

The California Commission on Health and Safety and Workers' Compensation



CHSWC 2007 Annual Report

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ABOUT CHSWC

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the health and safety and workers' compensation systems in California and makes recommendations to improve their operation.

Established in 1994, CHSWC has directed its efforts toward projects and studies to identify opportunities for improvement and to provide an empirical basis for recommendations and/or further investigations. CHSWC utilizes its own staff expertise combined with independent researchers with broad experience and highly respected qualifications.

CHSWC activities involve the entire health, safety and workers' compensation community. Many individuals and organizations participate in CHSWC meetings and fact-finding hearings and serve on advisory committees to assist CHSWC on projects and studies.

CHSWC projects address several major areas, including benefits, medical costs and quality, fraud and abuse, streamlining of administrative functions, informational services to injured workers, alternative workers' compensation systems, and injury prevention. CHSWC also continually examines the impact of workers' compensation reforms.

The most extensive and potentially far-reaching project undertaken by CHSWC is the ongoing study of workers' compensation permanent disability (PD) in California. Incorporating public fact-finding hearings with studies by RAND, the CHSWC PD project analyzes major policy issues regarding the way that California workers are compensated for PD incurred on the job.

In its oversight capacity, CHSWC focuses on various aspects of the health and safety and workers' compensation systems in response to concerns raised.

At the request of the Governor's Office, the Legislature and the Commission, CHSWC staff conducts research, issues reports and provides expert testimony on the health and safety and workers' compensation system. Topics include PD, State Disability Insurance (SDI), return to work, carve-outs and medical fee schedules.

CHSWC engages in a number of studies and projects in partnership with other state agencies and the workers' compensation community. These projects include the Medical Payment Accuracy Study (with the Fraud Assessment Commission), the Catastrophe Preparedness Forum (with the Labor and Workforce Development Agency, Cal/OSHA, the Service Employees International Union (SEIU), RAND, and other partners), and the Benefit Integration Pilot Project (with the California HealthCare Foundation, the building maintenance industry, SEIU Local 1877, and Kaiser Permanente.)

CHSWC *Serving all Californians*

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

ABOUT CHSWC

CHSWC Members Representing Employers



Catherine Aguilar

Catherine (Cathy) Aguilar has been the workers' compensation manager for the San Diego County Schools Joint Powers Authority (JPA) since March 2005. She has been active in the workers' compensation industry for over 25 years including positions as claims examiner, supervisor, manager, director and vice president of claims for a national third-party administrator (TPA). In addition, Ms. Aguilar worked for Costco Wholesale as their regional director for the East Coast workers' compensation program.

Ms. Aguilar has been an active member of the California Coalition on Workers' Compensation and is currently on the board of directors for the San Diego Chapter of Risk Insurance Managers Association. She is also a member of the San Diego Public Agencies Risk Management Association (PARMA). She has taught various courses for the Insurance Education Association over the years.

Appointed by: Governor



Sean McNally

Sean McNally is the vice president of human resources and legal counsel for Grimmway Farms in Bakersfield, California. He is certified by the State Bar of California as a specialist in workers' compensation law. He is a licensed general contractor and serves as a trustee for the Self Insurer's Security Fund. His community activities include serving on the Kern Adult Literacy Council Board of Directors as the president, and as a member of the Board of Directors of the Golden Empire Gleaners and the Board of Trustees for Garces Memorial High School.

Mr. McNally is a graduate of the University of the Pacific, McGeorge School of Law and was a partner at the law firm of Hanna, Brophy, MacLean, McAleer and Jensen. He graduated from the University of San Francisco with bachelor's degrees in English and Theology. Following that, he did graduate studies at Hebrew University in Jerusalem, Israel.

Appointed by: Governor

ABOUT CHSWC

CHSWC Members Representing Employers

Kristen Schwenkmeyer

Kristen Schwenkmeyer is secretary-treasurer of Gordon & Schwenkmeyer, a telemarketing firm she started with Mike Gordon in March of 1985. Her primary responsibilities include overall administration of operations, budgeting and personnel for a staff of over 700.

Previously, Ms. Schwenkmeyer served as staff aide to Supervisor Ralph Clark of the Orange County Board of Supervisors and Senator John Glenn in Washington, D.C.

Ms. Schwenkmeyer received a Bachelor of Arts degree in Political Science from the University of California, Santa Barbara.

Appointed by: Senate Rules Committee

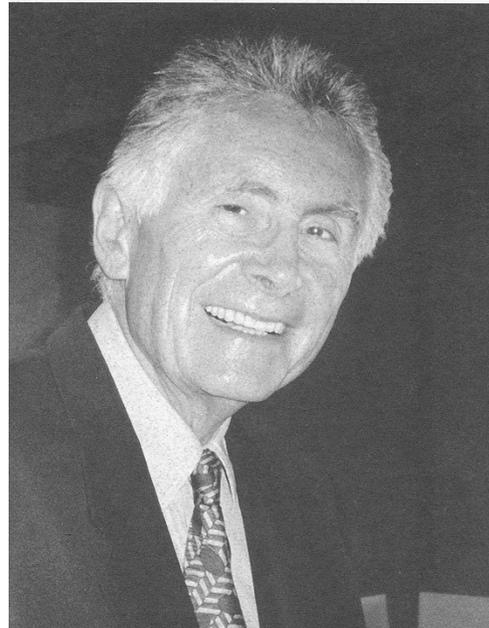


Robert B. Steinberg

Robert B. Steinberg is a partner in the law offices of Rose, Klein & Marias and specializes in employee injury, third-party civil damage construction, product liability, asbestos and toxic exposure litigation. He is a fellow of the American College of Trial Lawyers (ACTL), a member of the Board of Governors of the Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and a trustee of the Asbestos Litigation Group (ALG). He is a past president of the California Trial Lawyers (CTLA) (1985) and a past trustee of the Los Angeles County Bar Association (1987).

Mr. Steinberg received Law and Bachelor of Science degrees from the University of California, Los Angeles.

Appointed by: Speaker of the Assembly



ABOUT CHSWC

CHSWC Members Representing Labor



Allen Davenport

Allen Davenport is the director of government relations for the Service Employees International Union (SEIU) California State Council. A union member since 1971, Mr. Davenport also was the chief consultant for the employment security program for unemployment insurance, disability insurance, and job training on the staff of the state Senate Industrial Relations Committee for seven years.

Mr. Davenport serves on the advisory committee for the Workers' Compensation Information System (WCIS) and was a member of the governing board of the Workers' Compensation Insurance Rating Bureau (WCIRB). He is a former Peace Corps volunteer and a graduate of San Francisco State University.

Appointed by: Speaker of the Assembly



Darrel "Shorty" Thacker

Darrel "Shorty" Thacker is the central district manager for the Northern California Carpenters' Regional Council. Mr. Thacker also served as the director of field support operations for the Bay Counties District Council of Carpenters and as the senior business representative of Local 22, Carpenters.

Mr. Thacker joined the Millwrights in 1973, where he worked in construction as a journeyman, foreman, general foreman and superintendent from 1973 to 1978. He also worked as a Millwright business agent from 1978 to 1983.

Following his service as a United States Marine in the Vietnam War, Mr. Thacker earned an Associate's degree in mathematics from Fresno City College in 1970.

Appointed by: Governor

ABOUT CHSWC

CHSWC Members Representing Labor

Angie Wei

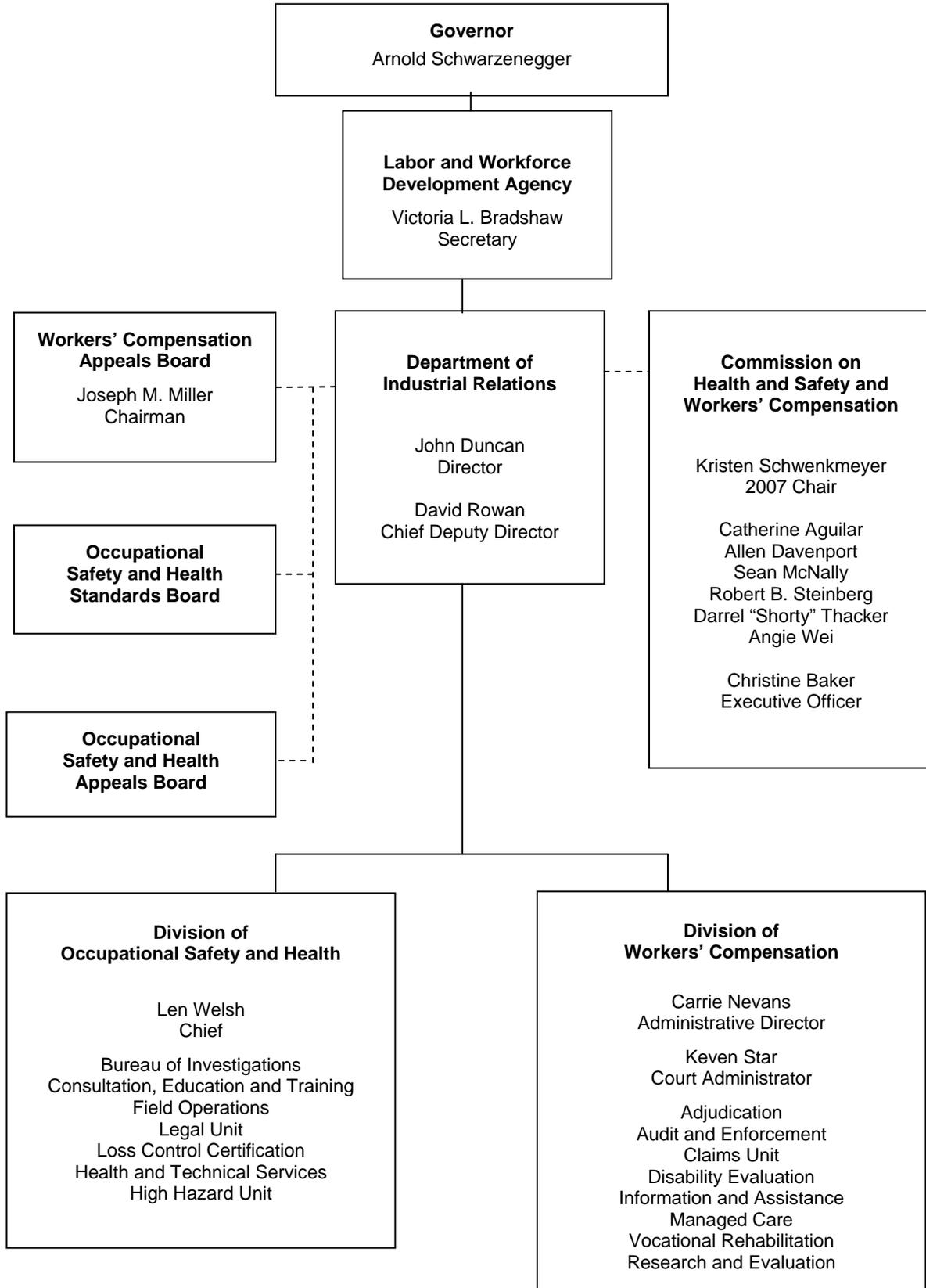
Angie Wei is the legislative director of the California Labor Federation, the state AFL-CIO Federation. The state Federation represents 1,200 affiliated unions and over two million workers covered by collective bargaining agreements. Previously, Ms. Wei was a program associate for PolicyLine of Oakland, California, and advocated for the California Immigrant Welfare Collaborative, a coalition of four immigrant rights organizations that came together to respond to cuts in public benefits for immigrants as a result of the 1996 federal welfare reform law.

Ms. Wei holds a Bachelor's degree in Political Science and Asian American Studies from the University of California, Berkeley, and a Master's Degree in Public Policy from the Kennedy School of Government at Harvard University.



ABOUT CHSWC

State of California Health and Safety and Workers' Compensation Functions



CHSWC RECOMMENDATIONS

ONGOING EVALUATION OF REFORMS

The Commission on Health and Safety and Workers' Compensation (CHSWC) was established in 1993 to conduct an ongoing examination of the workers' compensation system and of the State's activities to prevent industrial injuries and occupational diseases and to make recommendations to the Governor and the Legislature for improvements.

To carry out its Labor Code mandate, CHSWC engages in studies to examine the health and safety and workers' compensation systems in California. The scope of CHSWC projects has evolved in response to findings in initial studies and to concerns and interests expressed by the Legislature and the workers' compensation community.

CHSWC studies are conducted by staff and independent researchers under contract with the State of California. Interested members of the workers' compensation community and the public provide comments, suggestions, data and feedback. CHSWC is engaged in several joint projects with the Department of Insurance (CDI, Fraud Assessment Commission (FAC) and the California HealthCare Foundation (CHCF).

CHSWC studies and projects were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990s and to assess the impact on workers and employers. Findings from those studies have led to further reforms.

CHSWC recommends ongoing evaluation and monitoring of the system to determine whether the goals of the reforms are being realized and if further changes are needed.

MEDICAL ISSUES

Many reform provisions address medical and medical-legal issues. These include establishing medical networks, using medical treatment utilization guidelines, moving to agreed medical evaluators/qualified medical evaluators (AMEs/QMEs) as sole suppliers of medical-legal reports, and providing early medical treatment for injured workers.

Medical Treatment Guidelines

Labor Code Section 77.5, enacted by Senate Bill (SB) 228 in 2003, required CHSWC to "conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level, and in other medical benefit systems."

As required, CHSWC issued a report of its findings and recommendations for purposes of adopting a medical treatment utilization schedule. The report, "CHSWC Recommendations to the Division of Workers' Compensation (DWC) on Workers' Compensation Medical Treatment Guidelines," was issued in November 2004 and revised in April 2006. A CHSWC study by RAND made recommendations both on the implementation of medical treatment guidelines and on the need for the State to develop a consistent set of utilization criteria to be used by all payers.

The DWC has adopted acupuncture guidelines effective June 15, 2007. The pain management and elbow guidelines are expected to be adopted in 2007.

CHSWC RECOMMENDATIONS

CHSWC Recommendations

CHSWC recommends that the Administrative Direction (AD) of the DWC consider adopting additional guidelines for specified therapies, including chiropractic, physical therapy, occupational therapy, and biofeedback, consisting of a prior authorization process in which the indications for treatment and the expected progress shall be documented, and documentation of actual functional progress shall be required at specified intervals as a condition of continued authorization for the specified modalities.

Monitoring Medical Care

Issues of the quality of medical care being provided to California's injured workers continue to be raised. These issues include the timely and expedient access to medical care, restraints on unnecessary care, and understanding of medical errors in the provision of care. Studies have shown that the quality of medical care in the United States is not very high and that reporting quality-of-care information back to medical care providers can motivate them to improve.

CHSWC Recommendations

- Develop a conceptual framework for monitoring the California workers' compensation medical care system with feedback from stakeholders. The development of the framework would involve specifying the existing measures and data that might be used, as well as identifying where there are critical gaps in the measurement capabilities for priority components of the monitoring system.
- Conduct a demonstration project illustrating how quality monitoring might be used in the California workers' compensation system. This would involve testing the feasibility of developing and utilizing overuse and under use utilization criteria in measuring the appropriateness of medical care provided to injured workers.
- Study and review concerns regarding access to QMEs.

CHSWC recommends that the following studies be conducted by CHSWC:

- Evaluate additional guidelines for inclusion as supplements to the American College of Occupational and Environmental Medicine (ACOEM) guidelines.
- Assess the potential for developing a comprehensive set of guidelines or review criteria to identify overuse and under use.
- Monitor and evaluate the performance of the medical treatment utilization schedule as valid and comprehensive clinical practice guidelines that address the frequency, duration, intensity and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.
- Monitor the effect of the statutory caps on chiropractic, physical therapy and occupational therapy visits and compare these caps to scientifically based, nationally recognized, peer-reviewed guidelines.
- Monitor and evaluate the implementation of the medical treatment utilization schedule in utilization review (UR) processes and practices, including denials of authorization, grants of deviations from the schedule, grants of exceptions to the caps on chiropractic, physical therapy and occupational therapy visits, and effects upon case outcomes.
- Evaluate the validity and appropriateness of disability-management guidelines addressing disability durations and return to work (RTW).
- Evaluate the feasibility of decreasing litigation over medical issues through the implementation of an independent medical review program similar to one used by the Department of Managed Health Care.

CHSWC RECOMMENDATIONS

CHSWC Actions

CHSWC is partnering with RAND and Zenith Insurance Company on a demonstration project that will suggest a mechanism for monitoring and improving the quality of care provided to injured workers. The goal of the project is to demonstrate quality measurement in a workers' compensation setting and involves four objectives:

- Develop quality-of-care indicators for one work-related disorder, carpal tunnel syndrome.
- Apply the quality-of-care indicators to patients from several medical networks.
- Publish an anonymous report card comparing quality across networks.
- Consider how to translate the project into an ongoing quality-monitoring system.

Spinal Surgery Second-Opinion Process

With the perception that back surgery was being recommended too frequently and possibly inappropriately by workers' compensation treating physicians, the Legislature enacted SB 228 in 2003, which created the Spinal Surgery Second-Opinion Process (SSSOP). SB 228 also adopted Labor Code Section 4610 covering UR, thereby formalizing the process for employers' objections to medical treatment.

Pursuant to SB 228, Labor Code Section 4062 provides a procedure for a second opinion if the employer objects to the doctor's recommendation for spinal surgery in the workers' compensation system. The employer has ten days from the receipt of the report to object to the treating physician recommendation that spinal surgery be performed. Employees also may request the second-opinion process if the employer's UR does not approve the recommended surgery.

A provision of SB 228 requires CHSWC to conduct a study of SSSOP and issue a report concerning the findings of the study and recommendations for further legislation. CHSWC contracted with the University of California (UC) Berkeley for an evaluation of SSSOP. Subsequently, CHSWC added a survey component with injured workers to the study.

Analysis by UC Berkeley found that the concurrent adoption of UR made important parts of SSSOP legislation unnecessary. Modifications to SSSOP statutory language could significantly streamline the medical review process, limit delays, and reduce costs while still controlling unnecessary surgeries. The full report is available on the CHSWC website at <http://www.dir.ca.gov/CHSWC/Reports/SSSOP-Final.pdf>.

CHSWC Recommendation

In light of the findings of the report, CHSWC recommends the following legislative alternatives for consideration:

- SSSOP should be eliminated, so that spinal surgery issues are subject to the same UR and AME/QME process as other treatment issues,

Or

- SSSOP should become solely the method for an injured worker to challenge a UR decision denying authorization for spinal surgery, while UR would be the sole method for an employer to object to a recommendation for spinal surgery on the grounds of medical necessity.

CHSWC RECOMMENDATIONS

BENEFITS

Recent reforms made significant changes in workers' compensation benefit delivery, including temporary disability (TD) and permanent disability (PD) benefits and apportionment of PD.

Permanent Disability Rating Schedule

PD benefits are meant to compensate workers for their remaining disability after they have reached maximum medical improvement from their injuries. However, a CHSWC study by RAND found that the pre-2005 California Permanent Disability Rating Schedule (PDRS) was procedurally complicated, expensive to administer and inconsistent:

- Earnings losses for similarly rated impairments for different body parts varied dramatically.
- PD ratings varied among doctors evaluating the same or similar injuries, due in part to significant reliance on subjective criteria.

The AD adopted a new PDRS effective January 1, 2005. The new PDRS establishes adjustment factors for diminished future earning capacity (FEC). These FEC factors are applied as multipliers on the impairment ratings that are determined according to the American Medical Association (AMA) *Guides*. The changes to the PD schedule have cut employers' costs for PD by about two-thirds. This reduction is more drastic than expected by many policy makers. While the cost savings may be welcome, some contend that the remaining benefits are inadequate or inappropriately distributed.

There can be several approaches to revising the new PDRS, including:

- Adjusting FEC factors to reduce inequity in benefits across different injury categories.
- Changing the weekly amount of PD payments or the number of weeks benefits are paid.

CHSWC Recommendation

CHSWC recommends that labor and management discuss opportunities for addressing the inequities in the PDRS.

CHSWC Actions

At the request of CHSWC and the Workers' Compensation Insurance Rating Bureau (WCIRB), UC Berkeley conducted an analysis of PD ratings under the new PD schedule. The analysis compared the average ratings under the 2005 PDRS to comparable groups of ratings under the pre-2005 PDRS. The comparison included all ratings done under the 2005 PDRS through June 30, 2007. This comprised 29,580 "summary" ratings and 34,382 "consults" for a total of 63,952 ratings under the new schedule.

The analysis found that the average summary rating was 11.94 percent compared to an average of 20.52 percent for a comparable group of claims under the pre-2005 PDRS. This represents a decline of 41.8 percent in the average rating.

The average rating for consults was 19.73 percent compared to an average of 33.51 percent for a comparable group of cases rated under the pre-2005 PDRS, a decline of 41.1 percent.

CHSWC RECOMMENDATIONS

Apportionment

Apportionment is the process that separates disability attributed to other causes such as pre-existing conditions from disability attributed to an industrial injury or illness. Apportionment applies only to PD, not to TD or medical benefits. Prior to SB 899, the disability that could be apportioned was generally the disability that would have existed if there had been no industrial injury. SB 899 permits apportionment "based on causation." This appears to mean that some disabilities that would not have been apportioned under the old law will be apportioned now if they were caused in part by pre-existing conditions or other non-compensable causes. The statute remains subject to interpretation by the courts. The change may also affect the way a finding of PD is converted into an award of indemnity benefits.

Continuing judicial interpretations may change the final effect of the statutory changes. Due to conflicting rulings from the Courts of Appeal, the Workers' Compensation Appeals Board (WCAB) has put a hold on determinations of the dollar amount of apportioned awards as of September 2006. The conflict will have to be resolved by either the Supreme Court or the Legislature. A CHSWC recommendation for legislation is anticipated in 2007.

CHSWC Recommendation

CHSWC recommends continued evaluation and monitoring of the apportionment issue.

CHSWC Actions

At the request of CHSWC and the Workers' Compensation Insurance Rating Bureau (WCRI), UC Berkeley conducted an analysis of PD ratings under the new PD schedule. The analysis compared the average ratings under the 2005 PDRS to comparable groups of ratings under the pre-2005 PDRS.

The extent of apportionment was evaluated for summary-rated claims. Summary ratings are submitted to a judge to determine whether apportionment is appropriate. Consult ratings are not submitted to a judge, and apportionment is generally not considered by the Disability Evaluation Unit (DEU) of DWC. Findings show that:

- 2,909 of 29,580 summary-rated cases (9.8 percent) included apportionment.
- The average percent of the rating apportioned to other cases or causes was 40.1 percent; that is, on average, 59.9 percent was awarded in the current case when any apportionment was applied.
- The impact was to reduce the average rating on all cases by 4.9 percent (about 0.6 rating points).
- Apportionment reduced the average PD award by 5.8 percent.

Return to Work

Research supports the observation that RTW at the earliest appropriate time reduces the long-term wage loss of an injured worker and the costs borne by employers.

Earlier CHSWC studies by RAND found that California consistently had poor RTW rates for permanent workplace injuries when compared to other states. California's injured workers are far more likely to be out of work after their injury, and in the long run, the benefits could not compensate the resulting lower earnings.

Assembly Bill (AB) 227 and SB 899 provided rules and programs that encourage employers to offer work to their injured employees, including monetary incentives to return the injured worker back to work,

CHSWC RECOMMENDATIONS

supplemental job displacement benefit (SJDB) vouchers, and the RTW workplace-modification reimbursement program.

CHSWC staff conducted a RTW roundtable in November 2006 to discuss the operational and technical aspects of the RTW program. The roundtable involved 30 stakeholders of the workers' compensation system representing insured and self-insured employers, labor, insurance carriers, medical providers, and attorneys. The discussion centered on identifying the current issues with respect to RTW in California, as well as identifying potential solutions.

Roundtable Recommendations

Participants at the roundtable produced short-term and long-term technical and system recommendations to the RTW process, including the following:

Short-Term Suggestions

- Establish educational programs for employers:
 - Education about the DWC reimbursement program.
 - Information (e.g., sample programs, policies and procedures), database, and mentors.
- Provide training for physicians:
 - In addressing RTW issues using the ACOEM "Preventing Needless Disability" guideline.
 - In using the AMA *Guides* to evaluate disability in workers' compensation.
- Make technical changes regarding the SJDB and tiered PD benefit, including coordinating:
 - Deadlines and timing of notices, such as notices of potential right to the SJDB.
 - Eligibility criteria for the offers of regular, modified, or alternative work.
 - Timing of the offer of regular, modified, or alternative work.
 - Timing of the PD adjustment of 15 percent.
 - Timing of the SJDB voucher.
- Conduct needs assessment on RTW practices for small and medium-sized business.
- Provide incentives to physicians to spend the time needed to assist in the RTW process, e.g., reimburse them for completing a functional capacity evaluation form.
- Create outcome-based medical fee schedules (pay-for-performance).
- Require that necessary medical care be authorized promptly; do not require UR if treatment follows the ACOEM guidelines.
- Extend the TD ending date (e.g., limit the aggregate weeks of payment instead of limiting the period of payment), so the injured worker is motivated to attempt RTW.
- Explore how to specify requirements involving:
 - Seasonal and temporary employment (e.g., farm workers, entertainment industry, daily hires).
 - General and special employment.

Long-Term Suggestions

- Consider a mentoring role between large companies with RTW programs and small companies without these programs in place.
- Assess the adequacy of the funding of the RTW reimbursement fund.
- Provide employers with an "off-the-shelf" RTW program or a guide for what an RTW program should look like.

CHSWC RECOMMENDATIONS

- Assess the need for publicity about the reimbursement fund for worksite modifications at employers with fewer than 50 employees. Most employers do not know about this fund.
- Consider the ends and means of compliance with the process requirements versus RTW outcomes that are not being facilitated or coordinated.
- Explore additional resources to fund RTW.
- Redesign the existing RTW and voucher system potentially using funds from existing programs and redirecting them to a more functional program.
- Examine sources of funding for RTW programs. Suggest funding to include redirecting current funding and looking for additional funds.
- Examine best practices in early intervention programs and pre-injury management for RTW.
- Examine other states' programs, such as the RTW programs in Oregon and Texas.
- Examine California State Department of Rehabilitation programs for possible coordination with workers' compensation.
- Examine California State Department of Fair Employment and Housing programs for possible coordination with workers' compensation.
- Explore incentives/support for job placement, including services and/or resources from Department of Rehabilitation, the Labor and Workforce Development Agency, and CalJobs.
- Consider an integrated disability-management approach to treating injuries.
- Separate the medical treatment process from the medical-legal process, including the determination of PD (e.g., as in Nevada).
- Educate/train all stakeholders of the workers' compensation system, particularly small businesses, on RTW.
- Involve the State in the RTW process, providing funding, coordination, information and training.
- Consider including the services of an RTW counselor, ombudsman or specialist.
- Track outcomes on RTW and establish performance measures for the RTW counselor.
- Require employers to justify why transitional duty is not available [Americans with Disabilities Act (ADA) model].

Next Steps

- Develop legislative proposals to carry out short-term recommendations for technical changes.
- Continue to research, analyze and develop alternative proposals to carry out the long-term recommendations.

CHSWC Actions

CHSWC has partnered with employer, medical provider, insurance, and non-profit disability organizations to plan the first Northern California Summit on Promoting Stay-at-Work and Return-to-Work. The summit of experts was convened in Pleasanton, California, on June 21, 2007, and focused on the topic of reducing medically unnecessary time off work for injured or otherwise disabled employees. The goal of the summit was to advance toward sustained solutions for preventing needless time away from work and the realignments needed to meet this goal.

CHSWC RECOMMENDATIONS

Workers' Compensation and Public Safety Officer Retirement Benefits

The media and some public employers have expressed concern regarding disability and retirement package benefits for public safety officers. CHSWC has received a bi-partisan request to conduct a comprehensive study on this issue.

CHSWC Actions

This joint study with the National Institute for Occupational Safety and Health (NIOSH) is being carried out by RAND. The study was initiated in 2006 and is ongoing:

- The study examines causes and consequences of the high rates of injury and disability retirement among public safety workers in California.
- The objective of the study is to assist the Legislature with its goal to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured.

Preliminary CHSWC Recommendations

CHSWC study by RAND recommendations include:

- Consider the following possible starting points to improve the safety and health of public safety workers: training; clear command guidance; monitoring and analyzing data; operating procedures; and technology and equipment improvements.
- Collection, dissemination, and sharing of safety and health information,
- An ongoing review and evaluation of this issue,

ANTI-FRAUD EFFORTS

Partnership with the Fraud Assessment Commission

CHSWC is leading the Workers' Compensation Fraud Working Committee.

CHSWC partnered with the FAC to identify, measure, and focus anti-fraud efforts effectively.

The following recommendations were developed by CHSWC:

- Identify methods to detect and measure the extent of medical overpayments and underpayments of all types in the workers' compensation system based on data.
- Develop baselines for measuring the level of medical overpayments and underpayments of all types including fraud, waste, abuse, and billing and processing errors.
- Specify the most effective methodology to identify illegally uninsured employers and determine the effectiveness, costs and benefits of a matching records program to identify illegally uninsured employers and bring them into compliance.
- Identify the extent of workers' compensation premium and classification of overpayments to help determine the extent of this type of fraud.
- Identify existing anti-fraud resources that could be used by agencies to detect and monitor fraud.
- Determine the extent of underreporting of workers' compensation claims.
- Determine the extent of premium and job-classification fraud.

CHSWC RECOMMENDATIONS

CHSWC Actions

CHSWC has completed studies on fraud in workers' compensation payroll reporting (premium fraud) and workers' compensation split class code abuse. Recommendations from the findings of those studies follow.

