

California Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

Wednesday, December 16, 1998

Sacramento, California

In Attendance

Chairman Tom Rankin
Commissioners Gerald O'Hara, Kristen Schwenkmeyer, Robert B. Steinberg,
Darrel "Shorty" Thacker, Gregory Vach
Executive Officer Christine Baker

Absent

Commissioner Leonard C. McLeod (One commissioner position is vacant)

Call to Order / Adoption of Minutes

Chairman Rankin called the meeting to order at 10:00 am. Commissioner O'Hara moved to adopt minutes of September 10, 1998 CHSWC meeting, Commissioner Thacker seconded, the motion passed unanimously.

Presentation: Draft Final Report of the CHSWC Study of the DWC Audit Function

Christine Baker, CHSWC Executive Officer
Frank Neuhauser, UC DATA/Survey Research Center, UC Berkeley
C. L. Swezey, Esq., CHSWC Legal Consultant

[See attached copy of slide presentation]

Background

In April 1998, the Senate Industrial Relations Committee and the Assembly Committee on Insurance requested that the Commission study the effectiveness of the DWC audit function, established in the 1989 workers' compensation reform legislation. The commission formed a project team consisting of staff and independent researchers, assisted by an audit study advisory committee, consisting of interested members of the workers' compensation community.

Findings

The study found that the DWC audit function employed extensive time and effort auditing insurers and administrators. Current audit procedures do not review all insurers within a reasonable time period, they do not focus on the worst performers, and they assess penalties on all violations, both large and small. For example, since approximately 22 to 30 audits were conducted in 1998 out of over 800 locations that need to be audited, the report noted that the Audit function is not accomplishing as much as needs to be done.

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Recommendations

The report recommends that a new audit process be established which would reward good performers by eliminating administrative penalties and resource requirements for the good performers, increase incentives to improve benefit delivery by raising administrative penalties substantially on poor performers, and focus administrative penalties on major violations.

There should be a balance to the audit process. Bad business practices by claims administrators mean that injured workers are not receiving proper indemnity payments and appropriate medical services in a timely manner. Excessive audit penalties and regulation may result in employers paying higher costs to deliver the same benefits.

Under the proposed system, every location would be subject to a screening audit called the Profile Audit Review (PAR) every five years. PAR audits are intended to identify five percent to ten percent of the worst performers. Locations passing PAR would pay any 'compensation due' but would not pay administrative penalties. Locations failing the PAR would undergo a rigorous audit called the Full Compliance Audit (FCA). Locations passing the Full Compliance Audit would pay any compensation due and administrative penalties associated with unpaid or late compensation at the level of current administrative penalties. Locations failing the Full Compliance Audit would pay any 'compensation due' and administrative penalties on all violations, according to the proposed penalty schedule. Based upon complaints or other indications of inadequate performance, a location may be targeted for a PAR or a Full Compliance Audit at any time. Targeted locations failing the PAR audit and/or the Full Compliance Audit would be subject to the same consequences as locations otherwise undergoing PAR and/or Full Compliance Audits.

If a location fails on both of those levels - first the PAR and then the FCA - the project team recommends a new penalty structure, which fits penalties to the size of the location and the sample size that's used to determine their performance. The administrative penalties at the current level are applied to the smallest locations after ranking all locations by size into ten ranks. And then, adjusting for the size of the sample and the size of the location, penalties are structured to scale up to the largest locations.

Other recommendations, not directly related to the audit process will be forwarded to the CHSWC Permanent Disability Policy Advisory Committee. These include simplifying the calculation of the permanent disability benefit and paying all species of benefit (TD, PD) at the same weekly rate.

Questions and Comments

Commissioner Steinberg asked what was the rationale for eliminating penalties on locations that were penalized under the current audit system. It was explained that the resources in the Audit Unit would be better focused on the worst performers. Under the proposed audit system, insurers are subject to be audited every 5 years or so (instead of every 20 years) and that 'compensation due' - payments to the injured worker - will continue to be paid at all levels.

Mark Gerlach representing the California Applicant's Attorney's Association commented that CAAA strongly supported many of the issues that have been raised in the audit report - including the expansions of the audits to all audit locations. However, CAAA is very concerned that penalties will not be paid in the proposed PAR audit and believes that the 'no penalties' incentive should be reserved for those PAR audits in which the insurer demonstrates exemplary behavior.

Diana Johnson Miller with Applied Risk Management suggested that an insurer undergoing a PAR audit be evaluated with a score from one to six rather than pass/fail. Then penalties may be assessed or not depending upon the score. Ms. Baker noted that when penalties are assessed, the Audit Unit needs to document the file much more carefully – an extremely time consuming process.

