficult to make any conclusions. One of the things that CWCI found from their data base of a random sample of 122,000 indemnity claims in 1996 is that about 20% of the claims are reported late. But we all need to know the answers why.

Mr. Woodward encouraged the Commission to go a little further to provide the type of information that policy makers need. The system with the benefit notice forms was fairly simple

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and provided information such as 'This is what our decision is -- if it's a delay we're going to tell you how we made it; if it's a denial we'll tell you why; if payable we'll tell you ways that we paid it.' The information was readily available to everybody. This kind of information we think is valuable for government and for the community. It is probably most helpful to the employers.

Mr. Woodward said that such a system could be developed relatively quickly and easily, based on what they call EDI, electronic data interchange. Unfortunately, the system has been perceptually designed -- it could have been automated. We'd like to see that system put up. We need to find out what's going on in the workers' compensation system.

Commissioner Vach reiterated the importance of having a valid measuring tool. He also issued an invitation to the Commissioners to tour his office in June when the Commission meets in San Diego. They could talk to the examiners and staff to get first hand opinions as to where we might want to direct some review of claims administration practices. Commissioner O'Hara asked if the invitation would be extended to injured workers and Commissioner Vach replied that was fine with him.

Chairman Rankin asked Mr. Woodward, out of curiosity, what his position was on increasing the number of auditors. Mr. Woodward replied that, to his understanding, the Administrative Director has always had the flexibility to allocate staff as he wanted. Chairman Rankin thanked him for his comments.

VI. Public Comments

Chairman Rankin announced there were other comments from the public and called upon Mark Gerlach.

Mr. Gerlach said he is a consultant working with the California Applicant's Attorneys Association. Mr. Gerlach had sent a letter that basically asked the Commission to look into a study of a lot of processes. He joined with Mr. Woodward in expressing gratitude that this action had already been taken.

Mr. Gerlach did want to point out that the issues that have been raised they feel are extremely important issues. He believes the sheer consistency of the audit result over time indicates that it needs to be addressed. And we hope that a study can help identify what needs to be done, what we need to working at and how we can address them. There's obviously a major problem out there. In one out of five cases injured workers have benefits due them but they're not being paid. That affects injured workers but it also affects employers because it just drives up the cost of the process. The entire process is harmed by not getting checks out there on time and not getting information to the injured workers. Mr. Gerlach said that this Commission, for the past several years, has been dealing with the question of 'Do injured workers get information?' And we found they don't get very good information and sometimes they don't get the checks. They don't

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get information how to look forward to what's happening with their claim. Mr. Gerlach said we think this all needs to be worked at and considered by any advisory committee and whatever is set up to carry the study forward. Chairman Rankin thanked Mr. Gerlach for his comments.

VI. Other Business

Legislative Briefing

Chairman Rankin said that Ms. Baker had scheduled a briefing with certain legislators, including the chairs of the affected Senate and Assembly committees to review what the Commission has been doing on permanent disability and what it plans to do in the future. Anyone interested in attending is welcome. The briefing is scheduled for Tuesday, May 5th at 2 o'clock in room 114 of the State Capitol in Sacramento. Chairman Rankin indicated that he would attend.

Future Meetings

The next meeting of the Commission will be held on Thursday, June 25, 1998 at 10 a.m. at the San Diego Hilton, 1775 East Mission Bay Drive in San Diego.

VIII. Adjournment

Chairman Rankin asked for a motion for adjournment. Commissioner O'Hara so moved, the motion was seconded and Chairman Rankin adjourned the meeting at 12:00 p.m.

Approved:

Respectfully submitted,

 6/25/98

Tom Rankin, Chairman

Date

 6/25/98

Christine Baker, Executive Officer