Fraud in Workers' Compensation Payroll Reporting

CHSWC Recommendations

- The Legislature, CDI and the Department of Industrial Relations (DIR)/Division of Labor Standards and Enforcement (DLSE) could push for more aggressive enforcement against underreporting and misreporting. This could include:
 - Focusing more FAC funding on premium fraud;
 - Raising the civil penalties for premium fraud; and/or
 - Raising the criminal penalties for premium fraud.
- The Test Audit Program that monitors insurer audits of policyholders is currently operated by WCIRB, an insurance industry association. CDI might consider the suggestion of some observers and have this process conducted by a separate, private contractor.
- Employers report payroll data to the Employment Development Department (EDD) for tax withholding and unemployment and disability insurance. These records could be matched to employers' reporting to insurers for premium purposes. Currently, this avenue is limited by restrictions on insurer access to EDD data. Legislation could simplify this basic audit procedure.
- The Franchise Tax Board receives large amounts of information that could be used to identify fraudulent underreporting. These data include income information from both employers and workers that could be used to identify fraudulent use of independent contractor status. Again, access to these data is heavily restricted, and legislation might be needed to facilitate access for investigators.
- Professional employment organizations (PEOs) have been cited as a frequent avenue for employers to avoid the consequences of high experience modifiers or to disguise the risky nature of workers' occupations. However, to date, there has been no systematic study of the size or scope of the PEO market or the claims experience of PEOs. The State could undertake a study to gauge the impact of PEOs in the workers' compensation market.
- Recently, at least one very large national insurer was fined for systematically underreporting premium in several states (Bloomberg News, 5/26/07). It is unclear whether the underreporting extended to payroll and occurred in California. If this extended to California, then the estimates of underreporting could include fraudulent behavior by at least one insurer, not just employers. This could be a topic for study by CHSWC and CDI.
- If one or more insurers underreported payroll and premium, there is a possibility that this action could have affected individual employers experience modification. In the aggregate, insurer underreporting could also have altered pure premium rates set by the WCIRB and CDI. This could be a topic for study by CHSWC and CDI.

CHSWC RECOMMENDATIONS

Uninsured Employers Benefits Trust Fund

All employers in California are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured.

Since not all employers comply with the law to obtain workers' compensation coverage for their employees, the Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. As of 2004, Fund losses previously incurred by the State's General Fund are now incurred by the UEBTF and are now funded by a surcharge on all insured employers and self-insured employers, by penalties to non-compliant employers, and by recoveries from uninsured employers for actual worker injuries.

The workers' compensation community has expressed concern with several aspects of UEBTF. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers. Workers, along with the attorneys and medical providers to whom they turn for help, are concerned about the difficulties of obtaining benefits from UEBTF.

CHSWC Recommendations

In response to these concerns, CHSWC staff prepared a background paper and developed recommendations to improve UEBTF, including the following:

- Publicize and Enforce the Workers' Compensation Coverage Requirement:
 - Continue and expand efforts to ensure that all employers comply with the requirement to provide workers' compensation coverage.
 - Conduct outreach to workers, employers, medical providers, clinics, and social service programs regarding workers' compensation coverage requirements and reporting of uninsured employers.
 - Establish and fund a systematic uninsured employer-identification program.
- Provide Workers' Compensation Coverage Information:
 - Continue the effort to provide convenient and rapid public access to workers' compensation insurance coverage information. Currently, 26 states provide proof of coverage verification online.
 - Ensure that non-confidential information on DLSE investigations is publicly available and accessible online.
- Improve Methods to Help Workers Access Benefits from UEBTF:
 - Develop a simplified guide on UEBTF claims process for injured workers.
 - Educate Information and Assistance (I&A) Officers on UEBTF procedures to improve access for injured workers.
- Encourage Reporting of Suspected Illegally-Uninsured Employers:
 - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, require medical providers to report suspected uninsured employers to the CDI on the FD-1 fraud form.
 - Require UEBTF to report suspected uninsured employers to CDI and other enforcement agencies.
 - Establish a "hotline" number for employees, employers and others to report uninsured employers and trigger an investigation of coverage by DLSE.
- Protect and Improve UEBTF:
 - Improve UEBTF procedure while preserving the authority of UEBTF to recover funds from illegally uninsured employers.

CHSWC RECOMMENDATIONS

- Create a presumption of earnings, not to exceed the average wage of the occupation, so that UEBTF is protected from workers' uncorroborated claims of weekly wages that were not reported by the employer.
- Research ideas to measure performance, identify double billing, and identify opportunities for earlier identification of likely UEBTF claimants.
- Further Educate the Workers' Compensation Community:
 - Although DWC provides ample information online on UEBTF guidelines, the process is still complicated. I&A officers may benefit from additional training on advising workers on how to handle the UEBTF claim process.
 - Education for practitioners would facilitate their handling of basic civil procedures.
 - I&A officers, attorneys and the community would benefit from briefings regarding the UEBTF process. While the UEBTF process is necessarily different from the process of submitting an insured claim, it can be manageable if the participants understand the requirements.

Insurance Commissioner's Advisory Task Force on Insurance Fraud

The Insurance Commissioner's Advisory Task Force on Insurance Fraud was convened on May 31, 2007, at the invitation of Insurance Commissioner Steve Poizner. The task force is to work for one year and deliver recommendations to Insurance Commissioner Poizner on ways to reduce or eliminate insurance fraud. The executive officer of CHSWC has been asked to chair the Workers' Compensation Focus Group in the task force.

The goals of the task force are to:

- Review the efficiency of the CDI Fraud Division.
- Review anti-fraud efforts by the insurance industry and provide recommendations for improvement.
- Review Criminal Insurance Code statutes and regulations of anti-fraud programs and make recommendations for improvement.
- Determine new technology for CDI which can be used to reduce the incidence of insurance fraud.
- Review all outreach efforts by CDI and make recommendations for improvement.

CHSWC Actions

CHSWC has convened meetings with the various key stakeholders of the workers' compensation focus group to develop recommendations regarding workers' compensation fraud which meet the goals of the task force. The recommendations will be submitted to the Insurance Commissioner in February 2008.

INFORMATION FOR WORKERS AND EMPLOYERS

Injured workers, employers, and the public need up-to-date and easily accessible information about the workers' compensation system.

CHSWC Recommendation

CHSWC recommends that information about the workers' compensation system be updated as needed and made available in several languages in addition to English and Spanish, such as Chinese, Vietnamese, Tagalog and Korean.

CHSWC RECOMMENDATIONS

CHSWC Action

In 2007, CHSWC released an updated version in Spanish of “Workers' Compensation in California: A Guidebook for Injured Workers”, Third Edition, November 2006. This guidebook was designed and produced by the Institute of Industrial Relations (IIR) and the Labor Occupational Health Program (LOHP) of UC Berkeley under a contract with CHSWC.

The guidebook, which is available on the CHSWC website, provides an overview of the California workers' compensation system and incorporates information from the booklet “Getting Appropriate Medical Care for Your Injury.” It is meant to help workers with job injuries understand their basic legal rights, the steps to take to request workers' compensation benefits, and where to seek further information and help if necessary.

CALIFORNIA INSURANCE INDUSTRY

The cost of workers' compensation insurance in California has undergone dramatic changes in the past ten years due to a combination of factors.

When the workers' compensation insurance industry was deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances lower than their actual costs. Many insurers drew on their reserves to make up the difference and several insurers went bankrupt. Subsequently, the surviving insurers charged higher premium rates to meet costs and begin to replenish reserves.

The California workers' compensation legislative reforms in the early 2000s, which were developed to control medical costs, update indemnity benefits and improve the assessment of PD, also had significant impact on insurance costs. As a result of recent workers' compensation legislative reforms and the subsequent decisions by the Insurance Commissioner on advisory premium rates, workers' compensation insurers have reduced their filed rates, and some new insurers entered into the workers' compensation market in 2004 and 2005.

CHSWC Recommendations

To stabilize the workers' compensation insurance market and reduce workers' compensation costs and premium rates to employers, CHSWC recommends:

- Monitoring on an ongoing basis to ensure that the cost of workers' compensation insurance to employers accurately reflects the effects of the recent reforms. A close examination of administrative costs should be conducted.
- Conducting a study to analyze the reasons for bankruptcies that occurred after deregulation in 1995 in order to prevent any similar future trends of insolvencies. AB 316 (Yee) was passed by the Legislature on September 7, 2007, and signed by the Governor. AB 316 mandates CHSWC to conduct this study.

EXPLORING FUTURE DIRECTIONS

Integration of Group Health and Workers' Compensation Medical Care

Although recent workers' compensation reforms have decreased medical costs, California's employers still experience higher costs for workers' compensation claim medical care than employers in most other states. Suggestions have been made to integrate workers' compensation medical care with the general medical care provided to patients by group health insurers in order to improve the quality and coordination of care, lower overall medical expenditure, reduce administrative costs, and derive other efficiencies in care. Research also supports the contention that a 24-hour care system could potentially provide cost savings as well as shorten the duration of disability for workers.

CHSWC RECOMMENDATIONS

CHSWC staff held a 24-Hour Care Roundtable meeting in December 2006 in Oakland. The discussion centered on identifying the current issues and challenges with respect to 24-hour care in California and exploring:

- Successful models in other states, as well as in California.
- Challenges to implementing a 24-hour care system.
- Recommendations and objectives when moving toward a 24-hour care system, such as implementation in the public sector, voluntary participation with incentives in the private sector, and within carve-outs.

CHSWC Roundtable recommendations include:

- Coordinate existing administrative functions, forms and reporting requirements through common intake, common integration of processes, including the RTW process and case management, and a common appeal process.
- Identify to what extent the current workers' compensation system fits with integration of medical services and what could be modified to fit the model.
- Gather statistics and data that would include:
 - The number of workers who are covered and who are not covered through employer-based group health, as well as the demographics of these workers.
 - The number of workers of large vs. medium-sized vs. small employers who are covered by group health.
 - Employer demographics, such as the percentage of employers with 500 or more employees, number of employers with up to 10 employees who do not offer health benefits, and the percentage of employees without benefits who could potentially be helped by a 24-hour care system.
 - The total outcomes to the system from both medical/disability and productivity to determine what the total costs to the system would be if 24-hour care were not implemented.
- Consider potential avenues to implement 24-hour care:
 - Within carve-outs.
 - In the public sector, where ERISA preemption will not be an issue.
 - Consider piloting 24-hour care in the public sector.
- Consider the following areas:
 - Incentives or reimbursements to providers in order to avoid cost shifting.
 - Analysis of other models:
 - The Health Care Organization (HCO) model which has elements of the group health model, especially the internal dispute resolution system and quality assurance.
 - Programs in other states, especially Oregon and Washington.

CHSWC Recommendations

- Consider and explore the short-term and long-term recommendations from the 24-Hour Care Roundtable.
- Evaluate of the performance and outcomes of the 24-hour care pilot program currently underway.

CHSWC Actions

The California HealthCare Foundation awarded a grant to CHSWC to develop a proposal to integrate occupational and non-occupational medical treatment, an alternative that could offer savings on medical

CHSWC RECOMMENDATIONS

utilization, unit pricing, and administrative expenses while potentially offering improvements in the quality of health care. As a secondary advantage, the project is expected to expand access to affordable medical insurance.

The Service Employees International Union (SEIU) Local 1877, representing approximately 5,500 union janitors and unionized building-maintenance contractors in the San Francisco Bay Area, requested assistance from CHSWC and UC Berkeley with negotiating a collective bargaining agreement that would integrate both occupational and non-occupational medical treatment under the union's Taft-Hartley Health and Welfare Trust (H&WT). Kaiser Permanente is providing technical expertise on medical care and information necessary to help determine proper pricing levels, as well as helping to resolve barriers to integrating medical care.

Carve-Outs

Carve-outs provide an alternative to the existing procedures within California's workers' compensation system. Carve-outs have the potential to improve safety programs and reduce injury and illness claims, achieve cost savings for employers, provide effective medical delivery and improved quality of medical care, improve collaboration between unions and employers, and increase the satisfaction of all parties.

CHSWC Recommendations

CHSWC recommends the following:

- Evaluate and disseminate best practices of carve-out programs.
- Update the evaluation of the performance of carve-outs.
- Promote carve-outs to the workers' compensation community with identified incentives.
- Consider establishing performance measurements for parties in carve-outs.
- Explore the feasibility of permitting the State of California and its unions to enter into carve-out agreements.

CHSWC Actions

CHSWC developed and presented a one-day "Workers' Compensation Carve-Out Conference/ Alternative Dispute Resolution (ADR)" in Emeryville, CA, in August 2007 to provide information and resources on key issues on carve-outs. Key topics included:

- The process for establishing a carve-out.
- The benefits of creating a carve-out.
- Existing models of carve-outs and best practices.
- Health and safety prevention in carve-outs: ways to reduce injuries, illnesses and costs, including such topics as health and safety committees and injury and illness prevention training.
- The new paradigm in healthcare: integration of workers' compensation and group health.

CHSWC Findings from the Carve-Out Conference

Key findings from the carve-out conference include:

- Carve-outs offer:
 - Potential benefits for employers including cost savings through fewer delays and disputes, reduction in overuse, and discounts from insurers.

CHSWC RECOMMENDATIONS

- Potential benefits for injured workers including prompt medical care, faster healing, more complete recovery, and successful RTW with less time off.
- A flexible design. Each labor-management agreement can design the carve-out to meet the needs of its members. Features of a carve-out can be changed on an ongoing basis by amending the collective bargaining agreement.
- Carve-outs also have the potential to provide:
 - An opportunity to negotiate integration of occupational and non-occupational medical treatment which can provide: improved quality and coordination of care; improved access to care because there is no dispute over coverage and fewer disputes and delays over treatment; and a reduction in the administrative costs due to two systems.
 - A way to improve labor-management relations on a long-term basis by preventing disputes or decreasing the severity of disputes and creating more efficient methods to resolve disputes.

Plan for Older Workforce

The changing demographics of the workforce may require employers to hire older workers. Older adults may need to consider working longer to ensure their financial security.

CHSWC Recommendations

CHSWC recommends the development of:

- A research agenda to address the impact of older workers on the health and safety, and workers' compensation systems.
- Policies that emphasize health, workplace safety and injury prevention for older workers.
- Policies for the workers' compensation system that assist employers and aid older workers.

Pay-for-Performance in California's Workers' Compensation Medical Treatment System

There may be potential for creating financial incentives to encourage and reward the delivery of high-quality, efficient care to California's injured workers. Recently, financial incentives or pay-for-performance mechanisms have rapidly gained favor in other health care sectors but have been rarely used in workers' compensation.

CHSWC Actions

A report on pay-for-performance has been prepared for CHSWC by RAND. The report discusses three potential models of pay-for-performance for the California workers' compensation system. The recommendations from the findings of the study follow.

CHSWC Recommendations

CHSWC recommendations include:

- Expand the discussion on pay-for-performance to include representatives of the various stakeholder constituencies to gauge the level of interest and commitment in a pay-for-performance initiative.
- Define the program's goals and objectives.
- Determine whether there are any "idea champions" to promote the pay-for-performance concept.

CHSWC RECOMMENDATIONS

INJURY PREVENTION

Health and Safety Research Agenda

CHSWC believes that it is important to conduct research that results in both knowledge and policies that will lead to elimination of workplace fatalities and reduction in injuries and make California workplaces and workers the safest, healthiest and most productive in the country. At its August 9, 2007 meeting, the Commission voted to convene a health and safety advisory committee.

CHSWC Action

CHSWC held a Health and Safety Advisory Committee meeting on November 19, 2007, to develop a health and safety research agenda.

Worker Occupational Safety and Health Training and Education Program (WOSHTEP)

Labor Code Section 6354.7 specifies that CHSWC establish a Worker Occupational Safety and Health Training and Education Program (WOSHTEP). Pursuant to this mandate, CHSWC established WOSHTEP in 2002. WOSHTEP includes: the Worker Occupational Safety and Health (WOSH) Specialist training; the Small Business Resources Program; Young Worker Health and Safety Programs; and Resource Centers in Northern and Southern California.

CHSWC Recommendations

CHSWC recommends the continuation of the program to:

- Develop a statewide network of trainers to offer the WOSHTEP curriculum.
- Conduct outreach and dissemination of the WOSH Specialist course.
- Conduct dissemination of the WOSH Specialist curriculum to carve-outs.
- Develop a supplemental module for the WOSH Specialist course on emergency preparedness.
- Incorporate a health-promotion wellness module into the WOSH Specialist curriculum.
- Conduct outreach and dissemination of health and safety materials to small employers through the Small Business Resources Program.
- Conduct outreach and dissemination of the Multilingual Health and Safety Resource Guide.
- Expand WOSHTEP to the Central Valley, San Diego and the Inland Empire.

CHSWC Actions

CHSWC is submitting a fiscal year 2008/2009 Budget Change Proposal (BCP) to comply with its mandate in Labor Code Section 6434 by assisting schools in establishing effective Injury and Illness Prevention Programs.

CHSWC is also submitting a fiscal year 2008/2009 BCP to comply with its mandate in Labor Code Section 6354.7 by providing heat illness prevention training and resources in the Central Valley.

Young Workers

Each year California teens enter the workforce through summer jobs or part-time employment. However, many teens are unaware of their employment rights and the possible hazards that they can encounter in the workplace.

CHSWC RECOMMENDATIONS

Over the past five years, an average of 48 teens have died each year in the United States as a result of work-related injuries, and an estimated 160,000 are injured severely enough to require treatment in hospital emergency rooms. Studies suggest that youth job-injury rates are higher than those of adults, despite the fact that youths are prohibited from working in the most hazardous occupations.

CHSWC Recommendations

CHSWC recommends ongoing outreach to young workers through statewide activities including:

- The Young Worker Leadership Academy. The goals of the Academy are to: teach youth about workplace health and safety and their rights on the job; help youth start thinking about ways to ensure that young people do not get hurt on the job; and provide a forum for these youth to plan for specific actions they can take in the own communities to promote young worker safety.
- Health and safety information and outreach during Safe Jobs for Youth Month in May of each year. The objective is to protect young workers from injury by raising community awareness about child labor and workplace health and safety issues. This public information campaign is sponsored by CHSWC and is coordinated by LOHP at UC Berkeley.
- To address teen worker injuries in California, CHSWC convened a statewide task force on young worker health and safety, the California Partnership for Young Worker Health and Safety. This task force brings together key representatives from government agencies and statewide organizations that are involved with California youth employment and education issues or that can otherwise play a role in educating and protecting young workers. The Partnership develops and promotes strategies to protect youth at work.

CHSWC recommends that employers, educators, counselors, parents and everyone involved with young workers utilize these resources:

- The California Partnership for Young Worker Health and Safety provides training, educational materials, technical assistance, and information and referrals to help educate and protect young workers. Information is available at:
<http://www.dir.ca.gov/youngworker/YoungWorkerPartnership.html>

Combined Occupational Injury-Reduction Efforts with Health-Promotion Programs

Occupational health and safety professionals have traditionally focused attention on the control or elimination of work hazards to protect all exposed workers. Health-promotion professionals have often found that improved individual health behaviors can be encouraged in the workplace. There is some evidence that occupational injury and illness prevention programs are more effective in combination with programs that promote overall worker health.

CHSWC Recommendation

CHSWC recommends examining the effectiveness of combining occupational injury-reduction efforts with health-promotion “wellness” programs.

CHSWC RECOMMENDATIONS

EFFICIENCY OF WORKERS' COMPENSATION ADMINISTRATION

CHSWC recommendations include:

- Requiring that DWC report on the promptness of first payment by insurance carriers on a regular basis.
- Revising the reporting system for filing information on workers' compensation claims. Currently, employers and insurers are required to file the employer's report (DLSR Form 5020, Employer's Report of Occupational Injury or Illness) and the doctor's first report (DLSR Form 5021, Doctor's First Report of Occupational Injury or Illness). Now that the Workers' Compensation Information System (WCIS) has been implemented and this reporting could be done electronically, the manual filing process could be eliminated for a savings of about \$20 million per year to avoid duplicate reporting.
- Developing a system for the WCAB to accept electronic medical reports from insurance carriers.
- Conducting a review of WCIS to ensure that it meets the goals of the workers' compensation system and stakeholders for ongoing monitoring.
- Developing and adopting penalty regulations for failure to report data to WCIS.
- Developing a framework and research agenda with stakeholders for ongoing monitoring of the workers' compensation system.
- Taking steps in the interim to ensure systematic collection of summary data from insurers, self-insured employers, and public agencies.

SYSTEMS OVERVIEW

Changes in Workers' Compensation Insurance Driven by Crisis Peaking in 2003

Both the increases in the costs of workers' compensation benefits and the deregulation of the workers' compensation insurance industry were factors contributing to a workers' compensation crisis that peaked in 2003.

Increasing Cost of Benefits

The paid costs of workers' compensation benefits increased greatly between 1997 and 2003. The total costs of the California workers' compensation system more than tripled, growing from \$8.3 billion in 1997 to \$26.7 billion in 2003.¹

Medical Costs

The increase in medical costs, which rose from \$2.6 billion to \$6.1 billion, was a major contributor to the increases in total costs.

The rise in medical costs can be attributed to several factors including:

- Substantial increases in medical costs per claim.
- Increases in the average number of medical visits per workers' compensation claim.
- Growth of unregulated out-patient surgery facility costs.

Weekly Benefits

Other contributing factors to the increases in costs were the increases to the temporary disability (TD), permanent disability (PD) and death benefits that went into effect in 2002 with Assembly Bill (AB) 749. Benefits prior to AB 749 had not kept up with inflation.

- AB 749 indexed benefits to the state average weekly wage for TD benefits, much like in other states.
- After AB 749, PD benefits for 2006 were increased to approximately equal the rates in 1984 after inflation.

Expansion of Liability

Another factor contributing to the increase in workers' compensation costs for employers was the expansion of workers' compensation liability. Through most of the history of the workers' compensation system, the courts have expanded the boundaries of compensability. Partially counteracting this broad trend, there have been legislative restrictions from time to time, such as those imposing new conditions to compensability for psychiatric claims or post-termination claims.

Deregulation of Insurance Industry

When the workers' compensation insurance industry was deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances below their actual costs. Many insurers drew on their reserves or relied on investment profits to make up the difference during bull market years, and several insurers went bankrupt. Between 2000 and 2003, 27 workers' compensation insurers went into

¹ The total cost of the workers' compensation figures consists of medical care payments and wage replacement benefits to injured workers, along with administrative expenses and adjustments to reserves. Workers' Compensation Rating Bureau. *Annual Reports*, San Francisco: WCIRB, 1998, 2004.

SYSTEMS OVERVIEW

liquidation. Subsequently, the surviving insurers charged higher premium rates to meet costs and begin to replenish reserves.

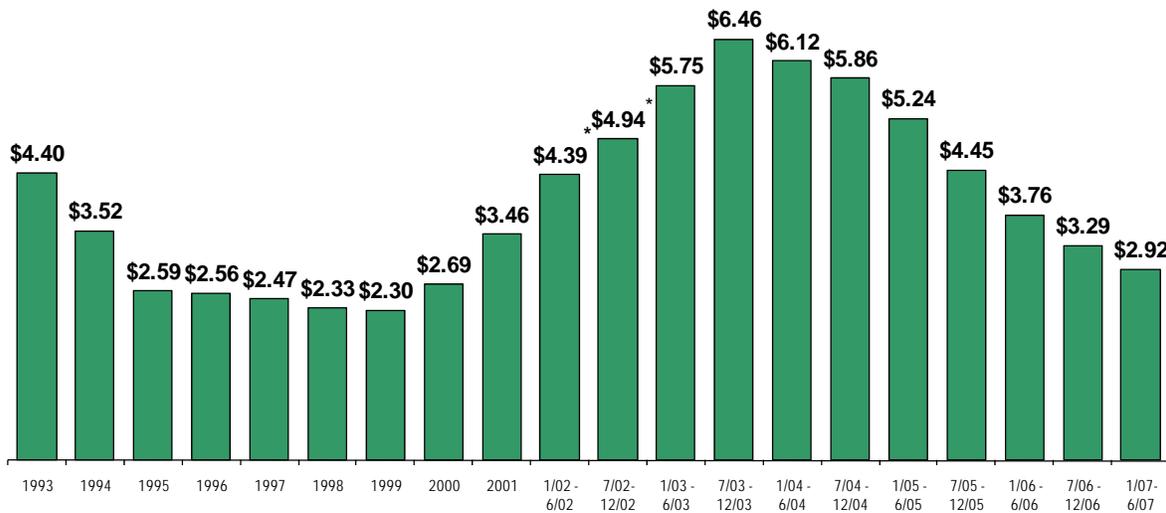
Impact of Cost Increases

Costs for insurance peaked at an average of \$6.47 per \$100 of payroll in the latter half of 2003, making California the most expensive state in the U. S. for workers' compensation insurance.

Workers' Compensation Average Premium Rate

The following chart shows the average workers' compensation premium rate per \$100 of payroll. The average dropped during the early-to-mid 1990s, stabilized during the mid-to-late 1990s, and then rose significantly beginning in 2000 up to the second half of 2003. However, the average rate has dropped every year since that time. Today, the average premium rate per \$100 of payroll is \$2.92 which is lower than it was in 1993.

Average Workers' Compensation Insurer Rate Per \$100 of Payroll as of June 30, 2007



Data Source: WCIRB

* Excludes the impact of the adopted changes to outstanding policy year 2002 pure premium rates effective January 1, 2003

SYSTEMS OVERVIEW

Workers' Compensation Reforms: Recent Changes to the California System

Discussion of Workers' Compensation Key Reforms

California has made significant legislative reforms in the workers' compensation system in 2002, 2003, and 2004. The reforms of 2002, 2003, and 2004 included provisions that accomplished the following:

- Control of medical costs:
 - Utilization review of medical treatment.
 - Standardized and transparent medical fee schedules.
 - Evidence-based medical treatment guidelines (e.g., ACOEM *Guidelines*).
 - Agreed medical evaluator (AME), qualified medical evaluator (QME) and medical dispute resolution.
 - New fee schedule for inpatient hospital, hospital out-patient departments and ambulatory surgery centers based on the Medicare fee plus 20 percent.
 - A new fee schedule for pharmaceuticals based on the Medi-Cal Fee Schedule.
 - Caps on the number of chiropractic, physical therapy and occupational therapy visits per claim.
 - Employer control of medical care through medical provider networks (MPNs).
- Update of indemnity benefits:
 - Indemnity benefit increases in 2002 reforms.
 - Indemnity benefit reductions in 2004 reforms.
 - Caps on TD benefits after two years.
- Changes in the delivery of PD:
 - Permanent Disability Rating Schedule (PDRS) revision.
 - Apportionment.
 - Incentives for return to work (RTW).
 - American Medical Association (AMA) *Guides* adopted for both descriptions and percentage of impairments.

Reform Results

CHSWC has noted several trends subsequent to the reforms:

- Costs are down for workers' compensation insurance.
- Direct costs of workers' compensation benefits are down.
- Medical costs are down.
- PD benefits are down by 60 percent.
- TD has declined, even before the two-year cap took effect and without any direct cut in benefits.
- Claim frequency is down 45 percent from 1997.

Savings from the workers' compensation reforms are estimated at \$14.5 billion per year.²

² Workers' Compensation Insurance Rating Bureau (WCIRB). "WCIRB Legislative Cost Monitoring Report. October 9, 2007."

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Medical Reforms

California's workers' compensation medical costs grew by over 120 percent from 1997 to 2004.

Prior to the reforms of AB 227, Senate Bill (SB) 228 and SB 899, overall costs for workers' compensation medical treatment were estimated to be 50 percent to 100 percent higher than group health. Several reforms were adopted in the recent legislative sessions to control medical costs including utilization controls and fee schedules.

Utilization

According to the Workers' Compensation Research Institute (WCRI), the utilization of workers' compensation medical services in California was over 70 percent greater than other states. Several utilization measures were adopted to control this including:

- Caps on chiropractic, physical therapy, and occupational therapy visits, limiting each type of therapy to 24 visits per claim. According to the Workers' Compensation Insurance Rating Bureau (WCIRB), following the enactment of workers' compensation reforms of SB 228, physical therapy utilization has been reduced by approximately 61 percent and chiropractic utilization by approximately 77 percent.
- Evidence-based guidelines for treatment of different injuries/illnesses. Scientifically based treatment guidelines were adopted to replace the nearly unlimited discretion of the treating physician.
- MPNs. Self-insured employers and insurers were allowed to establish MPNs envisioned as a selection of physicians skilled in dealing with the needs of injured workers, helping them return to work, and responding to the administrative needs of the workers' compensation system to deliver benefits efficiently.
- Elimination of the treating physician presumption of correctness on medical treatment issues for all dates of injury.

Fee Schedules

The Commission on Health and Safety and Workers' Compensation (CHSWC)/RAND studies found that the lack of fee schedules regarding certain medical services and the delays in updating existing fee schedules created administrative inefficiency and therefore higher costs.

CHSWC studies found that the California workers' compensation system had high pharmaceutical reimbursement rates relative to other systems, such as Medicaid and employer health benefits, and that when compared with other workers' compensation systems, California's pharmaceutical reimbursement rates were near the highest among the various states reviewed. Workers' compensation reforms accomplished the following:

- Created a new fee schedule for hospital inpatient and out-patient departments and ambulatory surgery centers based on Medicare fees plus 20 percent. (SB 228)
- Created a new schedule for pharmaceuticals based on 100 percent of Medi-Cal. (SB 228)
- Required pharmacies and other providers of medical supplies and medicines to dispense a generic drug equivalent unless the prescribing doctor states otherwise in writing. (AB 749)
- Authorized employers and insurers to contract with pharmacies or pharmacy benefit networks pursuant to standards adopted by the Division of Workers' Compensation (DWC) Administrative Director (AD). (AB 749)

In addition, CHSWC studies found that the payments for repackaged drugs dispensed by physicians based on the pre-existing Official Medical Fee Schedule (OMFS) are higher than the pharmacy-dispensed drugs that are reimbursed according to the Medi-Cal formula. On average, physician-dispensed drugs cost 490

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percent of what is paid to pharmacies. In some cases, including the most commonly prescribed drug dispensed by physicians, the mark-up exceeds 1000 percent.

The AD adopted regulations effective March 2007 restricting costs of repackaged drugs that are dispensed by physicians to be more in line with the Medi-Cal pharmacy fee schedule and what pharmacies are allowed to charge. This change is estimated to save \$263 million in paid costs in 2006.