CHSWC Vote

Chairman Rankin suggested that the Commission might wish to adopt the basic concept of the proposed revision to the audit system and allow for some fine-tuning in the future when enabling legislation is developed. Commissioner O'Hara so moved, Commissioner Vach seconded, and the motion carried unanimously.

Presentation on the CHSWC Carve-Out Study

Frank Neuhauser, UC DATA/Survey Research Center, UC Berkeley
David Levine, Ph.D., Haas School of Business, UC Berkeley
Richard C. Reuben, Esq., Stanford Center on Conflict and Negotiation

Background

The 1993 reform legislation enabled the California construction industry to collectively bargain for alternative workers' compensation programs, also known as "carve outs. The Commission contracted for an independent study of the carve-out programs in California.

The study team examined the collective bargaining agreements and interviewed the ombudspersons at all the existing carve-outs during the study period. The team performed detailed case studies of two carve outs: the NECA/IBEW carve-out between a single union of electricians and multiple employers, and the East Side Reservoir Project that involved a large project owner and many unions and subcontractors.

Findings

Given the limitations of the study, including a small sample of carve outs and the short time which they have been in operation, the project team could make only initial and general observations.

Based on very preliminary data on the NECA/IBEW carve out, the study team found that the most optimistic predictions about the carve-out's effects on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work were not realized. Neither were the

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most pessimistic predictions about carve-out's effects on reduced benefits and access to representation.

Recommendations

Preliminary recommendations were discussed. The study team recommends the development of comprehensive regulations to bring uniformity to carve-outs while still permitting adaptation experimentation in individual carve-outs. Standards should be created for the ombudspersons, confidentially should be assured, and communication with injured workers and all parties should be improved. Further study on the long-term effects of carve-outs was also recommended.

CHSWC Action

Chairman Rankin suggested that the Commission defer any action on the carve-out report since the commissioners as well as the community had very little time to review the report.

Presentation of the Results from the CHSWC Illegally Uninsured Employer Study

Christine Baker, Executive Officer of CHSWC

Frank Neuhauser, UC DATA/Survey Research Center, UC Berkeley

Nance Steffen, Assistant Chief of DLSE

[See attached copy of slide presentation]

Background

The CHSWC Illegally Uninsured Employers Matching Record Pilot Project was initiated pursuant to findings from a Commission fact-finding hearing on Workers' Compensation anti-fraud activities. The problem with illegally uninsured employers was raised by members of the workers' compensation community.

Findings

This project developed and tested ways to identify employers illegally uninsured for workers' compensation and bring them to compliance. The objectives were to determine the effectiveness of matching records between WCIRB and EDD to identify uninsured employers, and estimate the cost benefit of increasing compliance through targeted notification and inspection project.

The pilots included a sample of experience-rated employers and samples of auto/truck repair, restaurants/bars, and other employers. These are listed as some of the top violators in the Uninsured Employers' Fund data. The target notification and inspection project indicated that 9 percent of employers are uninsured and that almost 20 percent of the employers the targeted groups (auto/truck repair and restaurants/bars) were out of compliance.

Recommendations

Recommendations included implementing the matching records project on a priority basis for the targeted employers only, notification and follow-up inspection for new employers, perform sampling on a geographically grouped basis to minimize time and save resources for DSLE,

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implement FEIN to reduce costs for matching, implement information coordination between DWC, Uninsured Claims Unit and the DLSE project coordinator to assist in identification of targeted employer industries, and utilize certified mail for notification letters to improve collection of Labor Code 3711 penalties. Legislative recommendations were also made.

CHSWC Vote

Commissioner O'Hara moved to adopt the recommendations, Commissioner Schwenkmeyer seconded, and the motion passed unanimously.

Election of Commission Chair for 1999

Chairman Rankin opened the floor for nominations for the Chairman of the Commission for 1999. Commissioner Steinberg nominated Commissioner Kristen Schwenkmeyer for the position and Commissioner Vach seconded the nomination. There were no other nominations and Commissioner Schwenkmeyer was voted in unanimously as the 1999 Chair of CHSWC.

Other Business/ Public Questions/ Comments

Retirement of Commissioner Greg Vach

Chairman Rankin presented retiring Commissioner Greg Vach with a framed Certificate of Appreciation for his service since CHSWC's inception in 1994 and thanked him for his hard work. Commissioner Vach stated that he was very pleased to have been associated with this commission. This has been a real opportunity for California to take a good look at some of the components of the system, try to make some sense out of them and recommend truly useful changes. There is still a long way to go, but he thinks that it is going in the right direction, and is really pleased with the outcome so far.

Adjournment

Chairman Rankin adjourned the meeting at 12:10 p.m.

Future Meetings

The next meeting of the Commission will be held on Friday, February 26, 1999 at the State Building, 107 South Broadway in Los Angeles.

Approved:

Respectfully submitted,



Kristen Schwenkmeyer, Chair

Date



Christine Baker, Executive Officer