Immediate Medical Care

For claims reported after April 19, 2004, SB 899 requires that within one day of receiving an employee claim form, the employer will authorize the provision of medical treatment and will continue to provide such treatment until such time as the claim is accepted or denied. The employer's liability for medical treatment prior to the time the claim is accepted or denied is limited to \$10,000 (Labor Code Section 5402).

WCIRB has reviewed information from DWC on denial rates to assess if any significant increases in denied claims have occurred beginning in 2004 as a result of these SB 899 provisions related to immediate medical care. As shown in the following table, information from DWC shows that the rate of claims denied in calendar years 2005 and 2006 has increased somewhat from the prior years.

Statewide Claims Denied³

Accident Year	Total Reported Claims	Claims Denied	Claim Denial Rate
2002	867,774	56,269	6.5%
2003	827,282	43,781	5.3%
2004	779,745	48,777	6.3%
2005	726,068	50,247	6.9%
2006	694,541	55,760	8.0%

Indemnity Benefits

Permanent Disability Compensation

Changes to the Permanent Disability Rating Schedule

PD benefits are meant to compensate workers for their remaining disability after they have reached maximum medical improvement from their injuries. However, a CHSWC study by RAND found that the pre-2005 California PDRS was procedurally complicated, expensive to administer, and inconsistent:

- Earnings losses for similarly rated impairments for different body parts varied dramatically.
- PD ratings varied among doctors evaluating the same or similar injuries, due in part to significant reliance on subjective criteria.

SB 899 revised the way PD is rated:

- One of the basic principles of a PD rating, "diminished ability to compete," was replaced by "diminished future earning capacity," which is defined as "a numeric formula based on empirical

³ Reported in WCIRB's 2007 Legislative Cost Monitoring Report . Based on DWC Workers' Compensation Information System (WCIS) records as of July 10, 2007.

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data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees.”

- The new PDRS, adopted January 1, 2005, was required to incorporate the *AMA Guides* for both descriptions and measurements of impairments and for the corresponding percentages of impairment. Evaluations according to the *AMA Guides* are expected to be more predictable and consistent than evaluations under the more subjective rating system in place for almost a century.

Changes to Permanent Disability Indemnity

PD indemnity is payable as a weekly benefit for a number of weeks:

- The number of weeks depends entirely on the PD rating.
- The weekly benefit amount depends on the employee's pre-injury earnings; however it is subject to a maximum limit which is so low that most workers receive the maximum weekly rate.
- In a few cases, the weekly amount is affected by the PD rating. For most cases, the maximum weekly amount is \$230 per week. For the few cases with ratings of 70 percent to 99 percent, the maximum weekly amount is \$270. As noted above, most workers earned enough to qualify for the maximum weekly amount.

Under SB 899, the weekly amount may be adjusted up or down by 15 percent depending on whether the employer offers the employee RTW.

The PD rating determines the number of weeks of indemnity benefits, and the benefits are cumulative and progressive:

- The number is cumulative, meaning that each additional percentage point of disability adds a specified number of weeks of benefits to the award.
- The number is progressive, meaning that the number of weeks added for each point in the upper ranges is larger than the number added for each point in the lower ranges.

SB 899 reduced the number of weeks of PD benefits by one week for each of the first 14.75 percentage points of every disability rating. For the percentage points under 10, SB 899 reduced the weeks of indemnity payments from 4 to 3 weeks per point. For the percentage points from 10 percent to 14.75 percent, SB 899 reduced the weeks of indemnity payments from 5 to 4 weeks per point. Because an indemnity award is cumulative, this means that every award from 15 percent up to 69 percent is reduced by almost 15 weeks. Few awards reach 70 percent, but for those that do reach this range, SB 899 increased the number of weeks for each percentage point in the range of 70 percent to 99.75 percent from 9 weeks per point to 16 weeks per point.

Changes to Permanent Disability Apportionment

A permanent disability may be only partially attributable to an industrial injury and partially attributable to other factors such as prior injuries or other conditions. Apportionment is the process of determining the portion of PD which an employer is required to compensate. A simplified summary of the law prior to 2004 is that an employer was liable for all of the PD except that portion which the employer could prove would have existed even in the absence of the industrial injury.

SB 899 replaced the former statutes with new provisions, including the rule, “apportionment of PD shall be based on causation.” In some situations, this might be compared to weighing all the industrial and non-industrial factors and assigning liability in proportion to the industrial contribution to the PD award. The courts have not yet resolved the many questions raised about the interpretation of the new statutory provisions.

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The law prior to 2004 also permitted an employee to obtain an un-apportioned PD award despite receiving a prior award for a similar disability. The employee was permitted to show that he or she had recovered from the prior disability by evidence such as continuing to work, absence from medical treatment, or asserting freedom from the subjective complaints that had supported the prior award.

SB 899 adopted a presumption that any disability that has been previously awarded continues to exist. For example, if a worker with a previous disability award of 10 percent sustains an injury to the same part of the body and is then rated with a 15 percent disability, the 10 percent award may be subtracted from the award for the new injury. Prior to SB 899, it was not unusual for the worker in such a situation to receive a 15 percent award for the new injury because the employer had the burden of proving that the worker still had a 10 percent disability immediately prior to the second injury.

Another issue in apportionment is the method of converting an apportioned disability rating into an indemnity award. The issue arises from the fact that the indemnity tables are progressive, meaning that more weeks of benefits are payable for each percentage point in the upper ranges than for each percentage point in the lower ranges. For example, the dollar value of a 10 percent award is less than half the dollar value of a 20 percent award because more is payable for the second ten points than for the first ten points. The law prior to 2004 was interpreted to allow employers to pay the dollar value of the percentage that remains after apportionment. The law enacted by SB 899 has been subject to conflicting interpretations which are awaiting resolution by the California Supreme Court.

Combined Effects of Changes to Permanent Disability

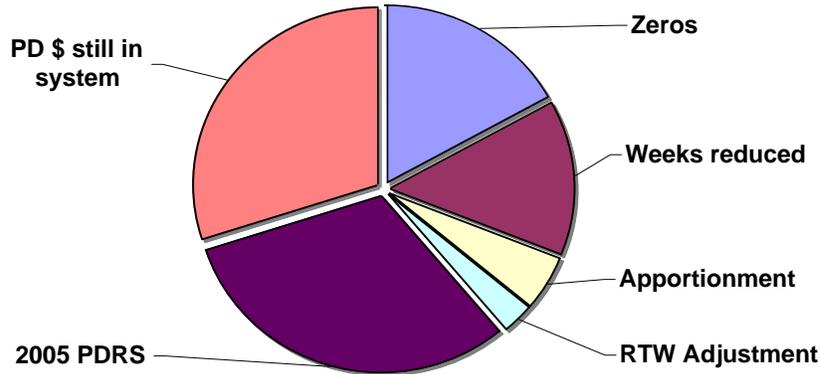
The savings from the combined effects of changes to PD are approximately \$1.8 billion per year. These savings resulted from:

- A substantial fraction of cases that would have received PD ratings under the former PDRS do not have any impairment according to the *AMA Guides*. It is difficult to quantify the share of these “zeros”; however, current evidence suggests that as many as 30 percent of cases may be dropping out of the PD ratings entirely.
- The reduction in weeks at the lower end of all awards cuts the overall cost of PD by 21 percent, according to University of California (UC), Berkeley analysis.
- Apportionment is reducing PD awards by an average of 6 percent, according to an ongoing analysis of Disability Evaluation Unit (DEU) ratings.
- The net effect of the 15 percent up or down adjustment of weekly benefits depending on an RTW offer has been estimated to reduce PD by about 3 percent, based on the numbers of workers who do and do not return to the at-injury employer. This estimate has not been empirically confirmed, and there are anecdotal reports that the adjustment may not be performing as expected.
- Average ratings under the new PDRS are approximately 40 percent lower than average ratings under the pre-2005 rating schedule, reducing the dollar value of awards by more than 50 percent, in addition to the other reductions already listed.

The combined effect of all of these changes is to cut the systemwide cost of PD benefits by two-thirds, as depicted in the following chart. (“Zeros” are assumed to be 20 percent for this illustration. The impact of each component in combination with the others produces smaller percentage impacts as depicted below than the impact of any one component taken alone as described above.)

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PD reductions per SB 899 and 2005 PDRS



A primary purpose of PD compensation is to compensate lost earning capacity caused by industrial injuries. RTW rates are therefore important to the evaluation of the PD compensation system. RTW with the at-injury employer is particularly important and is the focus of the RTW incentives in recent reforms. The first post-reform study of RTW rates was released by DWC in January 2007.

Temporary Disability Compensation

Temporary Disability Benefit

Until 1979, TD benefits were limited to no more than 240 weeks within five years of the date of injury.

In 1978, the Department of Industrial Relations (DIR) recommended that the Governor sign SB 1851 to remove the limit because of the hardship in the occasional case that required hospitalization for additional surgery more than five years after the date of injury. The cost was expected to be insignificant. It was not expected that the amendment would open the door to continuous TD going on for more than five years. The limits on temporary total disability were removed in 1979.

As interpreted by the courts, the statute allowed continuous TD to extend without limit. The time limit for reopening for new and further disability is five years from date of injury. Once there was an interruption in the TD, it could not be resumed after five years because that would constitute a reopening of the case.

The result was that a few workers managed to extend “temporary” disability indefinitely, creating a few egregious examples of abuse of a well-intended humanitarian amendment. To curb this abuse, the limit was reinstated and made even more stringent by SB 899 in 2004.

Research shows that prior to the reforms, only approximately eight percent of workers’ compensation TD claims involved payments exceeding 104 weeks. These claims often extended much longer, and the payments beyond 104 weeks represented approximately 34 percent of all TD payments.

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The weekly amount of the TD benefit is set at two-thirds of the worker's average weekly wage, within an upper and a lower boundary. The upper boundary remained unchanged from 1996 until 2003 while inflation pushed wages up. TD benefits lagged farther and farther behind the target of two-thirds replacement of lost wages for many workers. The maximum amount was raised beginning in 2003, and now it is indexed for inflation so that the maximum recognized earnings are nearly 1.5 times the statewide average weekly wage. This means that the maximum TD rate is nearly equal to the statewide average weekly wage.

A California Workers' Compensation Institute (CWCI) report published January 23, 2006, found that more than 97 percent of TD recipients in California received two-thirds of their average weekly wage in TD payments.

Return-to-Work Assistance and Incentives

Background

The goals of improving the impact of injuries on workers, as well as reducing the cost to employers and the impact on the California economy, are best served when injured workers return to sustained employment.

- The CHSWC/RAND study of PD found that permanently disabled workers who return to work at the same employer have less wage loss.
- The CHSWC/RAND RTW studies found that California has the poorest rate of RTW compared with other states and recommended that RTW incentives be implemented.

Although California had high PD costs, the poor rate of RTW produced a high rate of uncompensated wage loss compared to other states. A vocational rehabilitation program enacted in the 1970s was intended to help workers return to suitable gainful employment when they were precluded by the effects of their injuries from returning to their usual occupations. Many stakeholders in the workers' compensation community reported dissatisfaction with the costs and outcomes of the vocational rehabilitation program. The proportion of rehabilitated injured workers working at the time of vocational rehabilitation plan completion declined during the 1990s.

In 2003, the Vocational Rehabilitation Program was repealed by AB 227 and replaced by a supplemental job displacement benefit (SJDB) to provide a voucher for education-related retraining or skills-enhancement for workers injured on or after January 1, 2004, who cannot return to their at-injury employers. In 2004, SB 899 provided that for workers injured before 2004, the vocational rehabilitation program would end January 1, 2009.

Return-to-Work Reforms

The reforms employed several approaches to improving RTW including:

- Tiered PD benefit depending on whether or not the employer offers RTW. The weekly PD benefit rate is increased by 15 percent if the employer does not make a timely RTW offer and is decreased by 15 percent if the employer does make the offer, providing an incentive for employers. This applies to employers of 50 or more employees.
- Worksite-modification reimbursements of up to \$2,500 for employers to support accommodations by employers. This applies to employers of 50 or fewer employees.
- SJDB which helps pay for education for retraining or skills-enhancement for workers who could not return to work for the at-injury employer.
- Indirectly, but importantly, scientific standards for medical treatment which are expected to improve health outcomes and reduce the duration and severity of disability.

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Return-to-Work Findings From the Division of Workers' Compensation

Methodology

DWC has conducted a study of RTW rates. The study looked at workers who received PD ratings greater than zero within 18 months of date of injury. The RTW rate at 12 months after the date of injury was estimated by identifying whether any wages were reported to the Employment Development Department (EDD) by any employer for the fourth quarter after the quarter in which the injury occurred.

Findings

The measured RTW rate for workers injured from 2000 to 2002 was 64.6 percent. The measured RTW rate for workers injured from 2003 to 2004 was 64.8 percent. The measured RTW rate for workers injured in the first two quarters of 2005 was 70.0 percent.

For further information on DWC Studies...

See the Permanent Disability Special Report Section.

Legislative Issues for Consideration

Temporary Disability

Existing law allows payment of TD benefits for a maximum of 104 weeks within two years of first payment. There is widespread consensus that this is too short a period of eligibility. The commonly cited reason is that the two-year clock is running while a worker returns to work, so that if more time is needed later, the worker is no longer eligible for TD benefits.

As of mid-September, 2007 the Legislature passed AB 338 (Coto). The bill was signed by the Governor. It will allow an injured worker to receive up to 104 weeks of aggregate disability payments within five years of the date of injury.

Permanent Disability

PD benefits have been reduced by approximately two-thirds. Many people feel that cuts to seriously injured workers are too deep and that it was not the intent of the reforms to make such deep cut. Suggestions have been made to increase the number of weeks payable for any given rating, or increase the weekly benefit amount in order to mitigate the reductions, or revise the schedule for rating permanent disabilities.

Potential changes to weeks of benefits

As of mid-September 2007, the Legislature passed SB 936 (Perata). If signed by the Governor, the bill would eventually double the number of weeks of PD payments. A similar bill was vetoed by the Governor after passage by the Legislature in 2006. Recent experience suggests that changes to the PD system are more likely to be accomplished by administrative action than by legislation in the near future.

Potential changes to rating schedule

Changes in ratings can be accomplished by administrative revisions to the rating schedule, and DWC has announced an intention to do administrative revisions if warranted by studies conducted by DWC in 2007. CHSWC issued a recommendation in February 2006 to revise the schedule by recalculating the adjustment factors that convert from whole-person impairment ratings under the *AMA Guides* to PD ratings for workers' compensation. The CHSWC recommendation would take the average percentage of

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proportional earnings loss for each type of injury divided by the average whole person impairment rating for each type of injury and generate an adjustment factor for each type of injury that would produce more equitable ratings across the various types of injury. The adjustment factor could be scaled up or down across the board to meet other public policy goals.

DWC has completed a number of studies in 2007 to evaluate the effects of the new PDRS. The findings of these studies are summarized in the Permanent Disability Special Report section.

Potential changes to weekly benefit amounts

It has been suggested that the maximum weekly benefit for PD should be increased to half of the maximum weekly benefit for TD. For most workers, the compensation for lost earning capacity would become more proportional to the value of the earning capacity they have lost.

To demonstrate the effect of the suggestion, we may consider how benefits would be calculated if it had been in effect in 2007. (TD limits are indexed for inflation, so we cannot yet calculate the precise figures for 2008 cannot be calculated. Weekly benefits are two-thirds of average weekly wage, and the wage that is used for the calculation is subject to the minimum and maximum limits specified in Labor Code Section 4453. The following table illustrates what those maximums and minimums would be if this suggestion were in effect in 2007.

PD Benefit Limits for Disabilities Below 70 Percent, As Existing and As Under Discussion

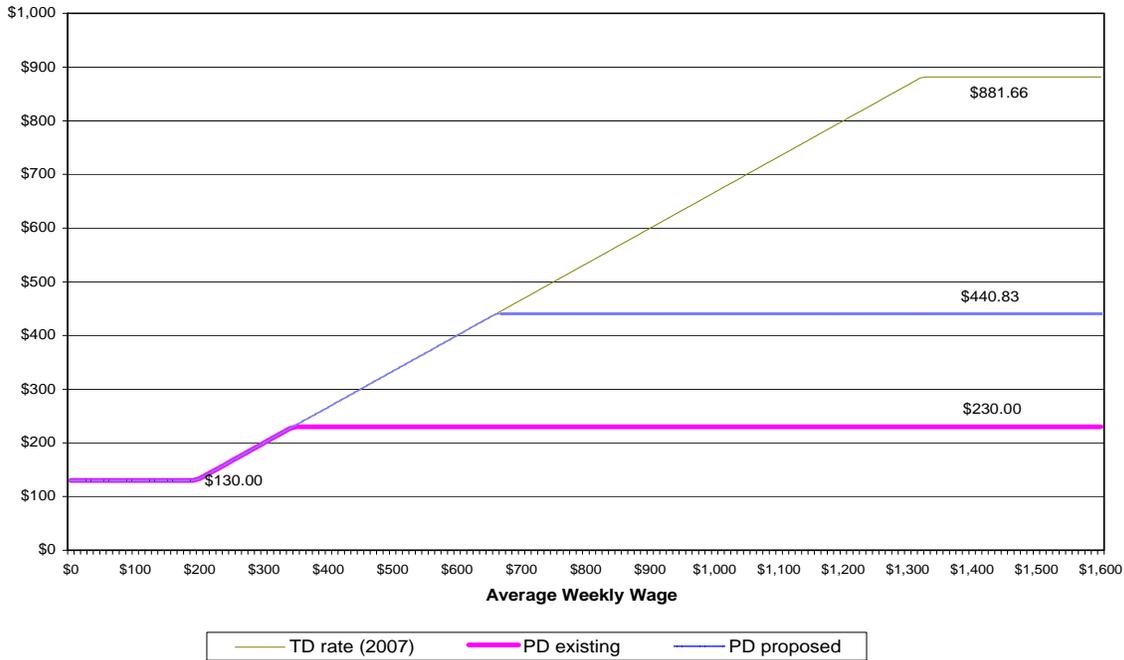
	Existing Law		Potential Changes (2007 Scenario)	
	Wage	PD Benefit	Wage	PD Benefit
Minimum for PD	\$195.00	\$130.00	\$195.00	\$130.00
Maximum for PD	\$345.00	\$230.00	\$661.25	\$440.83

The following chart depicts the weekly rates for TD benefits and PD benefits:

- Both types of benefits have minimum rates at approximately the same level for very low- wage earners, as in the lower left corner of the chart.
- For wages above the minimum, both types of benefits are set at two-thirds of average weekly wages (diagonal portion of chart).
- After a short interval, however, PD benefits (thick line nearest the bottom) reach the maximum allowed by existing law.
- TD benefits (thin line, nearest the top) do not reach their maximum until the wages are nearly four times as high as the maximum for PD.
- The proposal to increase the PD maximum to one-half the TD maximum is shown by the shaded line across the middle of the chart.

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PD Weekly Benefits Proposal Compared to Existing TD and PD Weekly Benefits



Modeling the effect of this change on the cost of workers' compensation indicates that it would increase the cost of PD benefits by about 63 percent, which means an increase of about 16 percent in the total direct cost of benefits. Where the cost of PD benefits is now approximately 30 percent of what it was before reforms, this change would bring the cost of PD benefits to approximately 54 percent of what it was before reforms.

Return to Work

Several issues have been raised by workers' compensation stakeholders regarding RTW and SJDB and how these interact with PD benefits:

- The 15 percent PD benefit adjustment may not create sufficient incentive for employers to offer work.
- Often, PD has already been paid before the deadline to offer work, so the incentive to offer work is diminished.
- The timeframe of the PD payout is poorly coordinated with other RTW benefits, specifically the SJDB voucher eligibility determination.
- Existing law is not well adapted to some significant segments of the labor market:
 - Seasonal employment, such as farm workers.
 - Temporary employment, as in the entertainment industry and other daily hires.
 - General and special employment.

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In addition, the following suggestions for improvements have been raised by workers' compensation stakeholders:

- Technical changes need to be made regarding the SJDB and tiered PD benefit. These include coordinating:
 - Deadlines and timing of notices, such as notices of potential right to SJDB.
 - Eligibility criteria for the offers of regular, modified, or alternative work.
 - Timing of the offer of regular, modified, or alternative work.
 - Timing of the PD adjustment of +/-15 percent.
 - Timing of the SJDB voucher.
- Explore how to specify requirements involving:
 - Seasonal and temporary employment (e.g., farm workers, entertainment industry, daily hires).
 - General and special employment.

Caps on Physical Medicine Treatment

Substantial savings in medical treatment costs have been attributed to the adoption of medical treatment guidelines by the American College of Occupational and Environmental Medicine (ACOEM) in general and the adoption of specific caps on certain types of treatment. Evidence-based medical treatment guidelines are intended to ensure that workers get all appropriate treatment without being subjected to excessive treatment. SB 228 in 2003 and SB 899 in 2004 limited injured workers to a maximum of 24 chiropractic, 24 physical therapy, and 24 occupational therapy visits per industrial injury. Between the general adoption of evidence-based guidelines and the specific caps on these therapies, physical therapy utilization is down by 61 percent and chiropractic utilization is down by 77 percent. There are exceptions where caps are inappropriate for post-surgery recovery and where it would clearly be in the best interests of injured workers to exceed these limits.

For example, after a shoulder surgery, it is generally necessary for the patient to have physical therapy to regain maximum function in the shoulder. In this case, further physical therapy should be authorized.

The likely questions for the Legislature are whether legislation is needed and, if so, how the 24-visit caps should be modified. As to whether legislation is needed, two points are noteworthy:

- Existing Labor Code Section 4604.5(d)(1) provides, "Notwithstanding the medical treatment utilization schedule [to be adopted by the Administrative Director pursuant to Section 5307.27] or the guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury."

Some contend that the AD could address the need for additional visits through the medical treatment utilization schedule; however, others contend that the AD cannot make changes unless the Legislature amends the statute.

- Existing Labor Code Section 4604.5(d)(2) provides, "This subdivision shall not apply when an employer authorizes, in writing, additional visits to a health care practitioner for physical medicine services."

Some contend that the statute provides sufficient flexibility to deal with exceptional cases; however, others contend that the right to appropriate medical care should not depend on the discretion and good will of the claims administrator.

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As to how the 24-visit caps should be modified, the Legislature might hear from a variety of interests:

- It might be suggested that the caps are unnecessary since all treatment is now subject to scientific medical guidelines.
- It might be argued that the caps are still necessary because existing guidelines are too vague to serve as reliable protections against under-treatment or overtreatment.
- It might be argued that the caps should remain in place except for post-surgical rehabilitation, as in the example described above.
- It might be suggested that the caps should remain in place until the AD finds that the medical treatment utilization schedule adopted pursuant to Section 5307.27 contains sufficient utilization criteria so that the caps are no longer required to prevent excessive treatment.

In mid-September 2007, the Legislature passed AB 1073 (Nava). The Governor signed this bill into legislation. The bill will allow the AD to adopt a post-surgical utilization schedule for physical medicine and rehabilitation that will not be restricted by the 24-visit caps.

Utilization Review

Mandatory requirements for utilization review (UR) became effective January 1, 2004. At first, there were many problems that could be attributed to the roll-out of a large new program where nothing on this scale had existed before, so there were infrastructure problems on the employer and insurer side. On the other side of the transaction, doctors who had been accustomed to a presumption that all their opinions were correct suddenly had to adapt to being second-guessed by utilization reviewers and being challenged to substantiate their recommendations with scientific evidence. Some of the early problems have improved; however, three years later, there are still problems that cannot be ignored.

Most complaints are from patients or doctors who cannot get authorization for recommended medical care because UR operations do not appear to be conducted in accordance with the law. In a survey conducted for DWC by the UCLA Center for Health Policy Research, the vast majority of workers received recommended care without difficulty. Only 2.4 percent were unable to obtain recommended specialist care, and 2.3 percent were unable to obtain recommended physical therapy or occupational therapy. Another 5.5 percent received specialist care but with difficulty, and 6.3 percent received physical therapy or occupational therapy with difficulty. It would not be surprising if 2 percent or 3 percent of recommendations were denied because they were inconsistent with scientific treatment guidelines. One purpose of the reforms was to cut back on excess treatment. The 5 percent or 6 percent of patients who eventually got the recommended care, however, reflect thousands of workers whose care was ultimately found to be reasonable but who had trouble getting it approved. These are probably the ones for whom the existing system did not work correctly. DWC adopted regulations that would permit DWC to investigate the set-up and performance of UR functions and to impose penalties for violations with existing law.

Some problems may be due to the way the statutes were written into the body of existing law, leaving certain loose ends. It appears that SB 228 intended an orderly process where claims administrators would decide all medical approvals or denials through UR, and workers who wanted to contest unfavorable UR decisions would obtain a Qualified Medical Evaluator (QME) examination. Instead, the Sandhagen II decision is allowing claims administrators to bypass UR and go directly to the more time-consuming QMEs, and the former statutes still on the books are permitting workers who are dissatisfied with UR decisions to go directly to expedited hearings without obtaining an independent opinion from QMEs. The present confusion and complexity do not appear to be what the drafters of SB 228 had in mind.

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Emerging Issues

Twenty-Four Hour Care

The rapid rise in health care cost has placed significant pressure on many employers to increase employee contributions, limit benefits, or discontinue employer-based group health coverage entirely. For many employers, workers' compensation occupational health costs represent a significant fraction of total employee health costs, often exceeding 50 percent. For an important fraction of employers, those in industries with a high risk of occupational medical conditions, California workers' compensation medical costs per claim have been rising more quickly than U.S. per capita expenditures. The reduction of medical costs for employers and workers requires innovative approaches to controlling occupational and non-occupational medical costs.

Suggestions have been made to more closely coordinate or combine workers' compensation medical care with the general medical care provided to patients by group health insurers in order to reduce overall administrative costs and derive other efficiencies in care. Research supports the contention that a 24-hour care system could potentially provide cost savings as well as shorten disability duration for workers.

Medical Provider Networks

SB 899 added Labor Code Section 4616, which provides that, beginning January 1, 2005, employers or insurers may establish networks to provide medical treatment to injured employees.

- An MPN is an entity or group of health care providers set up by an insurer or self-insured employer and approved by the AD of the DWC to treat workers injured on the job. Each MPN must include a mix of doctors specializing in work-related injuries and doctors with expertise in general areas of medicine. MPNs are required to meet access-to-care standards for common occupational injuries and work-related illnesses.
- MPNs also must offer an opportunity for second and third opinions if the injured worker disagrees with the diagnosis or treatment offered by the treating physician. If a disagreement still exists after the second and third opinion, a covered employee in the MPN may request an independent medical review (IMR).
- An MPN established by an employer controls medical treatment for the life of the claim. The degree of control differs from a health care organization (HCO) because after the first visit, the employee covered by an MPN has the right to select any physician in the MPN.

According to DWC, over 1100 MPNs have been approved as of January 2007. Some of the reported problems with MPNs include:

- Injured worker access problems. Some regional lists of MPNs are inadequate, or not provided to injured workers, or not accessible.
- Administrative inefficiency from approving applications from different insurers or self-insured employers using the same provider organizations. DWC reviews each application from an insurer or self-insured employer who would like to establish an MPN, whether or not the same provider organization is already being used by another insurer or self-insured employer, and has to provide a response on the status of the application to the party within 60 days of its receipt. Many of the same provider organizations such as Blue Cross, Kaiser, Concentra, Corvel, First Health and Medex are being used by many insurers or self-insured employers.

Areas for consideration for improving the MPN process:

- Administrative simplification of the MPN process can be achieved by allowing DWC to approve the medical provider entity instead of requiring each insurance carrier or self-insured employer to file an application to establish an MPN.
- Increased monitoring of quality and access to medical care.

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- Independent audit process to confirm representations made by MPN applicants.
- A periodic recertification process to assure continued compliance with requirements.

Costs of Workers' Compensation in California

Costs Paid by Insured Employers

The cost of workers' compensation insurance in California has undergone dramatic changes in the past ten years due to a combination of factors.

When the workers' compensation insurance industry was deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances lower than their actual costs. Many insurers drew on their reserves to make up the difference, and several insurers went bankrupt. Subsequently, the surviving insurers charged higher premium rates to meet costs and began to replenish reserves.

The California workers' compensation legislative reforms in the early 2000s, which were developed to control medical costs, update indemnity benefits and improve the assessment of PD, also had significant impact on insurance costs.

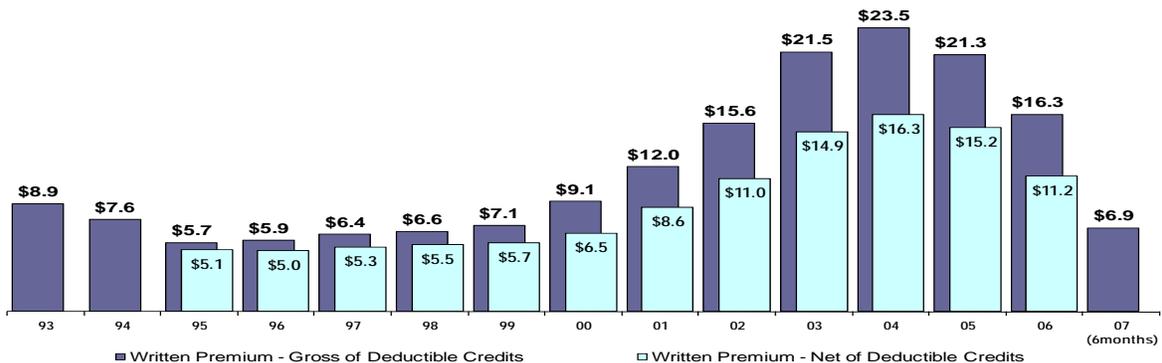
As intended by the most recent reforms, workers' compensation costs in California have begun to decline. The charts below illustrate the impact of those factors.

Workers' Compensation Written Premium

WCIRB defines written premium as the premium an insurer expects to earn over the policy period.

As shown in the following chart, workers' compensation written premium has undergone dramatic changes since 1993. Written premium decreased from 1993 to 1995, increased slightly in the latter part of the 1990s, more than tripled from 1999 through 2004, and began a significant decline in 2005 which appears to be continuing in 2007.

**Workers' Compensation Written Premium
(in billion\$, as of June 30, 2007)**



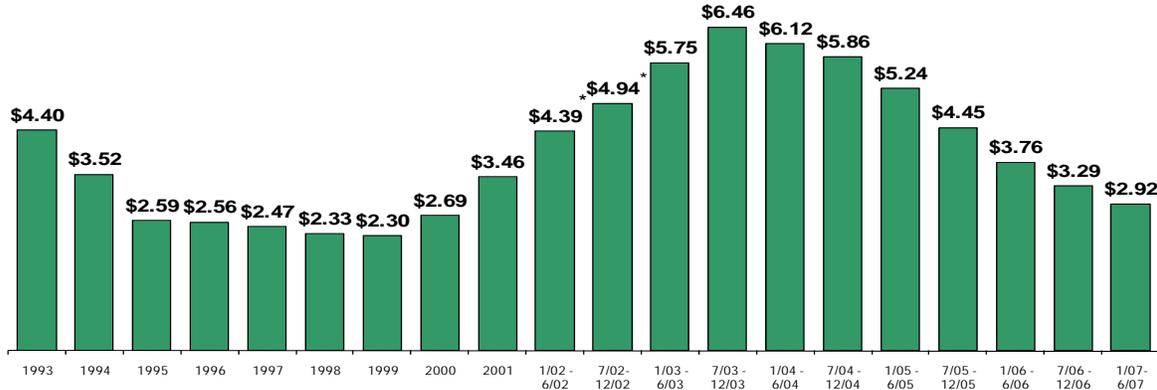
Data Source: WCIRB

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Workers' Compensation Average Premium Rate

The following chart shows the average workers' compensation premium rate per \$100 of payroll. The average dropped during the early-to-mid 1990s, stabilized during the mid-to-late 1990s, and then rose significantly beginning in 2000 up to the second half of 2003. However, the average rate has dropped every year since that time. In the first two quarters of 2007, the average rate was lower than in 1993.

Average Workers' Compensation Insurer Rate Per \$100 of Payroll as of June 30, 2007



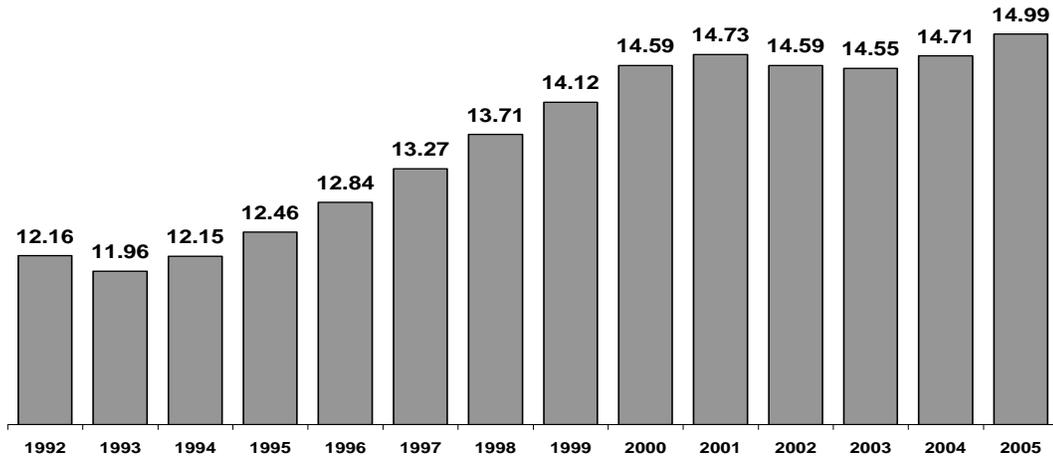
Data Source: WCIRB

* Excludes the impact of the adopted changes to outstanding policy year 2002 pure premium rates effective January 1, 2003

Workers Covered by Workers' Compensation Insurance

The estimated number of California workers covered by workers' compensation insurance grew by about 20 percent from 12.16 million in 1992 to 14.59 million in 2000. From 2000 through 2004, the number of covered workers in California stabilized, averaging about 14.70 million per year.

**Workers Covered by WC Insurance in California
(Estimate in Millions)**

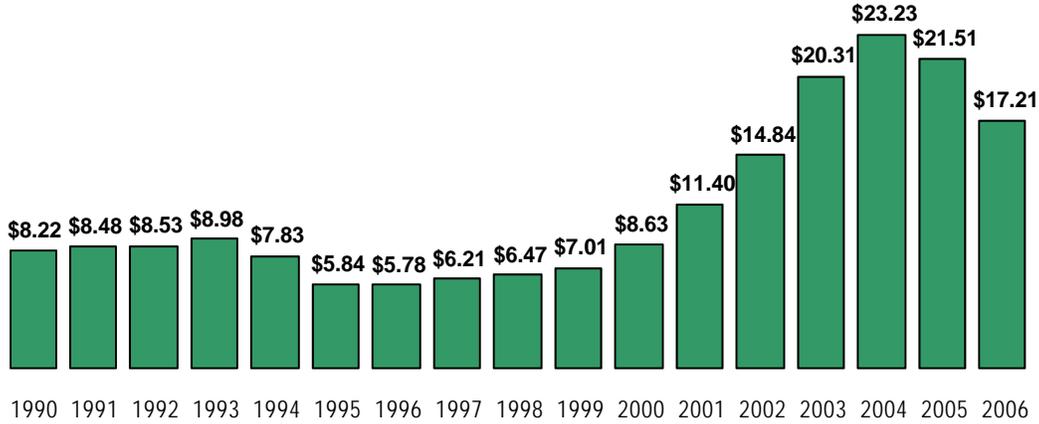


Data Source: US Department of Labor
Methodology: National Academy of Social Insurance (NASI)

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Total Earned Premium

Workers' Compensation Earned Premium (in billion\$, as of June 30, 2007)

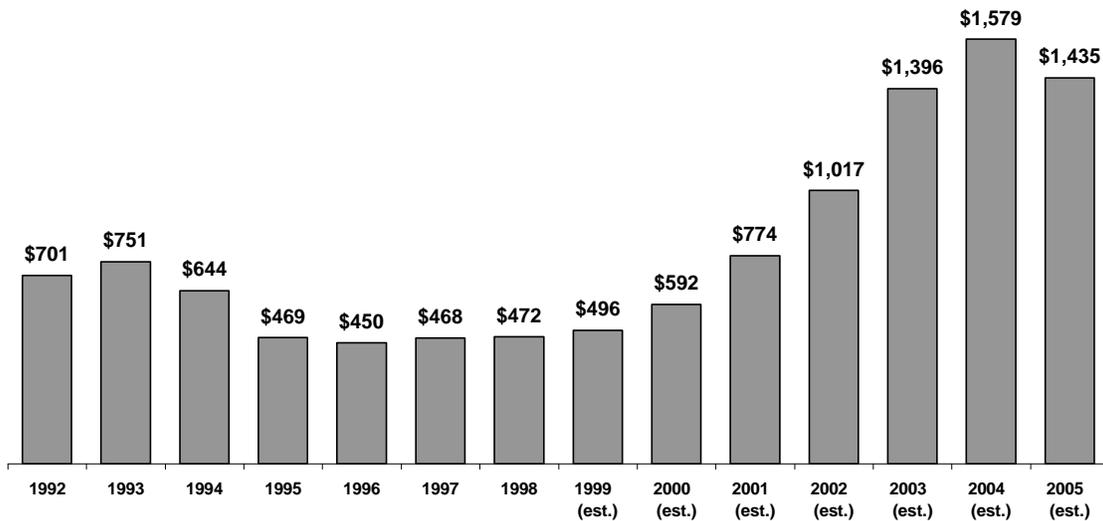


Source: WCIRB

Average Earned Premium per Covered Worker

As shown in the graph below, the average earned premium per covered worker dropped during the early-to-mid 1990s, leveled off for a few years, and then almost tripled between 1999 and 2005.

Average Premium per Covered Worker



Data Source: WCIRB and NASI
Calculations: CHSWC

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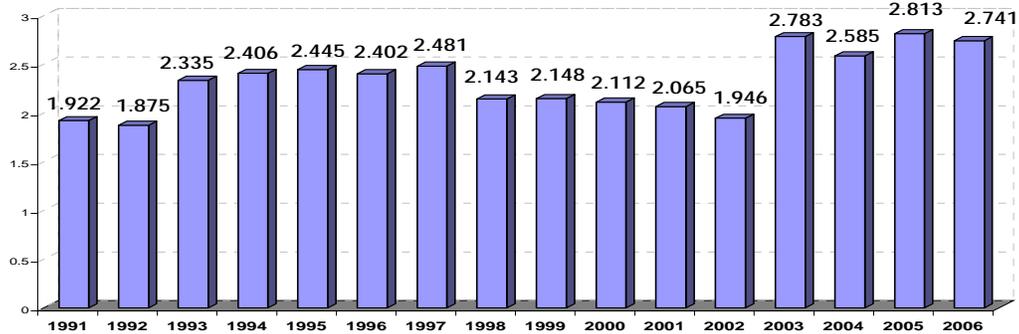
Costs Paid by Self-Insured Private and Public Employers

Private Self-Insured Employers

Number of Employees

The following chart shows the number of employees working for private self-insured employers between 1991 and 2006. The number of employees declined slightly between 1991 and 1992, increasing by 25 percent between 1992 and 1993. Between 1993 and 1997, the number of employees working for private self-insured employers remained fairly stable, declining by 14 percent between 1997 and 1998. Between 1998 and 2001, the number of employees remained fairly stable; then, between 2002 and 2003, it increased sharply by 43 percent. Between 2003 and 2004, the number of employees of private self-insured employers decreased by about 7 percent, increasing by almost 9 percent between 2004 and 2005, and then declining slightly again between 2005 and 2006.

**Number of Employees of Private Self-Insured Employers
(in Millions)**

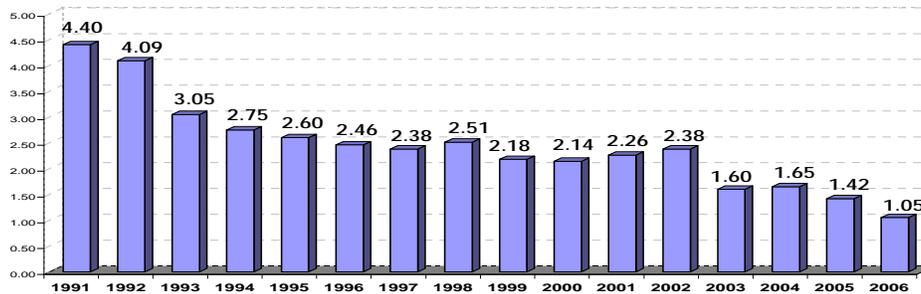


Data Source: DIR Self-Insurance Plans

Indemnity Claims

The number of indemnity claims of employees working for private self-insured employers declined between 1991 and 1997 by 46 percent, followed by a slight increase of 5 percent from 1997 to 1998. From 1998 to 2000, the number of indemnity claims decreased by 14.7 percent and remained stable until 2002, then decreased by 33 percent in 2003. Between 2003 and 2004, the number of indemnity claims per 100 employees increased slightly from 1.60 to 1.65 and then decreased by 36.4 percent between 2004 and 2006.

**Indemnity Claims Per 100 Employees
of Private Self-Insured Employers**



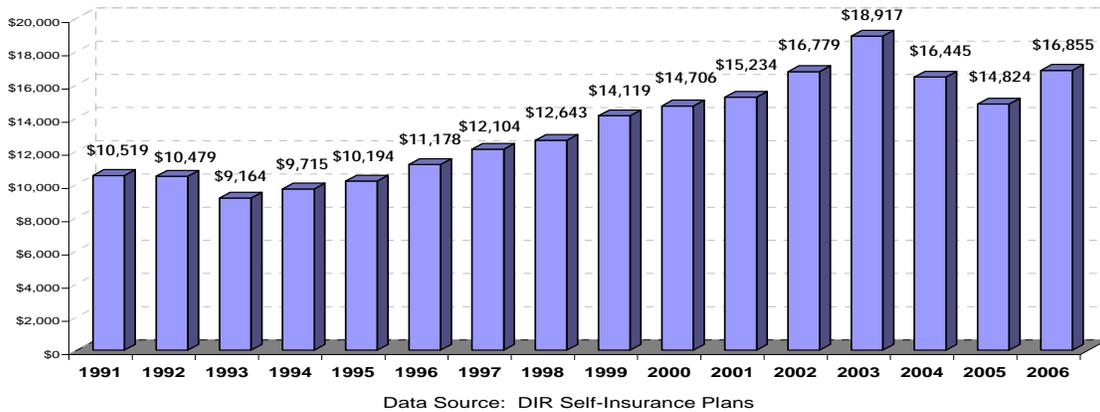
Data Source: DIR Self-Insurance Plans

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Incurred Cost per Indemnity Claim

The following chart shows the incurred cost per indemnity claim for private self-insured employers. During 1991 and 1992, the incurred cost per indemnity claim was stable. It dropped by 13 percent from 1992 to 1993. Between 1993 and 2003, the incurred cost per indemnity claim doubled and then decreased by about 21.6 percent between 2003 and 2005. Although the incurred cost per indemnity claim increased by 13.7 percent from 2005 to 2006, it still remained below the 2003 level.

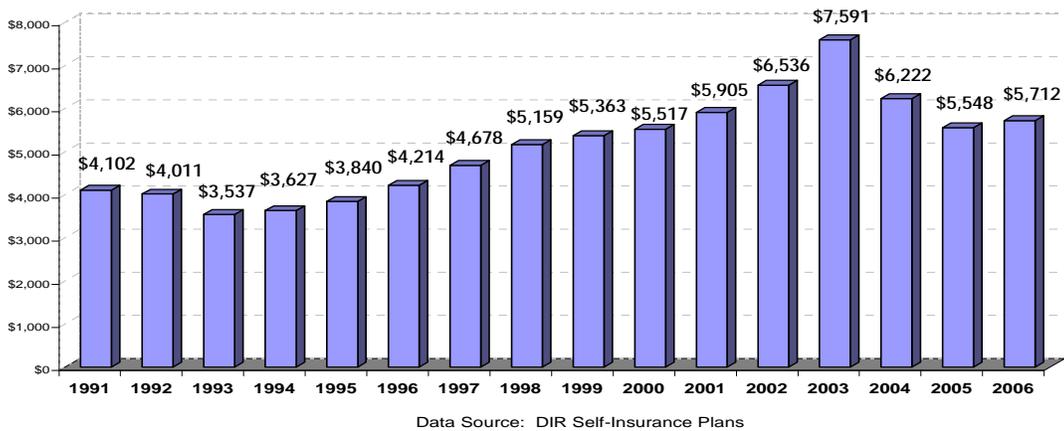
Incurred Cost Per Indemnity Claim of Private Self-Insured Employers



Average Incurred Cost per Indemnity and Medical Claim

The average incurred cost per indemnity and medical claim for the private sector was stable during 1991 and 1992, followed by a decline of 13 percent in 1993. It levelled off from 1993 to 1995, then increased by almost double by 2002. From 2002 to 2003, the incurred cost per indemnity and medical claim grew by 16 percent, decreasing by 28.2 percent between 2003 and 2005 and increasing slightly between 2005 and 2006.

Incurred Cost Per Claim-Indemnity and Medical Private Self-Insurers



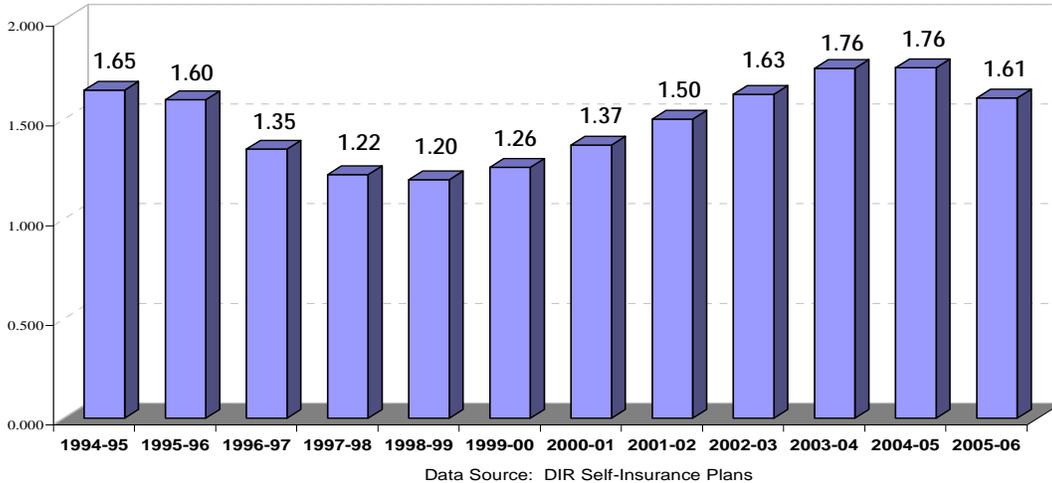
SYSTEMS OVERVIEW

Public Self-Insured Employers

Number of Employees

The following chart shows the number of public self-insured employers between fiscal years 1993-1994 and 2005-2006. The number of public self-insured employers declined between 1994-1995 and 1998-1999. Between 1998-1999 and 2003-2004, the number of employees working for public self-insured employers grew by 44 percent, then leveled off between 2003-2004 and 2004-2005, and declined between 2004-2005 and 2005-2006.

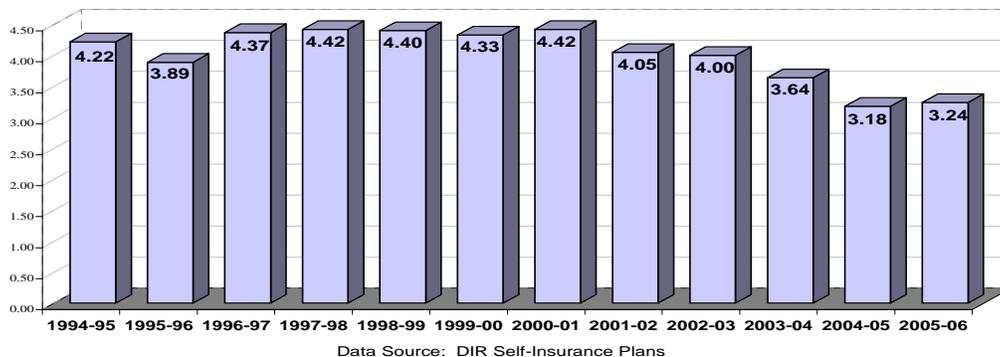
**Number of Employees of Public Self-Insured Employers
(in Millions)**



Indemnity Claims

The number of indemnity claims of employees working for public self-insured employers remained steady between 1996-1997 to 2000-2001. Between 2000-2001 and 2004-2005, the number of indemnity claims decreased steadily to the lowest in the past 12 years, then increased slightly between 2004-2005 and 2005-2006.

**Indemnity Claims per 100 Employees
of Public Self-Insured Employers**

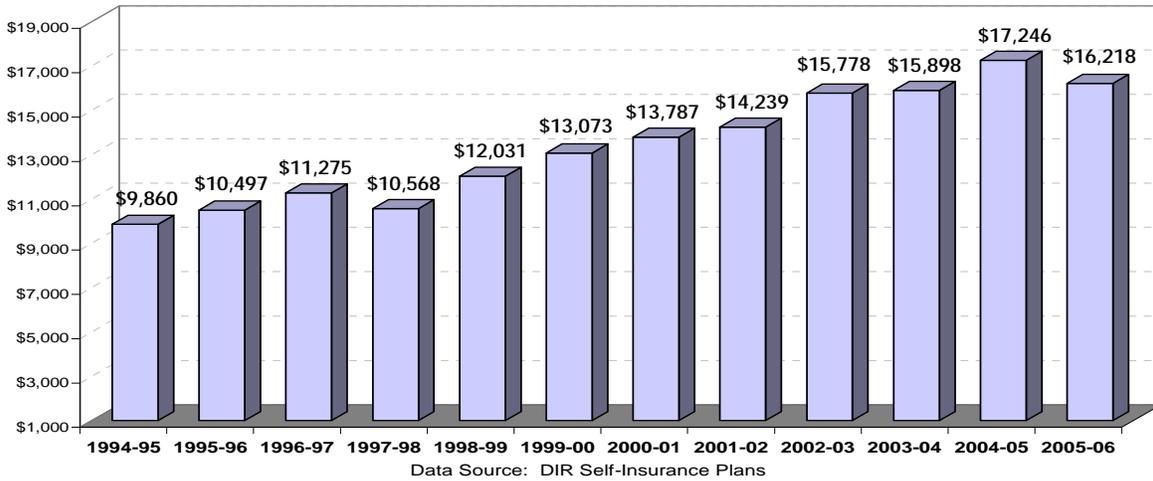


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Incurred Cost per Claim

The following chart shows the incurred cost per indemnity claim for public self-insured employers. Between 1994-1995 and 2005-2006, the incurred cost per indemnity claim increased by about 65 percent from \$9,860 to \$16,218.

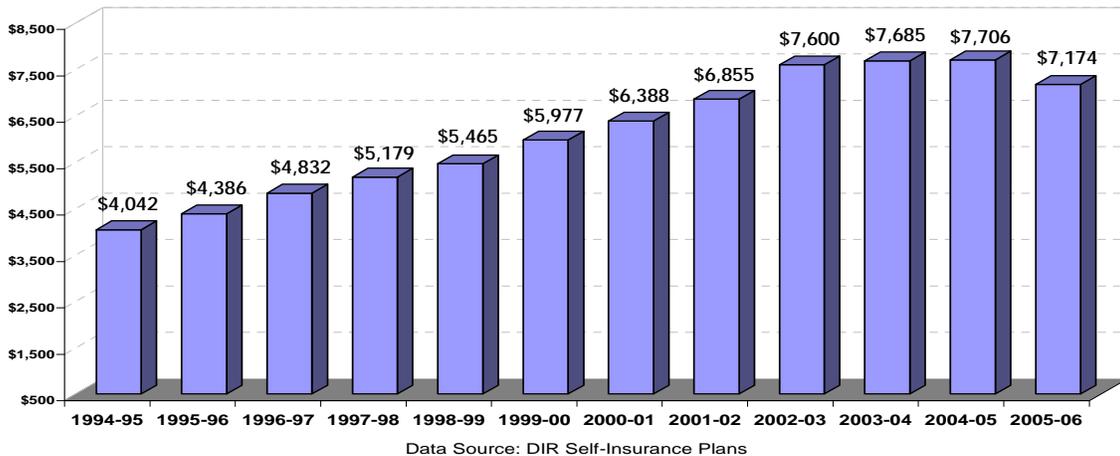
**Incurred Cost Per Indemnity Claim
of Public Self-Insured Employers**



Incurred Cost per Indemnity and Medical Claim

The following chart shows the incurred cost per indemnity and medical claim for public self-insured employers. Between 1994-1995 and 2002-2003, the incurred cost per indemnity and medical claim nearly doubled, then leveled off between 2003-2004 and 2004-2005, and then decreased slightly between 2004-2005 and 2005-2006.

**Incurred Cost per Claim - Indemnity and Medical
Public Self-Insured Employers**



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Vocational Rehabilitation Costs

Vocational Rehabilitation Settlements

WCIRB has compiled information from the WCIRB Permanent Disability Claim Survey on vocational rehabilitation settlements. In total, 14.2 percent of accident year 2003 PD claim costs involved vocational rehabilitation settlements of, on average, 40 months. The average settlement in these cases was \$6,095. For accident year 2003, the first year in which such settlements were allowed, settlements comprised 16 percent of total vocational rehabilitation costs.

Vocational Rehabilitation Vouchers

AB 227 and SB 228 created a system of non-transferable educational vouchers effective for injuries occurring on or after January 1, 2004. WCIRB's estimate of the cost of educational vouchers is based on information compiled from the most current WCIRB Permanent Disability Claim Survey. In total, 17.9 percent of accident year 2004 PD claim costs involved educational vouchers, and the average cost of the educational vouchers was approximately \$5,900.

Vocational Rehabilitation Incurred Costs

WCIRB has summarized initial first unit report level statistical submissions with respect to accident year 2006 claims on 2005 policies and accident year 2005 claims on 2004 policies. The tables below show preliminary summaries of this information at first unit report level for partial accident years and at a combination of first and second unit report levels for complete accident years. This preliminary unit statistical information suggests that vocational rehabilitation cost per claim has declined by approximately 80 percent subsequent to the reforms.

Table: Vocational Rehabilitation Incurred Costs At First Report Level

Policy Year/ Accident Year	Percent of Indemnity Claims with VR	Change from Average of AY 2001-03	VR Cost Per VR Claim	Change from Average of AY 2001-03	VR Cost Per Indemnity Claim	VR Cost Level Change From Average of AY 2001-03
2000/2001	19.6%	—	\$6,115	—	\$1,196	—
2001/2002	19.5%	—	\$5,945	—	\$1,158	—
2002/2003	18.3%	—	\$6,333	—	\$1,158	—
2003/2004	8.8%	-54%	\$3,774	-38%	\$330	-72%
2004/2005	7.7%	-60%	\$3,297	-46%	\$254	-78%
2005/2006	8.5%	-55%	\$3,050	-50%	\$260	-78%

Table: Vocational Rehabilitation Incurred Costs At First/Second Report Levels

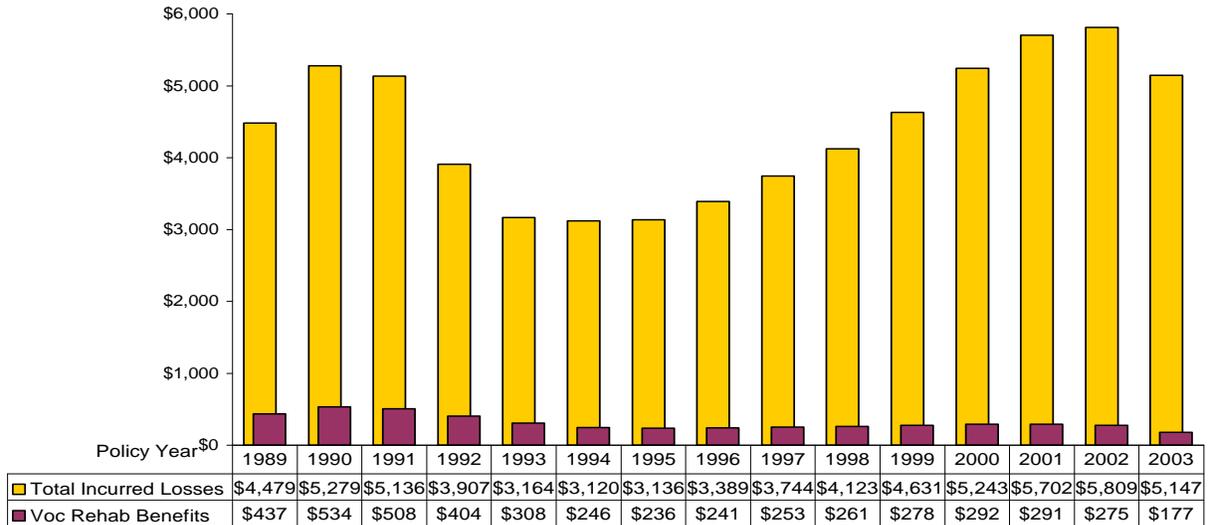
Accident Year	Percent of Indemnity Claims with VR	Change from Average of AY 2001-03	VR Cost Per VR Claim	Change from Average of AY 2001-03	VR Cost Per Indemnity Claim	VR Cost Level Change from Average of AY 2001-03
2001	22.8%	—	\$8,008	—	\$1,828	—
2002	22.9%	—	\$8,248	—	\$1,888	—
2003	21.4%	—	\$7,972	—	\$1,704	—
2004	10.6%	-53%	\$4,042	-50%	\$427	-76%
2005	10.0%	-56%	\$3,641	-55%	\$362	-80%

Data Source: WCIRB

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AB 749 repealed the workers' compensation vocational rehabilitation benefit for dates of injury on or after January 1, 2004. SB 899 provided that vocational rehabilitation benefits are available only to eligible workers who were injured before 2004 and will be available only through December 31, 2008.

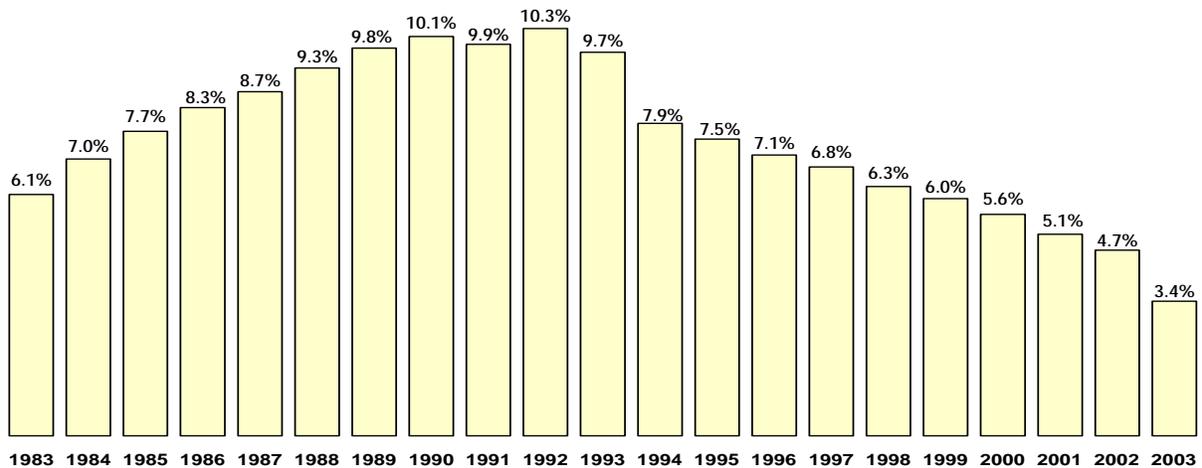
Vocational Rehabilitation Benefits Compared with Total Incurred Losses, WCIRB 1st Report Level (in Millions\$)



Data Source: WCIRB

The chart below shows the vocational rehabilitation costs as a percentage of total incurred losses. The vocational rehabilitation costs as a percentage of losses reached their peak in 1992 and have been declining since then.

Vocational Rehabilitation Costs as Percent of Total Incurred Losses

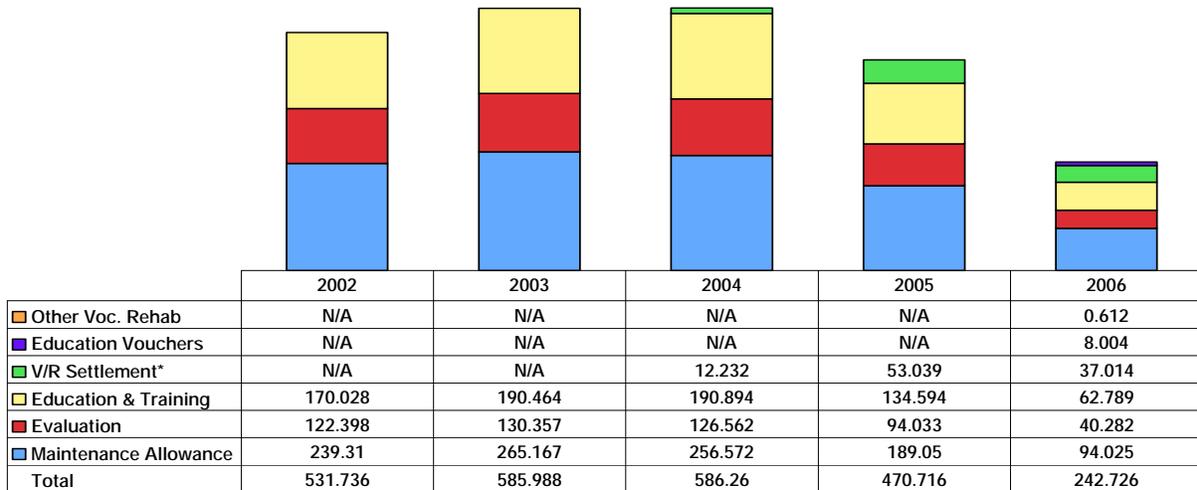


Source: WCIRB (1st Level Reports for Each Policy Year)

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The following chart shows the amount paid for each component of the vocational rehabilitation benefit each year from 2002 through 2005

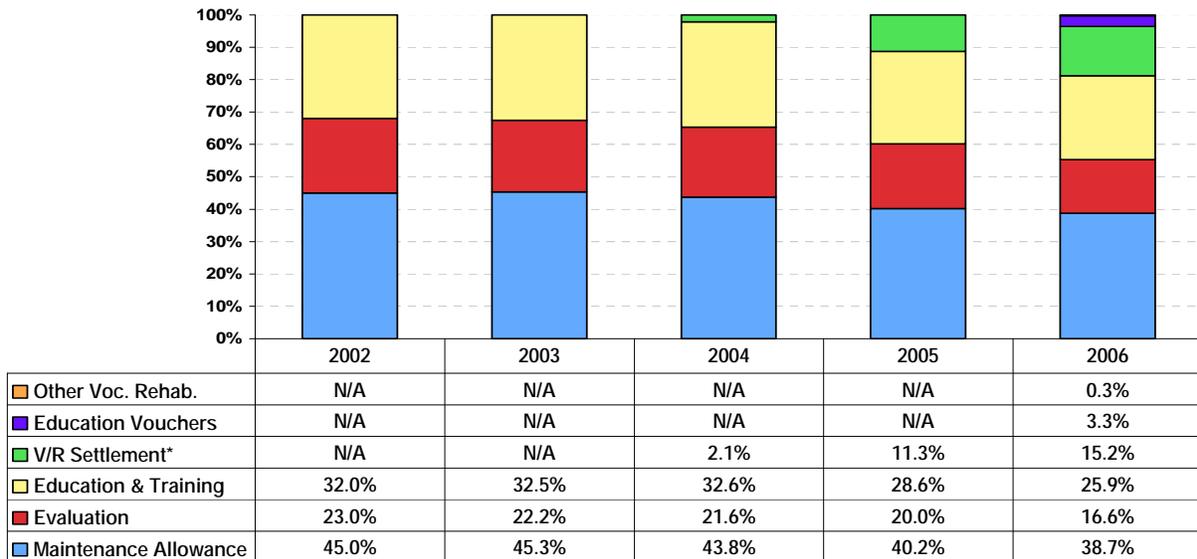
Paid Vocational Rehabilitation (Million\$)



* Vocational Rehabilitation Settlements were allowed on injuries occurring on or after January 1, 2003 pursuant to Assembly bill No.749
Data Source: WCIRB

The chart below depicts the proportion that each component of the vocational rehabilitation benefit contributes to the total. Since AB 749 allowed vocational rehabilitation settlements for injuries on or after January 1, 2003, such settlements have grown to more than 15 percent of the total paid costs.

Distribution of Paid Vocational Rehabilitation



Vocational Rehabilitation settlements were allowed on injuries occurring on or after January 1, 2003 pursuant to Assembly Bill No.749
Data Source: WCIRB

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Medical-Legal Expenses

Reform legislation changes to the medical-legal process were intended to reduce both the cost and the frequency of litigation. Starting in 1989, legislative reforms restricted the number and lowered the cost of medical-legal evaluations needed to determine the extent of PD. Reform legislation also limited workers' compensation judges to approving the PD rating proposed by one side or the other ("baseball arbitration"). In addition, the Legislature created the QME designation and increased the importance of the treating physician's reports in the PD-determination process.

In 1995, CHSWC contracted with the Survey Research Center at UC Berkeley, to assess the impact of workers' compensation reform legislation on the workers' compensation medical-legal evaluation process.

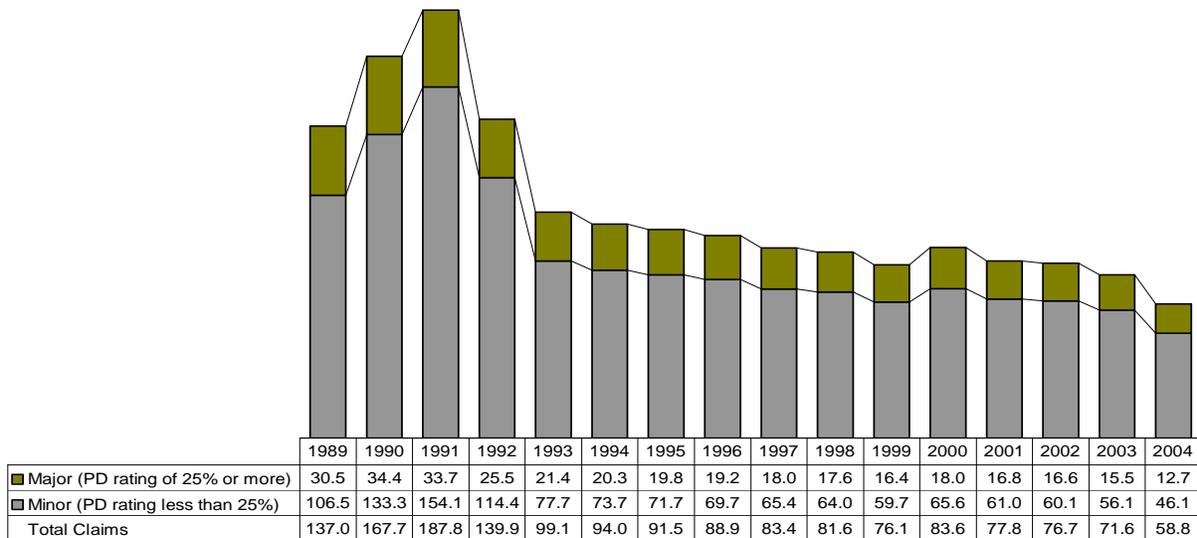
This ongoing study has determined that during the 1990s, the cost of medical-legal exams dramatically improved. As shown in the following discussion, this was due to reductions in all the factors that contribute to the total cost.

After a significant decrease of medical-legal expenses starting in 1989 when legislative reforms restricted the number and lowered the cost of medical-legal evaluations, there was again some increase in medical-legal costs beginning in the 2000 accident year.

Permanent Disability Claims

The following chart displays the number of permanent partial disability (PPD) claims during each calendar year since 1989. Through 1993, WCIRB created these data series from Individual Case Report Records submitted as part of the Unit Statistical Report. Since that time, the series has been discontinued, and estimates for 1994 and subsequent years are based on policy year data adjusted to the calendar year and information on the frequency of all claims, including medical-only claims, that are still available on a calendar year basis.

**PPD Claims at Insured Employers
(In thousands, by year of injury)**



Data Source: WCIRB

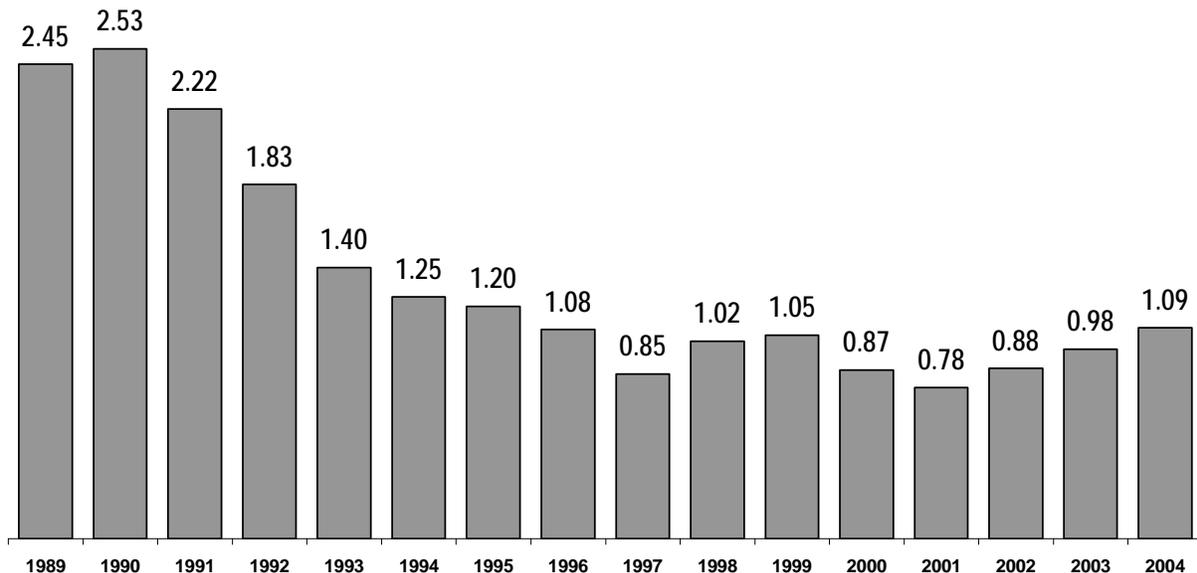
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Medical-Legal Exams per Claim

The following chart illustrates that the average number of medical-legal exams per claim declined from 2.45 claims in 1989 to 0.78 in 2001. This decline of 68 percent is attributed to a series of reforms since 1989 and the impact of efforts against medical mills.

Reforms instituted in 1993 that advanced the role of the treating physician in the medical-legal process and granted the opinions of the treating physician a presumption of correctness were expected to reduce the average number of reports even further. Earlier CHSWC reports evaluating the treating physician presumption did not find that these reforms had significant effect on the average number of reports per claim.

Medical-Legal Exams per Workers' Compensation Claim (At 40 months from the beginning of the accident year)



Data Source: WCIRB

The change in the average number of exams between 1993 and 1994 was almost entirely the result of improvements that occurred during the course of 1993 calendar year claims. These results were based on smaller surveys done by WCIRB when the claims were less mature. These later data involving a larger sample of surveyed claims suggest that the number of exams per claim continued to decline after leveling off between 1993 and 1995.

Between 2001 and 2004, the average number of medical-legal exams per claim began to increase. This increase could be driven by a number of factors.

Completion of First Medical-Legal Reports

According to WCIRB, the use of the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment* has altered the expected disability award for many kinds of claimed injuries and has led to different economic incentives by the parties. The table below shows the percentages of cases with the first medical-legal reports dated in the same year as the accident year. A higher number of first

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medical-legal reports were completed in 2004 for the 2004 accident year prior to the PDRS effective 01/01/2005 compared to any other accident year. It is possible that the change in the PDRS has led to more requests for medical-legal reports being completed prior to the date of the new schedule.

Table: Percent of First Medical-Legal Reports Completed in the Accident Year

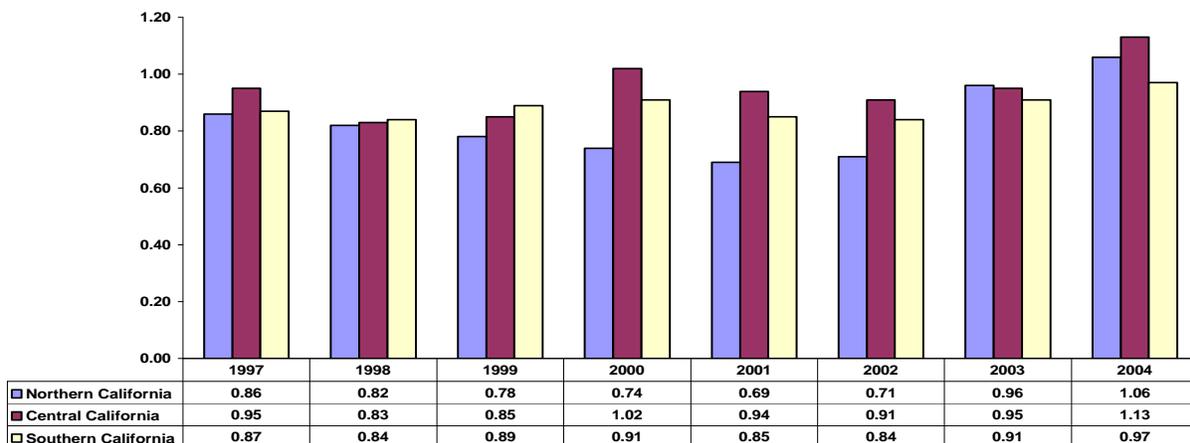
Accident Year	Percent of First Medical-Legal Reports Completed in the Same Year as the Accident Year
2000	21.6%
2001	19.7%
2002	20.1%
2003	18.8%
2004	25.4%

Medical-Legal Reporting by California Region

The different regions of California are often thought to have different patterns of medical-legal reporting. The revisions to the WCIRB Permanent Disability Survey, undertaken at the recommendation of CHSWC and instituted for the 1997 accident year, explored new issues. A zip code field was added to analyze patterns in different regions.

The following chart demonstrates the frequency with which medical-legal reports were used between 1997 and 2004 in different regions. The period from 1997 and 1999 did not indicate any significant difference in frequency across the State's major regions. However, as the number of reports per claim continued to decline between 2000 and 2002, the differences between regions became more pronounced. Between 2002 and 2004, the average number of medical-legal reports per claim for each region increased.

**Average Number of Medical-Legal Exams per Claim by Region
(at 34 months after beginning of accident year)**



Data Source: WCIRB

Different regions of California have different patterns of medical-legal reporting. Usually, the Southern California region has higher numbers for both the average cost per report and the average number of reports per claim. Since the 2001 accident year, there were also increases in the average number of

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medical-legal exams per claim in the Northern region and from the 2002 accident year in the Central region. As the chart above shows, this pattern continued to take place in the 2004 accident year.

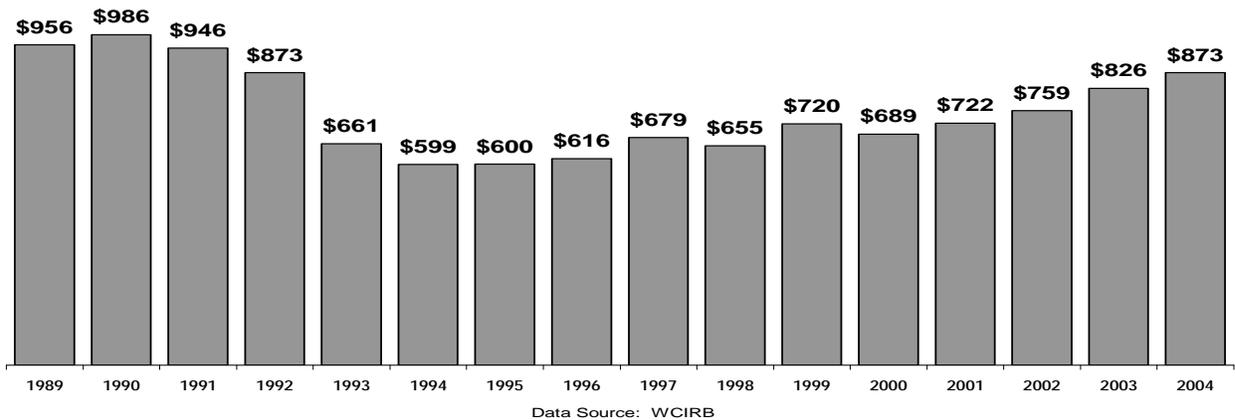
Average Cost per Medical-Legal Exam

The average cost of medical-legal exams per report declined from 1990 to the mid-1990s and then increased from the mid-1990s to 2000 by 15 percent. Between 2000 and 2004, the average cost of a medical-legal exam increased to the same level as in 1992, an increase of 27 percent.

There are two reasons why the average cost per medical-legal exams has declined from 1990 to 1995. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which medical-legal exams are reimbursed. These restrictions were introduced in early 1993 and enforced at the beginning of August 1993.

Second, during this period, the average cost of medical-legal exams was also being affected by the frequency of psychiatric exams. On average, psychiatric exams are the most expensive exams by specialty of provider. The relative portion of all exams that is made up of psychiatric exams has declined since hitting a high during 1990-1991, leading to a substantial improvement in the overall average cost per exam.

Average Cost of Medical-Legal Exam (Evaluated at 40 months of accident year)



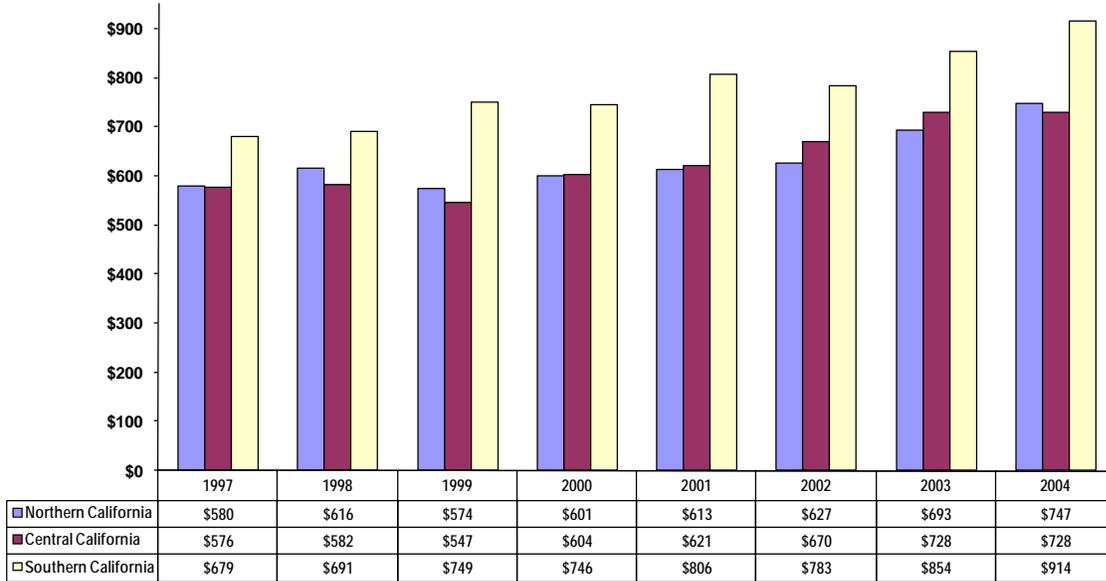
Since the mid-1990s, the average cost of a medical-legal report has increased, even though the reimbursement under the Official Medical Fee Schedule (OMFS) changed since 1993.⁴ The revised PD Survey by WCIRB includes additional questions that reveal some of the potential causes of this increase in costs. The changes indicate various types of fee schedule classifications as well as geography factors.⁵

⁴ The new Medical-Legal Fee Schedule became effective for dates of service on or after July 1, 2006.

⁵ Issues for injury years before 1997 cannot be examined because the WCIRB survey revision of that year prevents comparisons.

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Average Cost of Medical-Legal Exam by Region (at 34 months after beginning of accident year)



Data Source: WCIRB

The survey data show that, on average, reports done in Southern California have always been substantially more expensive. Increases in the average cost are being driven by claims in Southern California as can be seen from table below.

Table: Regional Contributions to the Increase of the Average Medical-Legal Costs: 2000-2004

Region	Percentage of Medical-Legal Reports by Region in 2000	Percentage of Medical-Legal Reports by Region in 2004	Change in Average Cost 2000-2004	Contribution of Each Region to the Average Cost
Southern California	58.6%	58.1%	\$146	57%
Central California	16.5%	16.3%	\$124	14%
Northern California	24.5%	25.7%	\$168	29%

Cost Drivers

The primary cost driver for California and its Southern region is not the price paid for specific types of exams. Rather, the mix of codes under which the reports are billed has changed to include a higher percentage of the most complex and expensive exams and fewer of the least expensive type. The two tables below show the costs and description from the Medical-Legal Fee Schedule.

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Table: Medical-Legal Evaluation Cost for Dates of Service before July 1, 2006⁶

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up/ Supplemental	\$250
ML-102 Basic	\$500
ML-103 Complex	\$750
ML-104 Extraordinary	\$200/hour

Table: Medical-Legal Evaluation Cost for Dates of Service on or after July 1, 2006

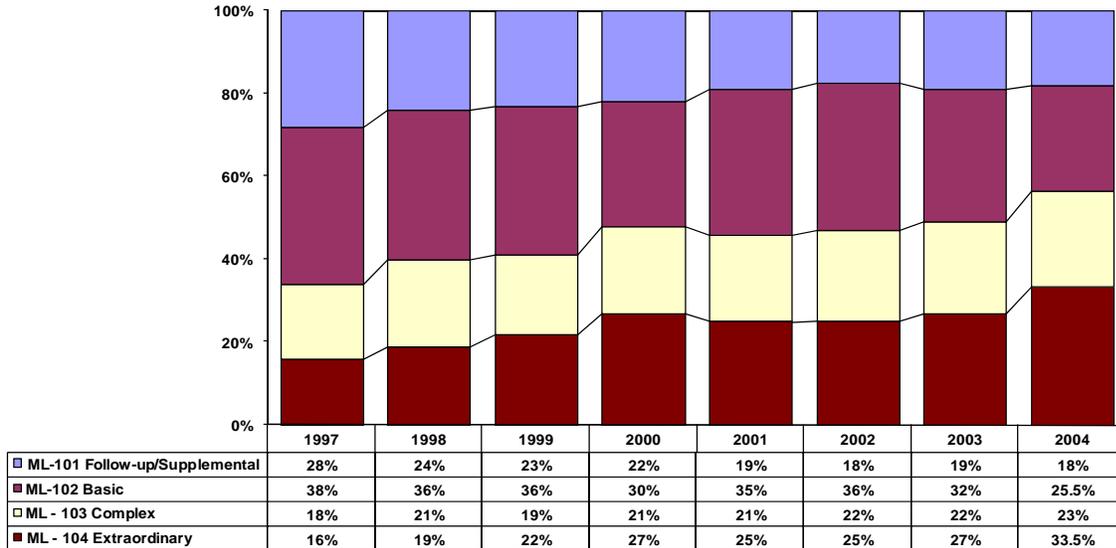
Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up/ Supplemental	\$62.50/15 minutes or \$250/hr
ML-102 Basic	\$625
ML-103 Complex	\$937.50
ML-104 Extraordinary	\$62.50/15 minutes or \$250/hr

⁶ Please note that Agreed Medical Evaluators receive 25 percent more than the rates shown in both of the tables.

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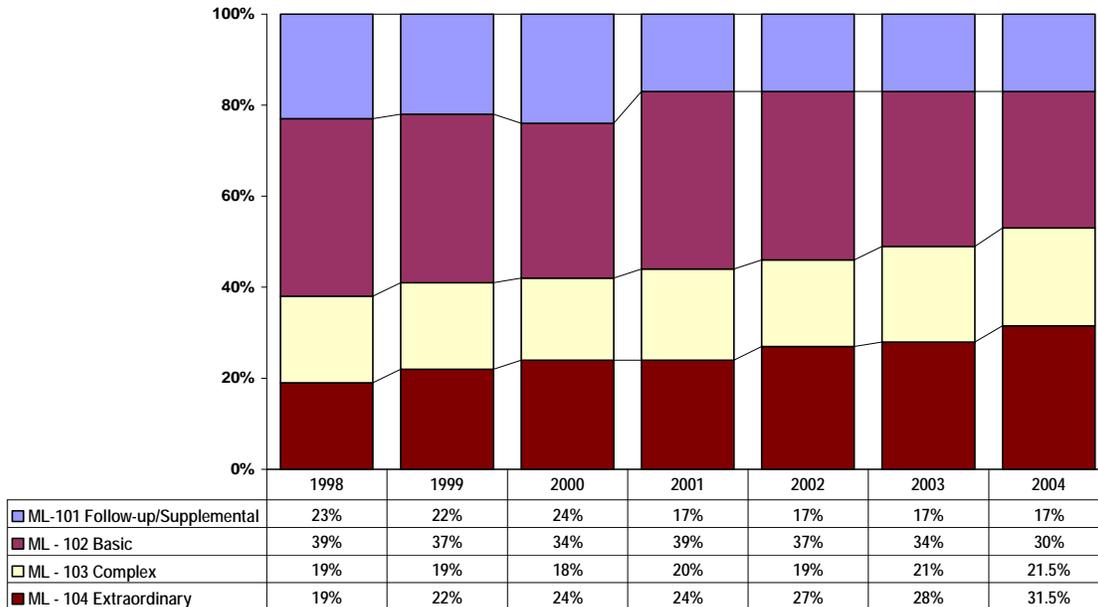
The following two charts indicate that the distribution of examinations both in Southern California and California as a whole has shifted away from ML-101 examinations to include a higher percentage of ML-104 examinations with “Extraordinary” complexity. At the same time, the average cost within each examination type did not exhibit a trend.

Distribution of Medical-Legal Exam by Type (Southern California)



Data Source: WCIRB

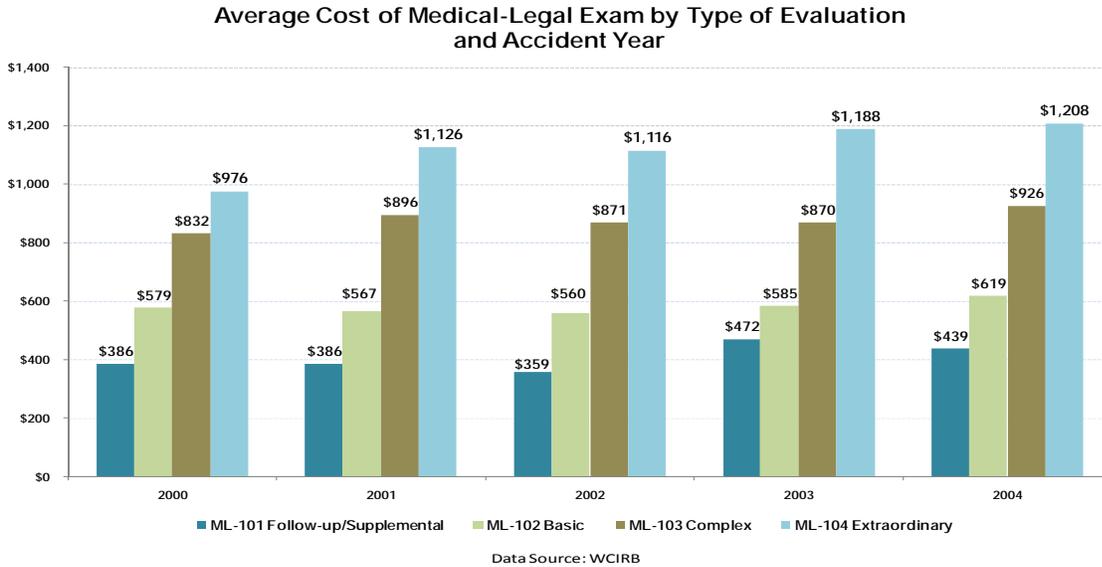
Distribution of Medical-Legal Exam by Type (California)



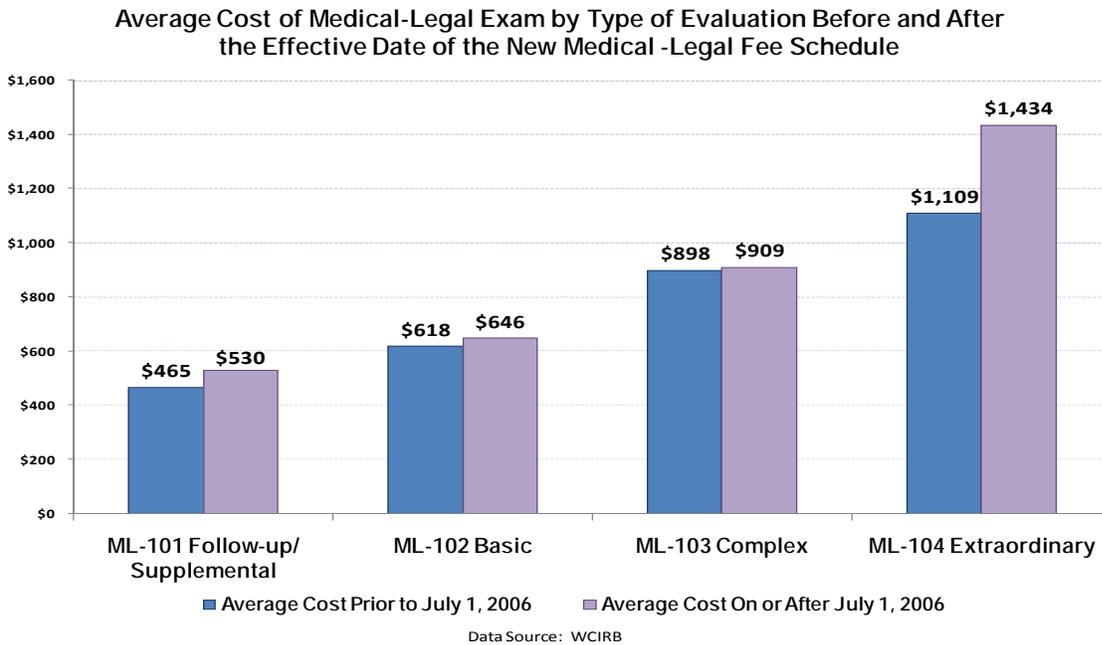
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Increases to the medical-legal fee schedules for dates of services on or after July 1, 2006, could have also contributed to the higher average cost per report. Medical-legal reports dated in 2006 made up about 20 percent of reports in the 2004 accident year. The chart below shows that the average cost per report is higher in the 2004 accident year sample compared to 2000 accident year. The biggest increases are for the complex and extraordinary cases.

In addition, the medical-legal reports in 2004 accident year had both a higher average cost of Extraordinary reports (\$976 and \$1,208 respectively) and a higher share of Extraordinary evaluations (24 percent and 32 percent respectively) than in accident year 2000.



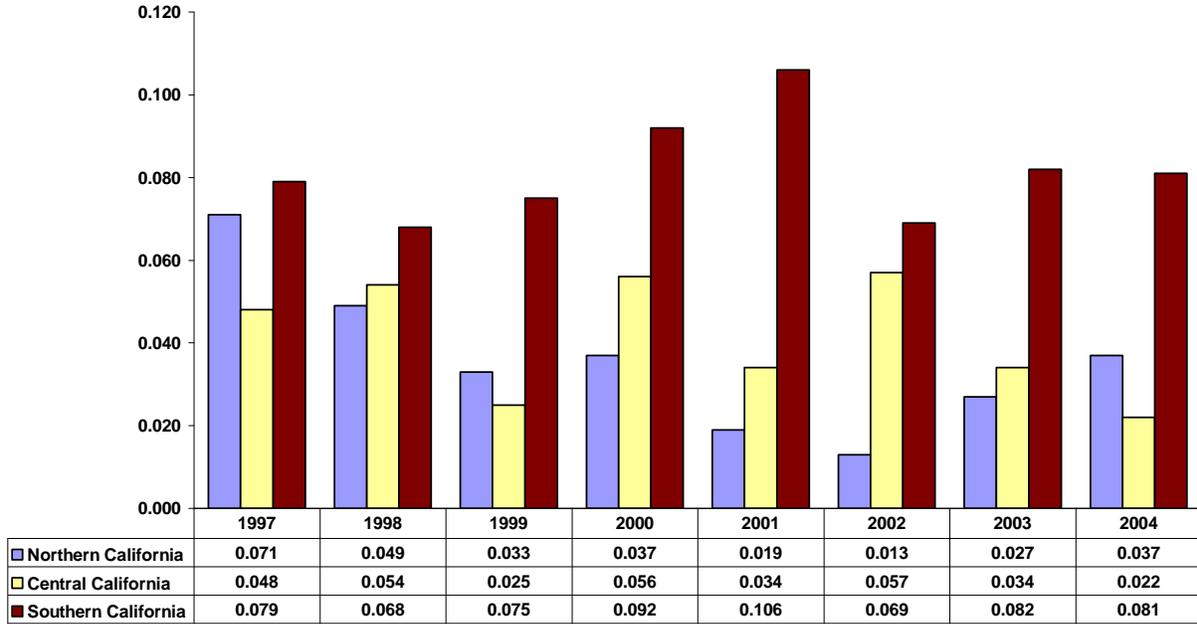
The chart below shows that the average cost of Extraordinary medical-legal reports increased by 29 percent after July 1, 2006, when the new Medical-Legal Fee Schedule became effective.



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Another possible explanation for the differing trends in the average cost per report and the increasing frequency of the most complex exams in Southern California is that psychiatric evaluations are more common in Southern California, although there has been a decrease in frequency for this region of 23.6 percent between 2001 and 2004. Psychiatric exams are nearly always billed under the ML-104 code that is the most expensive.

Average Number of Psychiatric Exams per PPD Claim by Region



Data Source: WCIRB

Total Medical-Legal Cost Calculation

Total medical-legal costs are calculated by multiplying the number of PPD claims by the average number of medical-legal exams per claim and by the average cost per medical-legal exam:

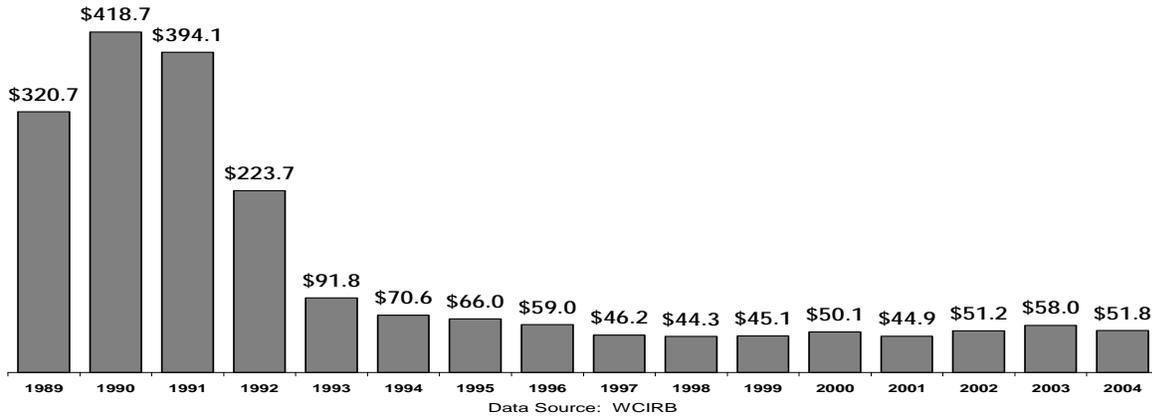
$$\text{Total Medical-Legal Cost} = \text{Number of PPD Claims} \times \text{Average Exams/Claim} \times \text{Average Cost/Exam}$$

Medical-Legal Costs

During the 1990s, the cost of medical-legal exams improved dramatically. For the insured community, the total cost of medical-legal exams performed on PPD claims by 40 months after the beginning of the accident year has declined from a high of \$419 million in 1990 to an estimated \$51.8 million for injuries occurring in 2004. This is an 87.6 percent decline since the beginning of the decade.

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Medical-Legal Costs on PPD Claims at Insured Employers (In Million\$, 40 months after beginning of accident year)

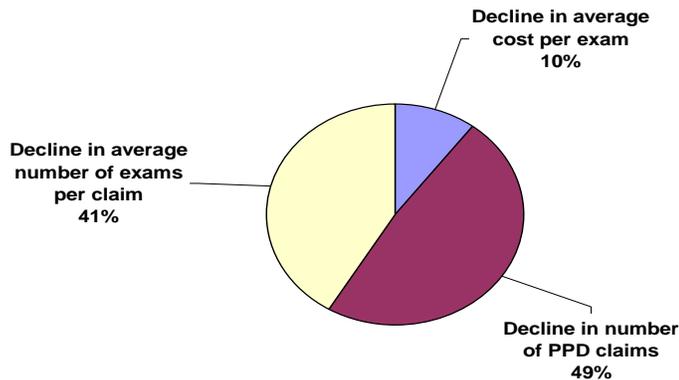


Sources of Improvement in Medical-Legal Costs

The decline in total medical-legal costs for insurers reflects improvements in all components of the cost structure during the 1990s. As discussed in the previous sections, this substantial decline in total medical-legal costs for insurers results from significant decreases in all of the components of the cost structure. The following chart shows how the cost savings break down by component since the beginning of the decade:

- About half (49 percent) of the cost savings is due to improvements in the medical-legal process that reduced the number of exams performed per claim.
- Ten percent of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of exams per claim.
- Forty-one percent of the improvement is a result of the overall decline in the frequency of reported PPD claims.

Sources of Savings. Medical-Legal Costs on PPD Claims 1990-2004



Data Source: WCIRB

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Workers' Compensation System Expenditures: Indemnity and Medical Benefits

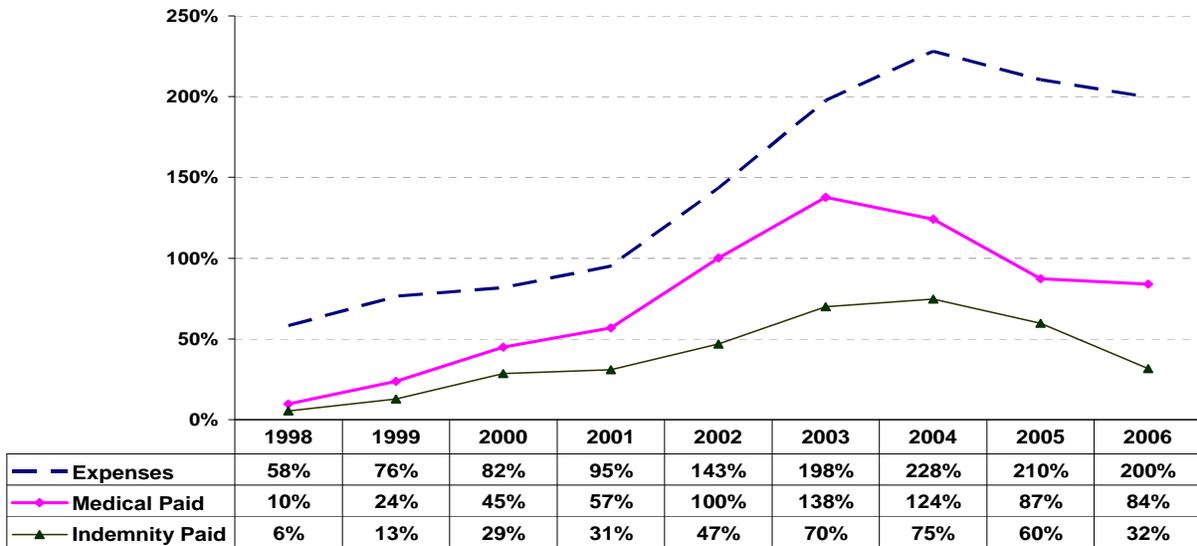
Overall Costs

Methodology for Estimating

The estimated percentages of total system costs are based on insured employer costs from WCIRB. The assumption is that these data apply also to self-insureds. Since self-insured employers are estimated to be 20 percent of total California payroll, the total system costs are calculated by increasing WCIRB data for insured employers to reflect that proportion.

Growth of Workers' Compensation Costs

**Workers' Compensation Costs Percent Growth by Year
Compared With 1997**



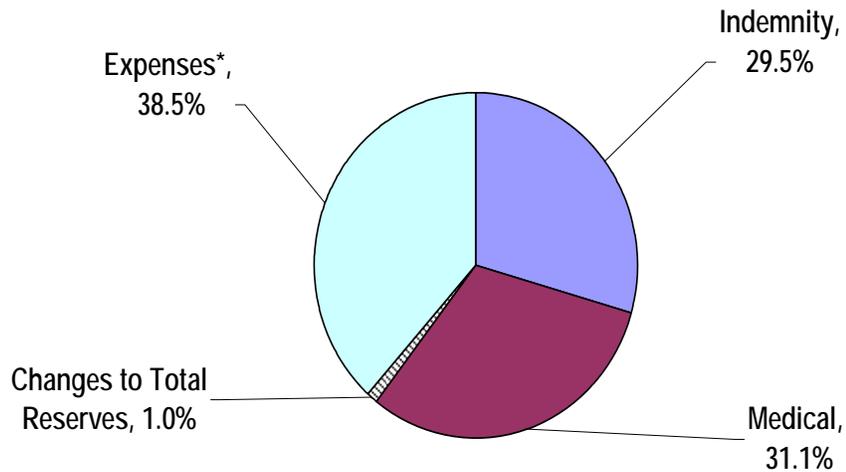
Data Source: WCIRB

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Distribution of Workers' Compensation Costs by Type

The following chart shows the distribution of workers' compensation costs.

Estimated Distribution of Workers' Compensation Costs 2006



* The distribution shown in this chart includes both insured and self-insured employers' costs. For insured costs, "expenses" include allocated loss adjustment expenses, unallocated loss adjustment expenses, commissions and brokerage, other acquisition expenses, and premium taxes. Self-insured employers would not encounter some of those types of expenses. In addition, not shown in this distribution, about 30% of the earned premium in 2006 went to insurers' underwriting profit.

Data Source: WCIRB

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Indemnity Benefits

WCIRB provided data for the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 80 percent of total California payroll, estimated indemnity benefits are shown on the following chart for the total system and for self-insured employers.

System-wide Estimated Costs of Paid Indemnity Benefits

Indemnity Benefit (Thousand\$)	2005	2006	Change
Temporary Disability	\$2,084,649	\$1,963,973	-\$120,676
Permanent Total Disability	\$140,963	\$123,431	-\$17,531
Permanent Partial Disability	\$2,502,040	\$1,960,023	-\$542,018
Death	\$74,460	\$76,250	\$1,790
Funeral Expenses	\$1,744	\$1,931	\$188
Life Pensions	\$52,351	\$54,935	\$2,584
Vocational Rehabilitation/Non-transferable Education Vouchers	\$588,395	\$303,408	-\$284,988
Total	\$5,444,601	\$4,483,950	-\$960,651

Paid by Insured Employers

Indemnity Benefit (Thousand\$)	2005	2006	Change
Temporary Disability *	\$1,667,719	\$1,571,178	-\$96,541
Permanent Total Disability *	\$112,770	\$98,745	-\$14,025
Permanent Partial Disability *	\$2,001,632	\$1,568,018	-\$433,614
Death *	\$59,568	\$61,000	\$1,432
Funeral Expenses	\$1,395	\$1,545	\$150
Life Pensions	\$41,881	\$43,948	\$2,067
Vocational Rehabilitation/Non-transferable Education Vouchers *	\$470,716	\$242,726	-\$227,990
Total	\$4,355,681	\$3,587,160	-\$768,521

Paid by Self-Insured Employers**

Indemnity Benefit (Thousand\$)	2005	2006	Change
Temporary Disability	\$416,930	\$392,795	-\$24,135
Permanent Total Disability	\$28,193	\$24,686	-\$3,506
Permanent Partial Disability	\$500,408	\$392,005	-\$108,404
Death	\$14,892	\$15,250	\$358
Funeral Expenses	\$349	\$386	\$38
Life Pensions	\$10,470	\$10,987	\$517
Vocational Rehabilitation/Non-Transferable Education Vouchers	\$117,679	\$60,682	-\$56,998
Total	\$1,088,920	\$896,790	-\$192,130

* Single Sum Settlement and Other Indemnity payments have been allocated to the benefit categories

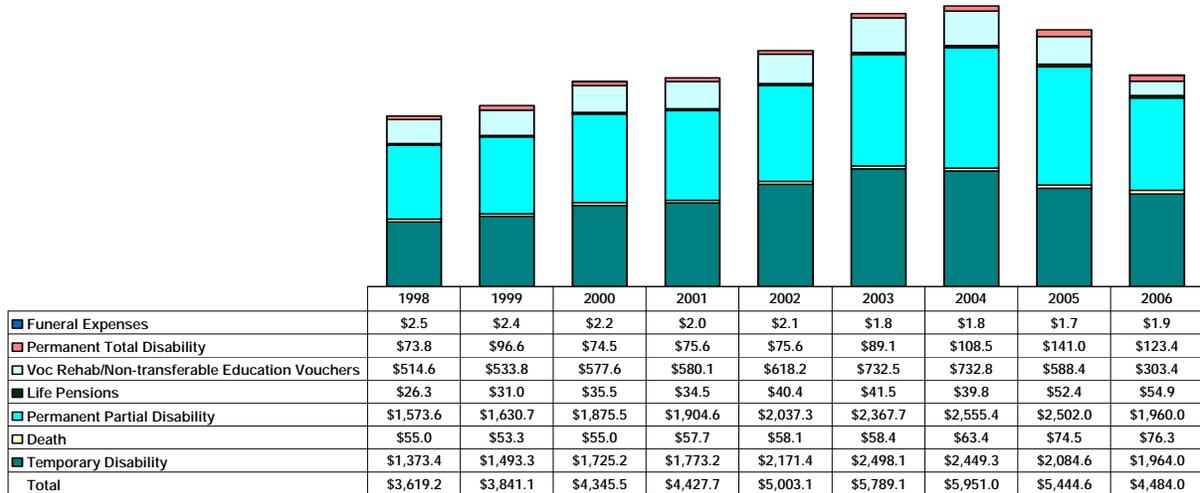
** Figures estimated based on insured employers' cost.
Self-insured employers are estimated to comprise 20 percent of total California payroll.

SYSTEMS OVERVIEW

Trends in Paid Indemnity Benefits

The estimated systemwide paid indemnity costs for the past several years are displayed in the chart below. The cost of the total indemnity benefit increased 64 percent from 1998 to 2004, then decreased by 24.7 percent from 2004 to 2006. The costs of TD, PPD, and vocational rehabilitation/non-transferrable education vouchers also declined from 2004 to 2006 after years of growth. Costs of life pensions, death benefits and permanent total disability increased from 1998 through 2006.

**Workers' Compensation Paid Indemnity Benefit
System-Wide Estimated Costs in Million\$**

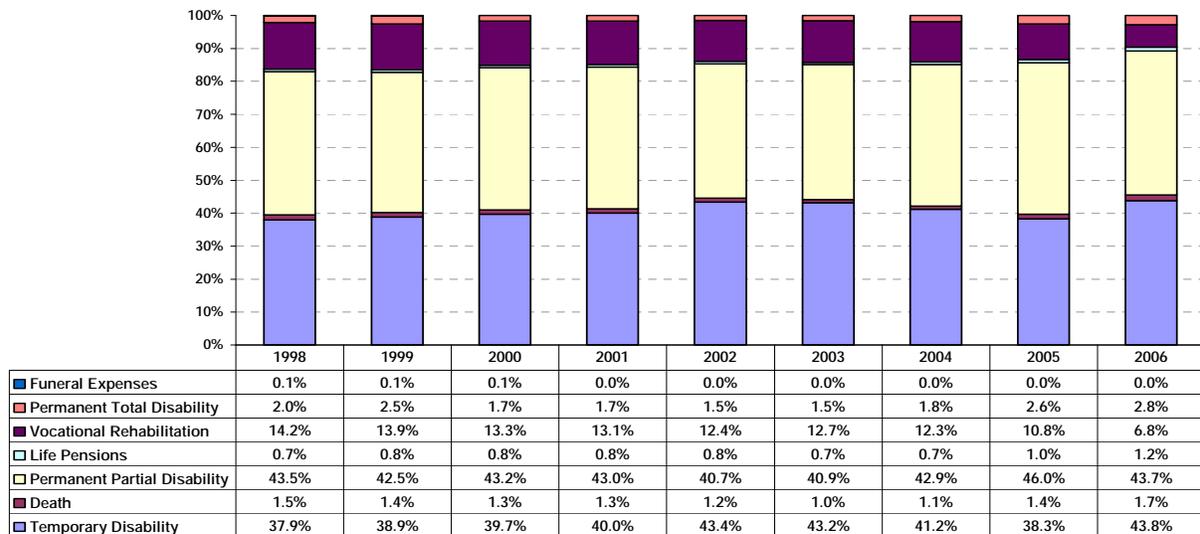


Data Source: WCIRB

Calculations: CHSWC

The following chart depicts the proportion of the total cost of paid indemnity contributed by each component.

Distribution of Paid Indemnity Benefits



* Vocational Rehabilitation/ Non-transferrable Educational Vouchers

Data Source: WCIRB

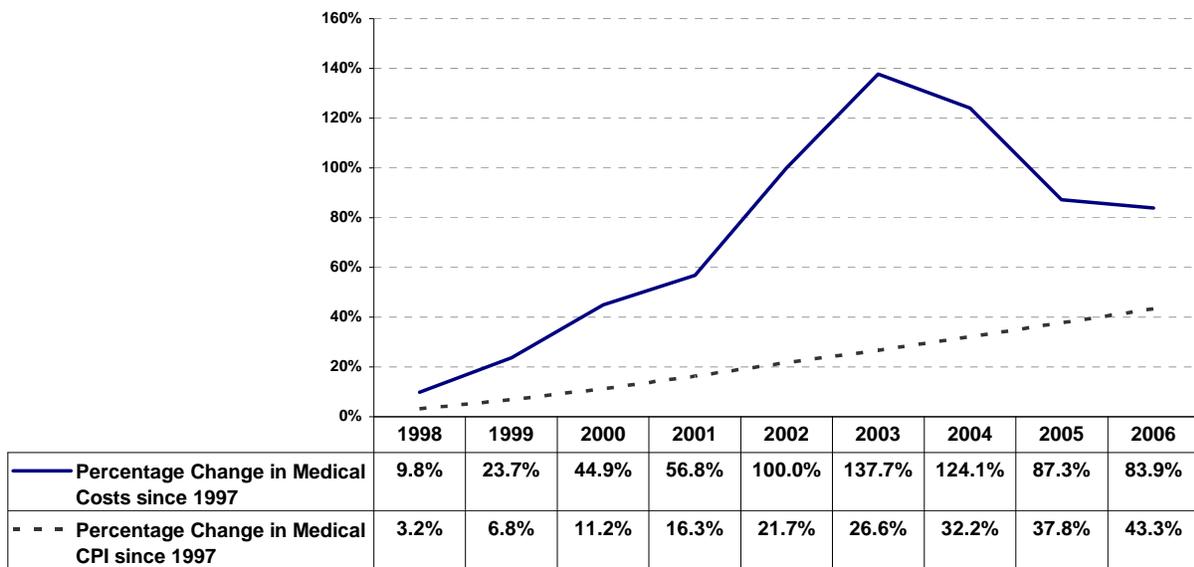
SYSTEMS OVERVIEW

Medical Benefits

Workers' Compensation Medical Costs vs. Medical Inflation

The following chart compares the growth rates of California's workers' compensation medical costs paid by insurers and self-insured employers with the medical component of the Consumer Price Index (CPI), also known as the "Medical CPI," a term used by economists to describe price increases in health care services.

Growth of Workers' Compensation Medical Costs Compared to Medical Inflation Rate-Percent Change since 1997



Data Source: WCIRB; Bureau of Labor Statistics

SYSTEMS OVERVIEW

Distribution of Medical Benefits: Where Does the Workers' Compensation Dollar Go?

Systemwide Estimated Costs - Medical Benefits Paid

Medical Benefits (Million\$)	2005	2006	Change
Physicians	\$2,125	\$2,000	-\$125
Capitated Medical	\$29	\$11	-\$18
Hospital	\$1,201	\$1,021	-\$180
Pharmacy	\$489	\$476	-\$13
Payments Made Directly to Patient	\$600	\$786	\$186
Medical-Legal Evaluation	\$214	\$203	-\$11
Medical Cost-Containment Programs*	\$109	\$219	\$109
Total	\$4,767	\$4,716	-\$51

Paid by Insured Employers

Medical Benefits (Million\$)	2005	2006	Change
Physicians	\$1,700	\$1,600	-\$100
Capitated Medical	\$23	\$9	-\$14
Hospital	\$961	\$817	-\$144
Pharmacy	\$391	\$381	-\$10
Payments Made Directly to Patient	\$480	\$629	\$149
Medical-Legal Evaluation	\$171	\$162	-\$9
Medical Cost-Containment Programs*	\$87	\$175	\$87
Total	\$3,813	\$3,772	-\$41

Paid by Self-Insured Employers**

Medical Benefits (Million\$)	2005	2006	Change
Physicians	\$425	\$400	-\$25
Capitated Medical	\$6	\$2	-\$4
Hospital	\$240	\$204	-\$36
Pharmacy	\$98	\$95	-\$3
Payments Made Directly to Patient	\$120	\$157	\$37
Medical-Legal Evaluation	\$43	\$41	-\$2
Medical Cost-Containment Programs*	\$22	\$44	\$22
Total	\$953	\$943	-\$10

* Figures for medical cost-containment programs are based on a sample of insurers who reported medical cost-containment expenses to the WCIRB

** Figures estimated based on insured employers' costs.

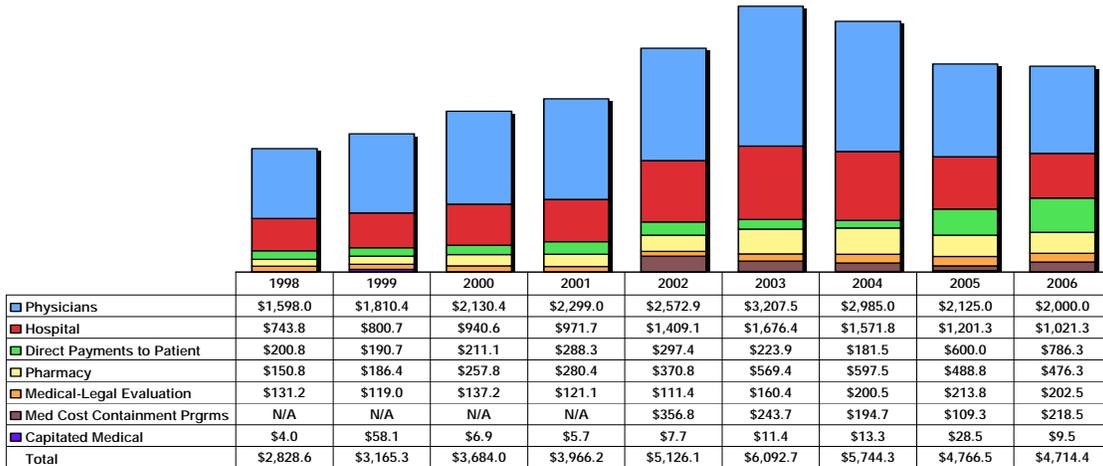
Self-insured employers are estimated to comprise 20 percent of all California employers.

SYSTEMS OVERVIEW

Trends in Paid Medical Benefits

The estimated systemwide paid medical costs for the past several years are displayed in the chart below. The following trends may result from the impact of recent workers' compensation reforms. The cost of the total medical benefit doubled from 1998 to 2003, then decreased by 22.6 percent from 2003 to 2006. Pharmacy costs nearly quadrupled from 1998 through 2004, before declining slightly from 2004 to 2006. Expenditures on medical cost-containment programs in 2005 were less than a third of what they were in 2002 and almost doubled again in 2006. Hospital costs more than doubled from 1998 to 2003, then declined by 39 percent from 2003 to 2006. Medical-legal evaluation costs fluctuated from 1998 to 2002, then doubled between 2002 and 2006. Payments to physicians doubled from 1998 to 2003, then dropped by 37.7 percent from 2003 to 2006.

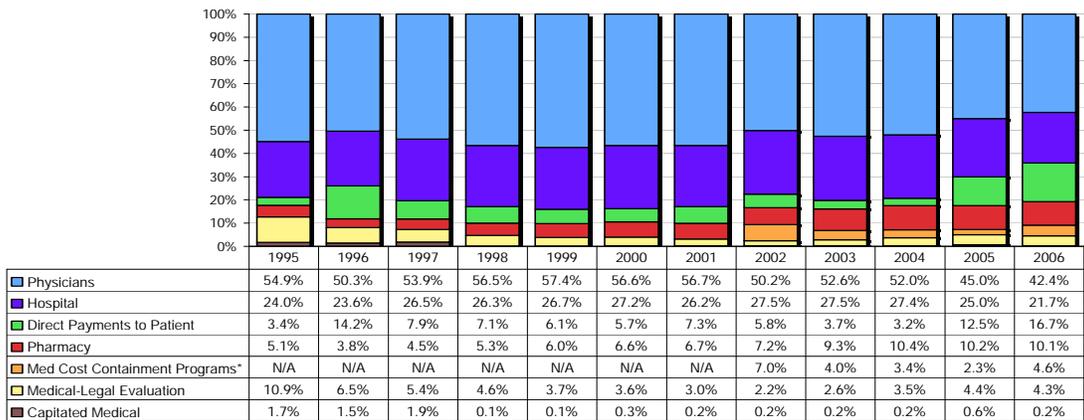
Workers' Compensation Paid Medical Benefits
System-Wide Estimated Costs in Million\$



Source: WCIRB Calculations: CHSWC

The following chart depicts the proportion of the total cost of paid medical contributed by each component.

Distribution of Paid Medical Costs



* Figures for medical cost containment programs are based on a sample of insurers who reported medical cost containment expenses to the WCIRB. The reporting of this data was voluntary for calendar year 2002 but mandatory beginning with calendar year 2003 payments.

Source: WCIRB

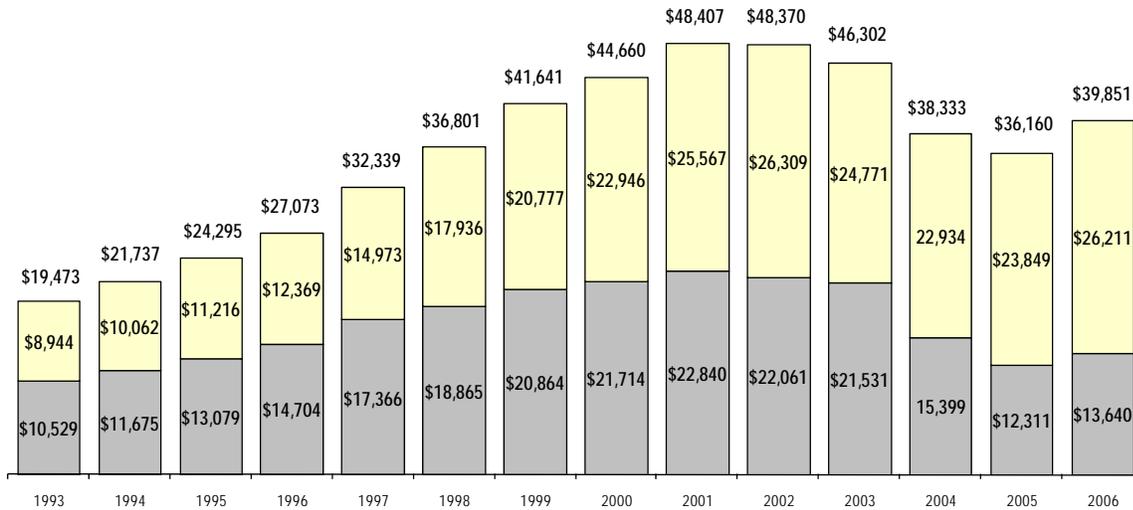
SYSTEMS OVERVIEW

Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply due to increases in the average cost of an indemnity claim, which rose dramatically during the late 1990s.

The total average cost of indemnity claims decreased by 17.8 percent from 2001 to 2006 reflecting the impact of AB 227, SB 228 and SB 899. However, the total, indemnity and medical average costs per claim increased between 2005 and 2006.

Estimated Ultimate Total Loss per Indemnity Claim
Reflecting the Impact of AB 227, SB 228 & SB 899 as of June 30, 2007



* Excludes medical-only

Source: WCIRB

Estimated ultimate indemnity per indemnity claim =
 Estimated ultimate medical per indemnity claim +
 Estimated Ultimate Total Losses per Indemnity Claim (excluding Medical-Only)

Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

SYSTEMS OVERVIEW

Average Cost per Claim by Type of Injury

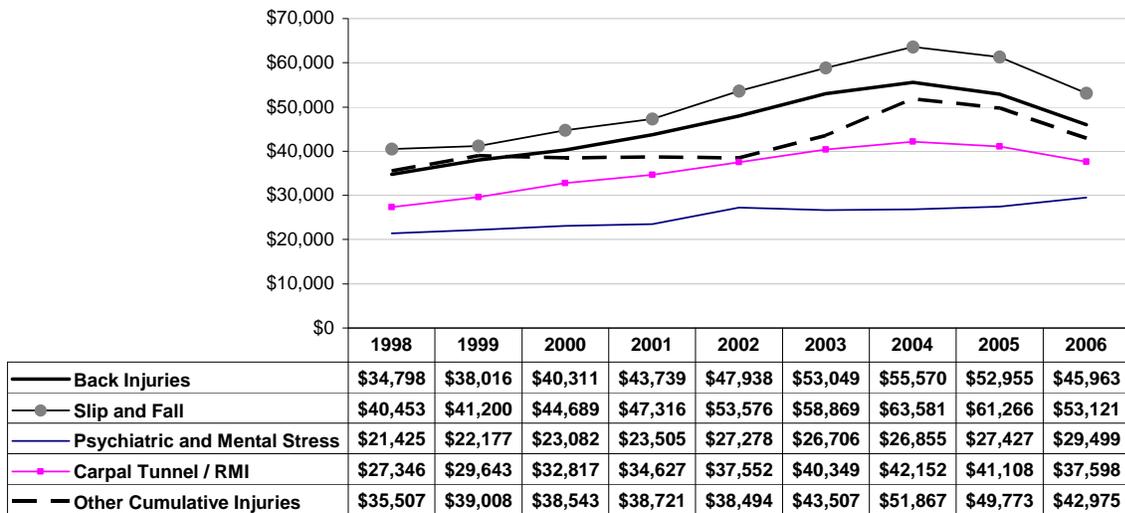
As shown in the following chart, from 1998 to 2003, slips and falls increased by 61 percent and back injuries by 59 percent, followed by carpal tunnel/repetitive motion injuries (RMI) by 56 percent.

On the other hand, average costs of psychiatric and mental stress claims appeared to have levelled off through 2001, increased slightly in 2002, and been mostly stable since then.

From 2003 to 2004, the average cost for some types of injuries, such as back injuries and carpal tunnel/RMI, increased only slightly and appeared to be leveling off.

From 2004 to 2006, the average costs for all of the types of injuries shown below, with the exception of psychiatric and mental stress, began to decline.

Average Cost per WC Claim by Type of Injury*



* These categories are not mutually exclusive. For example, some back injuries result from slips and falls.

Source: WCIRB

SYSTEMS OVERVIEW

Changes in Average Medical and Indemnity Costs per Claim by Type of Injury

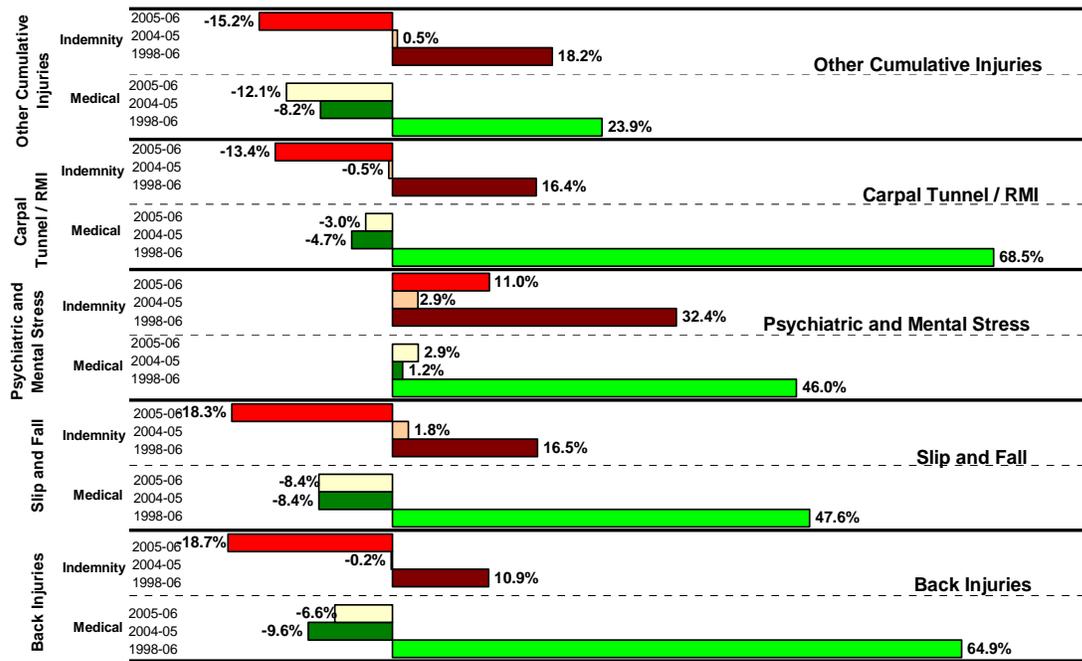
The chart below illustrates the impact of the reforms on selected types of injury. The long-term trend from 1998 to 2006 shows increases in medical costs and indemnity costs for all these types of injury.

In the past two years, the trend was reversed for most types of injury.

From 2004 to 2005, medical costs fell for every type except psychiatric and mental stress. In the same year, indemnity costs showed mixed increases or decreases of small magnitude, the largest being a 2.9 percent increase in indemnity for psychiatric and mental stress injuries.

From 2005 to 2006, medical costs again fell for every type except psychiatric and mental stress. In the same year, indemnity costs fell dramatically for every type except psychiatric and mental stress, which continued to grow.

% Change in Average Medical /Indemnity Costs per Claim by Type of Injury
(From 1998 through 2006, from 2004 through 2005 and from 2005 through 2006)



Data Source: WCIRB

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

The regulatory activities of the Division of Workers' Compensation (DWC) to implement the provisions of the recent workers' compensation reform legislation are outlined below. Formal rulemaking is often preceded by the release of a draft rule and the opening of an online forum for interested parties to post comments.

Information about these preliminary activities is available at <http://www.dir.ca.gov/Wcjudicial.htm>.

The latest formal rulemaking updates are available at www.dir.ca.gov/DWC/DWCrulemaking.html

Assembly Bill 1073

AB 1073 Mandates/Tasks	Status of Regulations
<p>Labor Code Sections (LC§§) 5307.27, 4604.5</p>	<p>Status: DWC posted postsurgical treatment guidelines and the functional improvement report form to the online forum.</p> <p><i>Title 8, California Code of Regulations (8 CCR) Section 9792.24.3</i></p> <p>http://www.dir.ca.gov/dwc/DWCWCABForum/2.asp?ForumID=62Reg</p> <p>The proposed postsurgical treatment guidelines provide that the 24-visit cap on physical medicine services shall not apply to visits for postsurgical physical medicine and rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director.</p> <p>The proposed postsurgical treatment guidelines define key terms commonly used in the regulations, address the presumption of correctness and application of the postsurgical treatment guidelines, address postsurgical patient management, set forth the postsurgical patient treatment approach and describe the indications, frequency and duration of postsurgical treatment.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

Senate Bill 899

SB 899 Mandates/Tasks	Status of Regulations
<p>LC §139.48 Return-to-Work Reimbursement Program for Workplace Modifications</p> <p><i>Sunset</i>*: January 1, 2009</p> <p>*Senate Bill (SB) 899 repeals this provision effective January 1, 2009, unless a new statute is enacted before January 1, 2009, deletes or extends that date.</p>	<p>Status: Regulations completed effective August 18, 2006.</p> <p>http://www.dir.ca.gov/DWC/DWCPropRegs/ReturnToWork_regulations/ReturnToWork_regulations.htm</p> <p><i>Title 8, California Code of Regulations (8 CCR) Section 10004</i></p> <p>For employers with 50 or fewer employees, provides for reimbursement of \$1,250 to accommodate each temporarily disabled employee and \$2,500 to accommodate each permanently disabled employee for expenses incurred in returning such employee to sustained, modified or alternative work within physician-imposed work restrictions.</p> <p>The maximum combined reimbursement per employee is \$2,500.</p> <p>“Sustained modified or alternative work” is work anticipated to last at least 12 months.</p> <p>NOTE: Reimbursement program for injuries on or after July 1, 2004, is subject to funding from §5814.6 penalties or funds transferred from the Workers' Compensation Administration Revolving Fund (WCARF) by the Administrative Director (AD) in accordance with rules to be adopted.</p>
<p>LC §4062.1 Qualified Medical Evaluator Procedures for Unrepresented Workers</p>	<p>Status: Regulations in process.</p> <p>Draft regulations were posted on the DWC Forum for pre-rulemaking comments. DWC Forum comment period ended 4/13/07</p> <p>Formal rule-making process to begin shortly.</p>
<p>LC §4062.2 Qualified Medical Evaluator Procedures for Represented Injured Workers</p>	<p>Status: Regulations in process.</p> <p>Draft regulations were posted on the DWC Fourn for pre-rulemaking comments. Formal rule-making process to begin shortly.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p>LC §4600 Pre-Designation of Physician</p> <p><i>Sunsets:</i> December 31, 2009</p>	<p>Status: Regulations completed. Effective March 14, 2006, and revised February 21, 2007, to comply with 2007 amendment to Labor Code §4600.</p> <p>http://www.dir.ca.gov/DWC/DWCPropRegs/predesignation_Regulations/Predesignation_regulations.htm</p> <p><i>8 CCR Sections 9780 through 9783.1</i></p> <p>An employee may pre-designate his or her personal physician if the employee notifies the employer prior to the date of injury that he or she has a personal physician and if the employer offers nonoccupational group health coverage.</p> <p>If the worker fails to properly pre-designate a personal physician prior to injury, he or she will not be able to do so after the injury occurs.</p> <p>If an injured worker does not properly pre-designate his or her personal physician, the employer will have the control over the employee's medical treatment for the first 30 days from the date the injury is reported.</p> <p>Alternatively, if the employee whose employer has a medical provider network (MPN) fails to properly designate his or her personal physician, the employee will be required to get treatment within the MPN for the course of the injury.</p> <p>If the employee has properly pre-designated a personal physician, referrals made by that physician need not be within an MPN.</p>
<p>LC §4616 Medical Provider Networks</p>	<p>Status: Regulations completed. Emergency regulations effective November 1, 2004. Permanent regulations effective September 15, 2005.</p> <p>http://www.dir.ca.gov/dwc/dwcpropregs/MPNReg.htm</p> <p><i>8 CCR Sections 9767.1 et seq.</i></p> <p>Regulations specify the requirements for an MPN, the MPN application process, access standards, the second- and third-opinion process, the procedure to modify an MPN, the process to transfer ongoing care into and within the MPN, the employer-notification requirements, and the procedures concerning the denial of an MPN plan or the suspension or revocation of an MPN plan.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p>LC §4616.4 Independent Medical Review For employees' disputes with diagnosis or treatment provided by an MPN, after exhaustion of second and third opinions within the MPN.</p>	<p>Status: Regulations completed. Effective June 10, 2005. http://www.dir.ca.gov/dwc/dwcpropregs/IMRRegs.htm <i>8 CCR Section 9768.1 et seq.</i> Regulations specify the qualifications to: serve as an independent medical reviewer (IMR); clarify the contract-application procedure; provide the required forms for the IMR contract application and the injured employee's application to request independent medical review; clarify the procedure to request an independent medical review; provide the procedures for an in-person examination or record review; set forth the required contents of the independent medical review reports; set forth the fees for the IMR services; and provide the procedure concerning the adoption of the IMR determination.</p>
<p>LC §§4658, 4658.1 Offer of Regular, Modified, or Alternate Work in relation to a 15 percent increase or decrease of permanent disability indemnity</p>	<p>Status: Regulations completed. Effective July 19, 2006, and September 21, 2006. Sections 10133.53 and 10133.55 have an effective date of August 18, 2006. Sections 10001 - 10003 have an effective date of October 21, 2006. http://www.dir.ca.gov/DWC/DWCPropRegs/ReturnToWork_regulations/ReturnToWork_regulations.htm <i>8 CCR Sections 10001 - 10005, 10133.53, and 10133.55</i> Regulations specify for injuries after January 1, 2005, and for employers who have 50 or more employees: If an employer offers the employee regular, modified or alternative work for a period of at least 12 months, permanent disability (PD) payments are decreased by 15 percent, regardless of whether the employee accepts or rejects the offer. If employer does not make such an offer, PD payments to the employee are increased by 15 percent.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p>LC §4660 Permanent Disability Rating Schedule Revision</p>	<p>Status: Regulations Completed. Emergency regulations effective January 1, 2005. Permanent regulations effective June 10, 2005.</p> <p>§5814.6 penalty regulations are pending with OAL for final approval. OAL is required to act by April 26, 2007.</p> <p>http://www.dir.ca.gov/dwc/dwcpropregs/PDRSRegs.htm</p> <p>8 CCR □ Section 9725 et seq.</p> <p>The Permanent Disability Rating Schedule (PDRS) adopts and incorporates the American Medical Association (AMA) <i>Guides to the Evaluation of Permanent Impairment, 5th Edition</i>. The PDRS includes multipliers ranging from 1.1 to 1.4, depending on type of injury, to adjust AMA impairment to reflect diminished future earning capacity.</p> <p>The PDRS is effective for dates of injury on or after January 1, 2005, and for dates of injury prior to January 1, 2005, in accordance with subdivision (d) of Labor Code §4660.</p> <p>The PDRS shall be amended at least once every five years.</p> <p>The AD shall (1) collect 2005 PDRS ratings for 18 months, (2) evaluate the data to determine the aggregate effect of the diminished future earning capacity adjustment on the permanent partial disability ratings under the 2005 PDRS, and (3) revise, if necessary, the diminished future earning capacity adjustment to reflect consideration of an employee's diminished future earning capacity for injuries based on the data collected.</p>
<p>LC §5402(c) Requirement for Employer to Provide up to \$10,000 in Medical Treatment Until Claim is Accepted or Rejected</p>	<p>Status: Regulations completed.</p> <p>http://www.dir.ca.gov/dwc/DWCCPropRegs/DWCCClaimFormReg.htm</p> <p>8 CCR Section 9881.1</p> <p>The AD's approved Workers' Compensation Notice to Employee Poster provided in 8 CCR Section 9881.1 includes the following language (in English and Spanish) after the last sentence in the section entitled "2. Report Your Injury":</p> <p>"Within one working day after an employee files a claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treating guidelines, for the alleged injury and shall continue to provide treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000)."</p> <p>NOTE: The statutory requirement for the provision of medical treatment pending a decision on a claim is self-effectuating without further regulations, but its administration and enforcement will be enhanced by administrative rulemaking.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p>LC §5814.6 Penalty for Business Practice of Unreasonable Delay in Payment of Compensation</p>	<p>Status: Regulations completed. Final regulations effective May 26, 2007.</p> <p>http://www.dir.ca.gov/DWC/DWCPropRegs/AdminPenalties_LC5814_6Regulations/LC5814_6Regulations.htm</p> <p><i>8 CCR Sections 10225 – 10225.2</i></p> <p>The AD may charge penalties under both Labor Code §§129.5 (including failure to pay undisputed portion of indemnity or medical treatment) and 5814 (unreasonable delay in payment of compensation); however, only one penalty may be imposed following the hearing on such charges.</p> <p>Penalties are specified for the following particular violations of Labor Code §5814:</p> <ol style="list-style-type: none"> 1. \$100,000 for a finding of knowing violation with a frequency indicating a general business practice; 2. \$30,000 for each finding by a workers' compensation judge of failure to comply with an existing award; 3. \$5,000 to \$15,000, depending on duration, for delay in payment of temporary disability benefits; 4. \$1,000 to \$15,000, depending on severity, for each penalty award by a workers' compensation judge for unreasonably denying authorization for treatment or failing to reimburse an employee for self-procured treatment; 5. \$2,500 for each penalty award by a workers' compensation judge for failure to provide a notice or training voucher regarding a supplemental job displacement benefit (SJDB) in a timely manner; 6. \$2,500 for each penalty award by a workers' compensation judge for failure to reimburse an injured worker for supplemental job displacement services, or where a failure to pay the training provided results in an interruption of training; 7. \$1,000 to \$15,000, depending on duration, for each penalty award by a workers' compensation judge for failure to make timely payment of permanent disability benefits; 8. \$2,500 for each penalty award by a workers' compensation judge for any other violation of Labor Code §5814. <p>The AD may mitigate a penalty based on consideration of specified equitable factors. Each administrative penalty shall be doubled upon a second finding and tripled upon a third finding under Labor Code §5814.6 within a five-year period.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

Assembly Bill 227 and Senate Bill 228 – Official Medical Fee Schedule

<p>AB 227 & SB 228 OMFS Mandates/Tasks</p>	<p>Status of Regulations</p>
<p>LC §5307.1 Physician Fee Schedule</p> <p>Provides that the existing Official Medical Fee Schedule (OMFS) for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5 percent.</p> <p>As of January 1, 2006, the AD will have the authority to adopt an OMFS for physician services.</p>	<p>Status: Regulations revised effective February 15, 2007.</p> <p>http://www.dir.ca.gov/DWC/OMFS9904.htm</p> <p><i>8 CCR Section 9789.11</i></p> <p>For physician services rendered on or after January 1, 2004, the maximum allowable reimbursement amount set forth in the OMFS 2003 is reduced by five (5) percent, except that the reimbursement will not fall below the Medicare rate.</p> <p>The AD has not yet adopted the Medicare-based schedule for physicians. On October 1, 2007, pursuant to contract, the Lewin Group began preparing its study regarding recommendations for a physician fee schedule. After the consultant's report is completed, the division will draft regulations.</p>
<p>LC §5307.1 Inpatient Facility Fee Schedule</p> <p>AD to adopt an inpatient facility fee schedule for inpatient hospital care based on the Medicare fee plus 20 percent.</p>	<p>Status: Emergency regulations adopted effective January 2, 2004. Effective date of permanent regulations is July 1, 2004.</p> <p>Statutes specify that Medicare changes can be implemented without regulations. Regulations are adjusted by an "Order of the Administrative Director of the Division of Workers' Compensation."</p> <p>http://www.dir.ca.gov/DWC/OMFS9904.htm</p> <p><i>8 CCR Section 9789.2 et seq.</i></p> <p>The Inpatient Hospital Fee Schedule, which applies to services with a date of discharge after January 1, 2004, provides that the maximum reimbursement is the Medicare fee plus 20 percent.</p> <ul style="list-style-type: none"> • Inpatient Hospital Fee Schedule is updated annually and posted on or before November. • The most recent updates to the Inpatient Hospital Fee Schedule to conform to Medicare changes were adopted by Order, effective December 1, 2006, and March 1, 2007.

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

AB 227 & SB 228 OMFS Mandates/Tasks	Status of Regulations
<p>LC §5307.1 Outpatient Facility Fee Schedule</p> <p>AD to adopt a new fee schedule for hospital outpatient departments and ambulatory surgery centers based on the Medicare fee for hospital outpatient departments plus 20 percent.</p>	<p>Status: Emergency regulations adopted effective January 2, 2004. Effective date of permanent regulations is July 1, 2004.</p> <p>Statutes specify that Medicare changes can be implemented without regulations. Regulations are adjusted by an "Order of the Administrative Director of the Division of Workers' Compensation."</p> <p>http://www.dir.ca.gov/DWC/OMFS9904.htm</p> <p><i>8 CCR Section 9789.3 et seq</i></p> <p>Regulations provide that all facility fees for services provided on or after January 1, 2004, by outpatient hospital departments and ambulatory surgical centers shall be paid in accordance with Medicare's Hospital Outpatient Prospective Payment System and that the maximum reasonable fees for outpatient facilities fees shall be 120 percent of the fees paid by Medicare for the same services performed in a hospital outpatient department.</p> <ul style="list-style-type: none"> • The Outpatient Fee Schedule is updated annually and posted on or before January. • The most recent updates to the Outpatient Fee Schedule to conform to Medicare fee changes were adopted by Order effective April 1, 2007.
<p>LC §5307.1 Pharmacy Fee Schedule</p> <p>AD to adopt a new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.</p>	<p>Status: Regulations complete. Effective March 1, 2007.</p> <p>http://www.dir.ca.gov/DWC/OMFS9904.htm</p> <p><i>8 CCR Section 9789.40</i></p> <p>Regulation reflects the statutory mandate that pharmacy services rendered on or after January 1, 2004, must be paid at 100 percent of the current Medi-Cal rates.</p>
<p>LC §5307.1 Official Medical Fee Schedule Shall Be Adjusted to conform to relevant Medicare/Medi-Cal changes within 60 days of changes (except specified inpatient changes)</p>	<p>Status: Statutes specify that changes can be implemented without regulations.</p> <p>Updates to Medicare and Medi-Cal changes are implemented by an "Order of the Administrative Director of the Division of Workers' Compensation."</p> <p>Update orders issued as follows:</p> <ul style="list-style-type: none"> • Inpatient – the most recent updates to the Inpatient Fee Schedule to conform to Medicare changes were adopted by Order, effective December 1, 2006, and March 1, 2007. • Outpatient – the most recent update of the Outpatient Fee Schedule to conform to Medicare changes was adopted by Order, effective April 1, 2007. <p>http://www.dir.ca.gov/DWC/OMFS9904.htm</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

AB 227 & SB 228 OMFS Mandates/Tasks	Status of Regulations
<p>LC §5307.1 Specified Schedules (Not in Fee Schedule until January 1, 2005) (Skilled nursing facility, home health agency, inpatient for hospitals exempt from Medicare Prospective Payment System, outpatient renal dialysis)</p>	<p>Status: In process. Expect to move forward on these in 2007. DWC is in the process of prioritizing the work.</p>
<p>LC §5307.1 Miscellaneous Medicare Fee Schedules</p>	<p>Status: Regulations complete (and ongoing). Adopted emergency regulations effective January 2, 2004. Permanent regulations became effective July 1, 2004.</p> <p>Statutes specify that Medicare changes can be implemented without regulations. Regulations are adjusted by an "Order of the Administrative Director of the Division of Workers' Compensation."</p> <p>http://www.dir.ca.gov/DWC/OMFS9904.htm</p> <p>Regulations were adopted incorporating Medicare's Ambulance, Laboratory and Pathology, and Durable Medical Equipment Prosthetics Orthotics Supplies (DMEPOS) fee schedules.</p> <ul style="list-style-type: none"> • Medicare update orders issued for laboratory and pathology effective January 1, 2007. The most recent updates to the DMEPOS were effective July 1, 2007 and April 1, 2007. • Ambulance Fee Schedule effective January 1, 2006, with the most recent updates effective January 1, 2007, and February 1, 2007. <p><i>8 CCR Section 9798.50:</i> Pathology and Laboratory. <i>8 CCR Section 9789.60:</i> Durable Medical Equipment, Prosthetics, Orthotics, Supplies. <i>8 CCR Section 9789.70:</i> Ambulance Services.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

Other Mandates of Assembly Bill 227 and Senate Bill 228

<p>AB 227 & SB 228 Other Mandates/Tasks</p>	<p>Status of Regulations</p>
<p>LC §4903.5 Medical Provider Lien Filing Fee</p>	<p>Regulations completed effective June 30, 2004</p> <p>Effective July 1, 2006, budget trailer bill language in AB 1806 repealed the lien filing fee in Labor Code §4903.05 and added §4903.6 to preclude the filing of frivolous liens at DWC district offices.</p> <p>http://www.dir.ca.gov/DWC/dwcpropregs/LienPayEmerRegs.htm</p> <p><i>8 CCR Section 10250 (Repealed)</i></p> <p>Repealed regulations required that medical providers and medical-lien claimants who use the judicial services of the Workers' Compensation Appeals Board (WCAB) contribute to the funding of the workers' compensation program through the payment of a \$100 filing fee for each initial medical or medical-legal lien filed in a workers' compensation case.</p>
<p>LC §4658.5 of AB 227 Supplemental Job Displacement Benefit</p>	<p>Status: Regulations completed. Effective August 1, 2005.</p> <p>http://www.dir.ca.gov/DWC/DWCPropRegs/SupplementalJobDisplacementBenefitRegs.htm</p> <p><i>8 CCR Sections 10133.50 - 10133.60</i></p> <p>The supplemental job displacement benefit (SJDB) is for injuries occurring on or after January 1, 2004. Vocational rehabilitation is no longer available for injuries occurring on or after January 1, 2004.</p> <p>The SJDB is available to an injured worker if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability.</p> <p>The statute requires that a voucher for education-related retraining or skill enhancement or both be provided to the eligible employee. The amount of the benefit is determined by the percent of the permanent partial disability award.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

<p>AB 227 & SB 228 Other Mandates/Tasks</p>	<p>Status of Regulations</p>
<p>LC §3201.7 Carve-out Program For All Industries</p>	<p>Status: Regulations completed. Effective October 4, 2004. http://www.dir.ca.gov/DWC/dwcpropregs/CollectiveBargainingAgreementsEmerRegs.htm</p> <p><i>8 CCR Sections 10200, 10201, 10202, 10202.1, 10203, 10203.1, 10203.2 and 10204</i></p> <p>Regulations specify that an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative may negotiate a labor-management agreement or carve-out that may include an alternative dispute resolution system [with final decisions subject to Workers' Compensation Appeals Board (WCAB) review], an agreed list of medical providers, an agreed list of qualified or agreed medical evaluators, the creation of a joint safety committee, the creation of a return-to-work program, the creation of a vocational rehabilitation or retraining program with an agreed list of rehabilitation providers.</p> <p>Unlike carve-outs in the construction industry, employees in these carve-outs have the right to representation by counsel at all stages during the alternative dispute resolution process.</p>
<p>LC §4062(b) Spinal Surgery Second-Opinion Process Procedure</p>	<p>Status: Regulations completed. Effective December 15, 2004. http://www.dir.ca.gov/DWC/dwcpropregs/SpinalProposedReg.htm</p> <p><i>8 CCR Sections 9788.01 et seq</i></p> <p>Regulations specify the procedures for an employer to object to a treating physician's proposed recommendation for spinal surgery and thus obtain from the AD the name of a randomly selected physician who is to render a second opinion.</p> <p>Regulations prescribe the qualifications of the physicians, the manner of their appointment and removal, the manner of selection and assignment of the second-opinion physicians, and the content of their reports.</p>
<p>LC §139.5 Vocational Rehabilitation Repeal for injuries on or after January 1, 2004.</p>	<p>Status: Completed. Effective August 1, 2004.</p> <p>Vocational rehabilitation benefit was repealed for injuries on or after January 1, 2004. (The SJDB was established for injuries on or after January 1, 2004.)</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

<p>AB 227 & SB 228 Other Mandates/Tasks</p>	<p>Status of Regulations</p>
<p>LC §4603.4 Electronic Bill Payment Regulations Regulations are required to be adopted by January 1, 2005, and to mandate acceptance of electronic bills by January 1, 2006.</p>	<p>Status: In process. Pre-rulemaking advisory committee meetings have been held from June 2004 to the present. A draft of the regulations was posted on the DWC forum from August 10 to September 10, 2007. Notice of Rulemaking will be issued in December 2007. Proposed regulations will require standardized forms for medical bills and will require claims administrators to accept electronic claims for payment of medical services.</p>
<p>LC §4610 Utilization Review</p>	<p>Status: Regulations completed. Emergency regulations effective December 13, 2004, and readopted effective April 12, 2005. Permanent regulations effective September 22, 2005. http://www.dir.ca.gov/dwc/DWCPPropRegs/UREmerRegs.htm <i>8 CCR Sections 9792.6 et seq.</i> Regulations specify the applicability of the utilization review process; set forth the medically-based criteria required for the utilization review process; set forth the timeframe, procedures and notice content with respect to the utilization review requirements; provide clarification and guidance with respect to the dispute resolution process; and set forth the penalties which will be imposed for failure to comply with the requirements of the statute.</p>
<p>LC §4610.1 Utilization Review Enforcement</p>	<p>Status: Regulations completed. Final regulations effective June 7, 2007. http://www.dir.ca.gov/DWC/DWCPPropRegs/UREnforcementRegulations/UR_EnforcementRegulations.htm <i>8 CCR Sections 9792.11 – 9792.15</i> Regulations provide for: <ul style="list-style-type: none"> • Investigations of the Utilization Review process. • A series of penalties on claims administrators from \$50.00-\$50,000 for failure to have a utilization review plan or provide treatment according to the regulations. • Procedures include Notice of Administrative Penalty Assessment, Appeal Hearing, and Review Procedure. </p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

<p>AB 227 & SB 228 Other Mandates/Tasks</p>	<p>Status of Regulations</p>
<p>LC §5318 Spinal Surgery Implantables/Hardware Reimbursement Statute codified old regulation providing extra payment for hardware/implantables until AD adopts reimbursement regulation.</p>	<p>Status: In process. DWC is seeking assistance from RAND to develop possible approaches to refine reimbursement methodology.</p>
<p>LC §5307.27 Medical Treatment Utilization Schedule</p>	<p>Status: Regulations completed. Final regulations effective June 15, 2007. http://www.dir.ca.gov/DWC/DWCPropRegs/MedicalTreatmentUtilizationSchedule/MTUS_regulations.htm <i>8 CCR Sections 9792.20 – 9792.23</i> The American College of Occupational and Environmental Medicine’s (ACOEM) <i>Practice Guidelines, Second Edition</i> (2004), are presumed correct for both treatment and diagnostic services addressed in those guidelines, both for acute and for chronic conditions. For conditions and injuries not addressed by ACOEM Practice Guidelines, treatment shall be in accordance with other scientifically and evidence-based treatment guidelines that are generally recognized by the national medical community. Key terms are defined. A hierarchy of evidence is established to govern circumstances not covered by ACOEM <i>Practice Guidelines</i>, variances from the guidelines, and conflicts between other guidelines. The hierarchy ranges from strong to moderate to limited research-based evidence, with a minimum of one randomized controlled study to constitute limited research-based evidence. Treatment shall not be denied on the sole basis that the condition or injury is not addressed by the ACOEM <i>Practice Guidelines</i>. In this situation, the claims administrator shall authorize treatment if such treatment is in accordance with other scientifically and evidence-based medical treatment guidelines that are generally recognized by the national medical community. A Medical Evidence Evaluation Advisory Committee is established and its composition is specified. DWC has proposed updates to the Medical Treatment Utilization Schedule (MTUS). The MTUS update, which includes new chronic pain and elbow guidelines, was previously posted to an online forum for review and public comment. Once the comment period for the postsurgical treatment guidelines is complete, formal rulemaking on the entire package of updates to the MTUS will commence.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

AB 227 & SB 228 Other Mandates/Tasks	Status of Regulations
Changes Without Regulation Effect	Preparation of various Rule 100 changes without regulatory effect to conform regulations to statutory changes are underway for filing with the Office of Administrative Law (OAL) in 2007.

Assembly Bill 749

AB 749 Original Mandate/Tasks	Status of Regulations
<p>LC §127.6 Medical Study</p> <p>AD, in consultation with CHSWC and other state agencies, to conduct a study of medical treatment provided to injured workers. Study to begin by July 1, 2003, report and recommendations to be issued by July 1, 2004.</p>	<p>Status: Completed.</p> <p>The contract was awarded to RAND.</p>
<p>LC §138.4 Benefit Notices to Employees from Claims Administrators</p> <p>Regulations need to be revised to reflect changes in this statute.</p>	<p>Status: Regulations in process.</p> <p>The benefit notice regulations were submitted to OAL on October 25, 2007. OAL will have 30 working days to review before the regulations are final.</p> <p><i>8 CCR Sections 9767.16, 9810, 9811, 9812, 9813, and 9813.1</i></p>
<p>LC §139.47 Return to Work</p> <p>Department of Industrial Relations (DIR) Director to establish a program to encourage early and sustained return to work, including creation of educational materials.</p>	<p>Status: Regulations completed. Effective August 18, 2006.</p> <p><i>8 CCR Sections 10001 - 10005, 10133.53, and 10133.55</i></p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

<p>AB 749 Original Mandate/Tasks</p>	<p>Status of Regulations</p>
<p>LC §§139.48 and 139.49 Return-to-Work Reimbursement Program/Study</p>	<p>Status: DWC is preparing a Request for Proposal (RFP) for a contract to do this study, which is due January 1, 2008.</p>
<p>LC §§3201.5, 3201.7, and 3201.9 Carve-Out Data AD to collect data regarding collectively bargained carve-out programs. By June 30, 2004, and annually thereafter, AD to report claim statistics to the Legislature; by July 1, 2004, and annually, AD to report the number of collective bargaining agreements (CBAs) and the number of employees covered to the DIR Director.</p>	<p>Status: Completed. Effective October 4, 2004. DWC reports and data on carve-out programs, including claim statistics, CBAs and number of employees covered, are available at http://www.dir.ca.gov/dwc/carveout.html.</p>
<p>LC §3550 Workers' Compensation Notice to Employees Poster AD to prescribe the form and content of workers' compensation notices required to be posted by employers "in a conspicuous location frequented by employees"; notice must be available in Spanish.</p>	<p>Status: Regulations completed. Effective August 1, 2004. http://www.dir.ca.gov/DWC/DWCPropRegs/DWCCClaimFormReg.htm <i>8 CCR Section 9881</i> Regulations specify a poster that will provide employees with information concerning workers' compensation benefits, including the name of employer's workers' compensation insurance carrier, how to obtain workers' compensation benefits and how to get medical treatment. It also states that there are time limits for the employer to be notified of an occupational injury, the protections against discrimination, and the location and telephone number of the nearest Information and Assistance Officer. The poster includes information on the SJDB and that for injuries on or after January 1, 2004, there is a limit on some medical services. (Caps on chiropractic, physical therapy and occupational therapy visits.) The AD's approved Workers' Compensation Notice to Employee Poster includes the following language: "Within one working day after an employee files a claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treating guidelines, for the alleged injury and shall continue to provide treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000)."</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

<p>AB 749 Original Mandate/Tasks</p>	<p>Status of Regulations</p>
<p>LC §3551 Workers' Compensation Written Notice to New Employees</p>	<p>Status: Regulations completed effective August 1, 2004. http://www.dir.ca.gov/DWC/DWCPropRegs/DWCClaimFormReg.htm <i>8 CCR Section 9880</i> Regulations require a written notice to new employees to be easily understandable and to be provided in English and Spanish. The notice is required to include: information concerning workers' compensation benefits, including the name of employer's workers' compensation insurance carrier; how to obtain workers' compensation benefits; and how to get medical treatment. It also states that there are time limits for the employer to be notified of an occupational injury, the protections against discrimination, and the location and telephone number of the nearest information and assistance officer. The notice includes information on the SJDB and that for injuries on or after January 1, 2004, there is a limit on some medical services. (Caps on chiropractic, physical therapy and occupational therapy visits.) The notice must also include a form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician."</p>
<p>LC §3822 Fraud Notice (Annually to every employer, claims adjuster, third-party administrator, physician and attorney participating in workers' compensation)</p>	<p>Status: Completed for 2007.</p>
<p>LC §4062.9 Develop and Revise Educational Materials for Primary Treating Physicians and Chiropractors</p>	<p>Status: Project in process. The University of California, San Francisco (UCSF) is preparing the update for the Physician's Guide to Workers' Compensation. The revision will include a section for treating physicians plus other information on writing reports. The work should be completed in 2007.</p>
<p>LC §4600.2 Pharmacy Contract Standards</p>	<p>Status: Completed. DWC contracted with UCSF Pharmacy School to provide study and recommendations for contract standards. Report received at the end of March 2004. Pharmacy Fee Schedule effective March 1, 2007.</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

AB 749 Original Mandate/Tasks	Status of Regulations
LC §4603.4	Pre-rulemaking advisory committees have been ongoing. A draft of the regulations was posted on the DWC forum from August 10 to September 10, 2007. Notice of Rulemaking will be issued in December 2007.
LC §5401 Workers' Compensation Claim Form and Notice of Potential Eligibility for Benefits	<p>Status: Regulations completed effective August 1, 2004.</p> <p>http://www.dir.ca.gov/DWC/DWCPropRegs/DWCCLAIMFormReg.htm</p> <p><i>8 CCR Sections 10117.1 and 10118.1</i></p> <p>Regulations specify contents of the claim form and the attached notice of potential eligibility for benefits.</p>

Other Regulations

Other Mandates/Tasks	Status of Regulations
<p>LC §138.6 Workers' Compensation Information System</p> <p>Implementation of the Workers' Compensation Information System (WCIS) mandated medical treatment and payment data collection.</p>	<p>Status: Regulations became effective April 21, 2006. Proposed updated regulations posted to the DWC online Forum.</p> <p>http://www.dir.ca.gov/dwc/DWCWCABForum/2.asp?ForumID=61</p> <p>The proposed Regulations update the two WCIS implementation guides, refine the list of required data elements, and establish reporting procedures for medical bills paid by a lump sum following the filing of a lien with the Workers' Compensation Appeals Board (WCAB).</p>
<p>LC §138.6 Workers' Compensation Information System (continued)</p>	<p>Status: Regulations provide that medical bill payment data reporting will become mandatory on September 22, 2006.</p> <p>To implement the Legislature's amendment of Labor Code §138.7, the regulations allow access to this information by researchers employed or under contract to the Commission of Health and Safety and Workers' Compensation (CHSWC).</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

Other Mandates/Tasks	Status of Regulations
<p>LC §§ 59, 133, 4627, and 5307.3</p> <p>Medical-Legal Report Fee Schedule Regulations</p>	<p>Status: Regulations completed effective July 1, 2006.</p> <p>http://www.dir.ca.gov/DWC/DWCPropRegs/MedicalLegalFeeSchedule_Regulations/MedicalLegalFeeSchedule_regulations.htm</p> <p>8 CCR Sections 9793 and 9795</p> <p>Regulations provide that the fee for each medical-legal evaluation is calculated by multiplying the relative value by \$12.50 (formerly \$10.00) and adding any amount applicable because of the modifiers permitted. Definitions are revised for the various levels of medical-legal services.</p> <p>“Medical research” is the investigation of medical issues and includes investigating and reading medical and scientific journals and texts. “Medical research” does not include reading about the <i>Guides for the Evaluation of Permanent Impairment</i> (any edition), treatment guidelines [including guidelines of the American College of Occupational and Environmental Medicine (ACOEM)], the Labor Code, regulations or publications of the DWC (including the <i>Physicians’ Guide</i>), or other legal materials.</p> <p>For medical-legal testimony and for supplemental medical-legal evaluations, the physician shall be reimbursed for each quarter-hour or portion thereof, rounded to the nearest quarter-hour, spent by the physician. The physician shall be paid a minimum of one hour for a scheduled deposition.</p>
<p>LC §§129, 129.5</p> <p>Audit Program Regulations</p>	<p>Status: Revised regulations in process. Draft regulations have been prepared and are posted on the DWC forum through November 13, 2007.</p>
<p>LC §123.6</p> <p>Ethical Standards for Workers’ Compensation Administrative law Judges</p>	<p>Status: Draft regulations have been prepared.</p> <p>8 CCR §§9720.1 et seq.</p>
<p>LC §§133, 4603.5, 5307.3, 5307.4</p> <p>Americans with Disabilities Act – Access to DWC District Offices. New sections.</p>	<p>Status: The proposed regulations were posted on the DWC forum from July 13 to July 23, 2007. Notice of rulemaking will be issued by December 2007.</p>
<p>LC §§127.5, 5300, 5307</p> <p>WCAB/DWC District Offices Regulations and Forms</p>	<p>Status: Draft regulations have been prepared.</p> <p>8 CCR §§ 10250 et seq</p>

UPDATE: WORKERS' COMPENSATION REFORM REGULATIONS

Other Mandates/Tasks	Status of Regulations
<p>LC §§4061.5, 4603.4, and 4610 PR-2 Form - Primary Treating Physician's Progress Report</p>	<p>Status: Advisory committee meetings. <i>8 CCR 9785, 9785.2</i></p>
<p>LC §127 Fees for Copies of Documents</p>	<p>Status: Need to revise to comply with DIR standard. <i>8 CCR 9990</i></p>
<p>LC §4659 Computation Tables for Permanent Disability</p>	<p>Status: Need to hire actuary. <i>8 CCR §§ 10169, 10169.1</i></p>

CHSWC PARTNERSHIPS WITH THE COMMUNITY

Introduction

Since its inception, the Commission on Health and Safety and Workers' Compensation (CHSWC) has been working closely with the health and safety and workers' compensation community including employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.

In certain studies and projects, CHSWC partners with other state agencies or other organizations in studies and projects of mutual interest. Key partnerships include:

Workers' Compensation Fraud Working Committee ***Partnership with the Department of Insurance***

Insurance Commissioner Poizner has organized an Advisory Task Force on Insurance Fraud with several working committees. CHSWC Executive Officer Christine Baker is serving as a member of the Working Committee and is the Chair of the Workers' Compensation Fraud Focus Group working in partnership with the Department of Insurance (CDI). The goal of the Workers' Compensation Fraud Working Committee is to create a report for the Fraud Task Force that will guide its efforts to improve the efficiency and effectiveness of California's anti-fraud efforts.

Members of the Workers' Compensation Fraud Focus Group:

Christine Baker, CHSWC, Chair of the Workers' Compensation Fraud Working Committee
Dennis Ayers, Dun & Bradstreet
Dave Bellusci, Workers' Compensation Insurance Rating Bureau
Doug Benner, M.D., Kaiser Permanente Medical Group
Laura Clifford, Employers Fraud Task Force
Lilia Esther C. Garcia, Maintenance Cooperation Trust Fund, Employment Law Investigation
David Goldberg, CDI Fraud Division
Scott Hauge/Lori Kammerer, Small Business California/Cal Insurance & Associates
Vanessa Himelblau, CDI
Matthew Hopkins, Berkshire Hathaway Homestate Co., Workers' Compensation Specialty Division, Special Investigations Unit
Dori Rose Inda, Watsonville Law Center
Joel LeBow, Liberty Mutual Group, Special Investigations Unit
Ralph Matthews, Acclamation Insurance Management Services
Michael Nolan, California Workers' Compensation Institute
Don Marshall, Zenith Insurance
Sean McNally, Legal Counsel, Grimmway Farms
Destie Overpeck, Department of Industrial Relations Division of Workers' Compensation
Ranney Pageler, Employers Insurance Company of Nevada, Employers' Compensation Insurance Company, Fraud Investigations Department
Rick Plein, CDI Fraud Division
Bill Randall, Capital Claims Service
Tom Rankin, California Labor Federation, AFL-CIO/WORKSAFE!
Darlyn Regan, Fraud Assessment Commission/State Compensation Insurance Fund
Mark Voss, CDI Fraud Division
Lance Wong, Los Angeles County District Attorney's Office
Bill Zachry, Fraud Assessment Commission/Safeway

Consultants:

Frank Neuhauser, UC Berkeley
Juliann Sum, UC Berkeley

PARTNERSHIPS AND OUTREACH

Integrated Occupational-Non-Occupational Medical Care Partnership with the California HealthCare Foundation

The California HealthCare Foundation awarded a grant to CHSWC to develop a proposal to integrate occupational and non-occupational medical treatment, an alternative that could offer savings on medical utilization, unit pricing, and administrative expenses while potentially offering improvements in the quality of health care. As a secondary advantage, the project is expected to expand access to affordable medical insurance.

The Service Employees International Union (SEIU) Local 1877, representing approximately 5,500 union janitors and unionized building-maintenance contractors in the San Francisco Bay Area, requested assistance from CHSWC and the University of California, Berkeley (UC Berkeley) with negotiating a carve-out agreement that would integrate both occupational and non-occupational medical treatment under the union's Taft-Hartley Health and Welfare Trust (H&WT). Kaiser Permanente is supplying technical expertise on medical care and information necessary to help determine proper pricing levels, as well as helping to resolve barriers to integrating medical care. UC Berkeley is conducting data analysis for pricing issues and developing the evaluation strategy.

California Workers' Compensation Medical Payment Accuracy Study Partnership with the Fraud Assessment Commission

CHSWC and the Fraud Assessment Commission (FAC) are conducting a joint study on estimating the extent of medical provider fraud in the California workers' compensation system. Funds were allocated by FAC in 2006 for the study, and Navigant Consulting was selected to conduct the Medical Payment Accuracy Study.

CHSWC and FAC are partnering with CDI on the study whose objectives are to:

- Determine the extent of workers' compensation medical overpayments and underpayments of all types in order to allocate the appropriate level of resources to detect and evaluate suspected medical-provider fraud in California.
- Develop baseline measurements for medical overpayments and underpayments of all types including suspected fraud, waste, abuse, billing and processing errors.

Quality-of-Care Indicators Study Partnership with RAND and Zenith Insurance Company

CHSWC is partnering with RAND and Zenith Insurance Company on a demonstration project that will suggest a mechanism for monitoring and improving the quality of care provided to injured workers.

The goal of the project is to demonstrate quality measurement of health care in a workers' compensation setting and involves four objectives:

- Develop quality-of-care indicators for one work-related disorder, carpal tunnel syndrome.
- Apply the quality-of-care indicators to patients from several medical networks.
- Publish an anonymous report card comparing quality across networks.
- Consider how to translate the project into an ongoing quality-monitoring system.

PARTNERSHIPS AND OUTREACH

The IAIABC International Forum on Disability Management

Partnership with International Association of Industrial Accident Boards and Commissions

CHSWC is partnering with the International Association of Industrial Accident Boards and Commissions (IAIABC) on The International Forum on Disability Management (IDFM). The forum will be held in Berlin, Germany, September 22-24, 2008, and in Los Angeles, California, in 2010. The purpose of the Forum is to share information about disability management and to identify barriers and ways to overcome barriers in disability management systems. Participants will develop policy recommendations to improve management of occupational disabilities by government, employers and service support organizations.

The Forum will bring together policymakers, such as legislators and heads of the executive branches, dynamic leaders in labor, business and insurance, and experts in disability management, including people mastering personal disabilities. Representatives of organizations with an interest in disability issues and a commitment to more effective systems for overcoming barriers to the rehabilitation and full integration of workers with disabilities in gainful employment will participate in the discussion.

Health and Safety Training for Small Business Restaurant Owners

Partnership with the State Compensation Insurance Fund and the California Restaurant Association

One of the components of CHSWC's Worker Occupational Safety and Health Training and Education Program (WOSHTEP) focuses on small business resources. CHSWC has partnered with the State Compensation Insurance Fund (SCIF) and with the California Restaurant Association (CRA) to provide health and safety trainings to small business restaurant owners and managers. Preliminary findings from the evaluation of these trainings have been positive.

Return-to-Work and 24-Hour Care Roundtables

Partnership with various workers' compensation stakeholders including employers, labor, insurance carriers, medical providers, and attorneys

Return-to-Work Roundtable

At the request of 2006 CHSWC Chair Angie Wei, CHSWC staff held a Return-to-Work (RTW) Roundtable meeting on November 17, 2006, in Oakland, to discuss the operational and technical aspects of the RTW program. The roundtable involved 30 stakeholders of the workers' compensation system representing insured and self-insured employers, labor, insurance carriers, medical providers, and attorneys. The discussion centered on identifying the current issues with respect to RTW in California, as well as identifying potential solutions.

Research supports the observation that RTW at the earliest appropriate time reduces the long-term wage loss of an injured worker and costs borne by employers. Earlier CHSWC studies by RAND found that California consistently had poor RTW rates for permanent workplace injuries when compared with other states. California's injured workers are far more likely to be out of work after their injury, and in the long run, the benefits could not compensate the resulting lower earnings. Assembly Bill (AB) 227 and Senate Bill (SB) 899 provided rules and programs that encourage employers to offer work to their injured employees. These programs include monetary incentives to return the injured worker back to work, supplemental job displacement benefit (SJDB) vouchers, and the RTW workplace-modification reimbursement program.

PARTNERSHIPS AND OUTREACH

Areas identified in advance of the roundtable included:

- Timing of the vouchers. The current statutes provide for vouchers very late in a claim, because the voucher amounts can only be determined after an award of permanent partial disability (PPD) benefits.
- Disability rights. State and federal laws, the Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA), require the employer to engage in a timely, good faith interactive process with the injured worker to determine reasonable accommodations. These requirements need to be coordinated with workers' compensation claims.
- RTW reimbursement. State law authorizes the Division of Workers' Compensation (DWC) to reimburse eligible employers to make workplace modifications to accommodate an injured employee's return to modified or alternative work.
- Notices. Requirements for notices need to be clarified and coordinated. These include: notices about final temporary disability (TD) benefits; initial permanent disability (PD) benefits; potential rights to a voucher; the interactive process to determine reasonable accommodations; offers of regular, modified, or alternative work; eligibility for a voucher; and 15 percent increased or decreased PD benefits.
- Carve-Outs. Statutes need to be updated to require that workers' access to SJDB vouchers are not diminished in a carve-out.

Return-to-Work Roundtable Recommendations

Participants at the roundtable came up with many short-term and long-term technical and systemic recommendations to the RTW process.

Short-term recommendations included: establish education programs for employers; train physicians to address RTW issues using the American College of Occupational and Environmental Medicine (ACOEM) *Preventing Needless Disability Guideline* and the American Medical Association (AMA) *Guides* and create outcome-based medical fee schedules (pay-for-performance); make technical changes to the SJDB and tiered PD benefit regarding eligibility and timing; conduct a needs assessment on RTW practices for small and medium-sized businesses; and extend the TD ending date so injured workers are motivated to return to work

Long-term recommendations included: provide training on RTW for all members of the workers' compensation community; consider a mentoring role between large companies with RTW programs and small companies without these programs in place; assess the adequacy of the funding of the RTW reimbursement fund and explore more funding sources, as needed; provide employers with an off-the-shelf RTW solution, or a guide for what an RTW program should look like; inform employers with fewer than 50 employees about the reimbursement fund for worksite modifications; examine other states' programs, particularly Oregon and Texas, especially regarding early intervention programs and pre-injury management for RTW; consider including services of an RTW counselor, ombudsman or specialist and establish performance measures; track outcomes of RTW measures; and consider an integrated disability management approach to treating injuries.

The roundtable concluded with the understanding that all input from participants would be collected for continued review of technical adjustments and broader systemic challenges of RTW.

PARTNERSHIPS AND OUTREACH

24-Hour Care Roundtable

At the request of CHSWC 2006 Chair Angie Wei, CHSWC staff held a 24-Hour Care Roundtable meeting on December 7, 2006, in Oakland, to provide an update on the state of 24-hour care programs, to discuss the operational and technical aspects of a 24-hour care system, and to investigate the options for integration, such as integrating health care services or integrating health care services with both group health insurance and workers' compensation insurance.

The roundtable included 26 stakeholders in the workers' compensation system representing insured and self-insured employers, labor, insurance carriers, and medical providers. Discussion centered on identifying the current issues and challenges with respect to 24-hour care in California:

- Successful models in other states, as well as in California.
- Challenges to implementing a 24-hour care system.
- Recommendations and objectives when moving toward a 24-hour care system such as implementation in the public sector, voluntary participation with incentives in the private sector, and implementation within carve-outs.

Suggestions have been made to more closely coordinate or combine workers' compensation medical care with the general medical care provided to patients by group health insurers in order to reduce overall administrative costs and derive other efficiencies in care. Research supports the contention that a 24-hour care system could potentially provide cost savings as well as shorten disability duration for workers.

Studies on 24-hour care by CHSWC and RAND describe the consolidation of health care benefits and, possibly, disability benefits for both work-related and non-work-related claims. These health care services could be delivered by the same group of providers under coordinated insurance package(s).

The CHSWC study looked at states that have adopted 24-hour care legislation and that have conducted pilots. At least ten states have adopted legislation permitting 24-hour care pilots. Since then, pilot programs in five states were attempted and examined in research. Only two states, Oregon and California, succeeded in making the pilots operational. The results, benefits and barriers of the California pilot, called "Kaiser on the Job," were documented in a 2003 CHSWC study.⁷

The RAND study looked into legislative and legal issues of 24-hour care program systems and components. The study included focus groups of stakeholders in California who shared views on the potential value, barriers and incentives of adopting such new models. Finally, recommendations for a pilot program were made, with specific criteria about eligible participants, design options and robust evaluation capabilities.⁸

These two studies suggested that an integrated 24-hour care benefits program offers the potential to improve efficiency in claims administration, reduce overuse of workers' compensation-based health services through care management, and reduce health care costs. However, not all of these benefits have been proven in practice, due partially to measurement difficulties and the limited and inconclusive nature of the pilot programs ("failure to scale").⁹

⁷ CHSWC Background Paper: Twenty-four Hour Care, December 2003.
http://www.dir.ca.gov/CHSWC/CHSWC_24hCare.pdf

⁸ RAND Assessment of 24-Hour Care Options for California, 2004.
<http://www.dir.ca.gov/CHSWC/Reports/24HourCare.pdf>.

⁹ RAND, p. xix and p. 30.

PARTNERSHIPS AND OUTREACH

Benefits of 24-hour coverage could potentially include: improved quality and coordination of care; lower overall medical expenditures; reduction in administrative costs of the two systems; and savings for employers and improved affordability for workers.

Options for an Integrated System include:

- Option A:* Integrate health care services
- Option B:* *Option A* + integrate group health insurance policy and workers' compensation medical insurance policy
- Option C:* *Option A* + *Option B* + integrate disability insurance (disability integration is not subject to discussion in this roundtable.)

24-Hour Care Roundtable Recommendations

Short-term roundtable recommendations include: coordinate existing administrative functions, forms and reporting requirements through common intake, common integration of processes, including the RTW process and case management, and a common appeal process; identify to what extent the current system fits Option A and what could be modified to fit the model; gather statistics and data on: (1) number and demographics of people who are covered by employer-based group health and those who are not covered by both large and small employers; (2) the number of people who seek long-term treatment and the cost of this treatment; (3) the number of people who change employers and/or plans; and (4) the number of people who seek treatment out of state and the costs; and consider potential avenues to implement 24-hour care, such as within carve-outs, in the public sector, where ERISA preemption will not be an issue, and through a pilot in the public sector.

Long-term roundtable recommendations include: resolve frictional costs (Option B, which looks at integrating insurance plans as well as medical services, will lend itself to discussion of how to resolve frictional costs and what types of dispute resolution mechanisms need to be put in place); maintain a perspective that incorporates all system costs if 24-hour care were not implemented; and consider data on such areas as incentives or reimbursements to providers in order to avoid cost shifting, outcomes in the system if 24-hour care were not implemented, and the performance of the \$90-day/\$10,000 cap specified in Labor Code Section 5402; analysis of other models, including the Health Care Organization (HCO) model; and analysis of programs in others states, especially Oregon and Washington.

Northern California Summit on Promoting Stay-at-Work/Return-to-Work Partnership with employers, medical providers, insurers, and non-profit disability organizations

CHSWC has partnered with employers, medical providers, insurers, and non-profit disability organizations to plan the first Northern California Summit on Promoting Stay-at-Work/Return-to-Work.

The Northern California summit of experts convened in Pleasanton, California, on June 21, 2007, to discuss reducing medically unnecessary time off work for injured or otherwise disabled employees. The goal of the summit was to advance toward sustained solutions for preventing needless time away from work and the realignments needed to meet this goal.

PARTNERSHIPS AND OUTREACH

Carve-out Conference/Alternative Dispute Resolution

Partnership with various workers' compensation stakeholders including employers, unions, risk managers, government agencies, medical providers, and insurance organizations

Carve-outs provide an alternative to the existing procedures within California's workers' compensation system. Recognizing that many cities and counties, as well as private industries, are interested in knowing more about carve-outs and about health and safety training and education within a carve-out, CHSWC hosted a conference devoted to carve-outs/alternative dispute resolution on August 2, 2007, in Emeryville, California. The conference was for all stakeholders in the workers' compensation system including: those in existing carve-outs; those considering establishing a carve-out; unions and employers; risk managers; government agencies; third-party administrators; insurers; policy makers; attorneys; and health care providers.

The conference provided an opportunity for the health, safety and workers' compensation communities and the public to discuss and share ideas for establishing carve-outs which have the potential to: improve safety programs and reduce injury and illness claims; achieve cost savings for employers; provide effective medical delivery and improved quality of medical care; improve collaboration between unions and employers; and increase the satisfaction of all parties.

Presentations at the conference focused on:

- Carve-outs: labor and management perspectives.
- How to save costs to employers and improve the injured workers' workers' compensation experience by:
 - Saving costs by providing an alternative dispute resolutions process.
 - Improving delivery of medical care.
 - Preventing job injuries and illnesses.
 - Ensuring full communication between everyone involved.
- Integration of group health medical care and workers' compensation medical care under a carve-out.
- How to decide if a carve-out is right for you and where to start in negotiating and creating a carve-out.

Carve-out Conference Recommendations

- Medical care: In selecting high-quality providers for the carve-out agreement, employers and workers should look for providers who understand the workers' compensation system, the administrative processes, the American College of Occupational and Environmental Medicine (ACOEM) guidelines, and the American Medical Association (AMA) *Guides* to rate impairment.
- Injury and illness prevention: Injury and illness prevention programs should be included as part of the carve-out agreement as they can ensure worker safety as well as save costs for employers.
- Communication: Carve-outs should ensure that there is communication with all parties, as this will help create a fair result without litigation.
- Data: An analysis of carve-out data and the costs of carve-outs should be conducted.

PARTNERSHIPS AND OUTREACH

Health and Safety Research Agenda

Partnership with employers, workers, and occupational health and safety governmental agencies and researchers

CHSWC believes that it is important to conduct research that results in both knowledge and policies that will lead to elimination of workplace fatalities and reduction in injuries and make California workplaces and workers the safest, healthiest and most productive in the country. At its August 9, 2007 meeting, the Commission voted to convene a Health and Safety Advisory Committee.

CHSWC held a Health and Safety Advisory Committee meeting on November 19, 2007, with various stakeholders to develop a health and safety research agenda. A Health and Safety Research Strategic Plan will be developed as a result of this meeting.

SPECIAL REPORT: ESTIMATION OF POST-REFORM SAVINGS

The following chart shows the Workers' Compensation Insurance Rating Bureau's (WCIRB) estimates of post-reform savings due to Assembly Bill (AB) 749, AB 227, Senate (SB) 228 and SB 899 by major benefit components. The information is derived from the WCIRB's Legislative Cost Monitoring Report published October 9, 2007.

September 2007 Evaluation of Post-Reform Costs by Major Cost Component

	Projected Pre-Reform Annual Cost in millions ¹⁰ (Insured employers only)	Estimated Annual Reform Impact			
		WCIRB Prospective Evaluation ¹¹		September 2007 Retrospective Evaluation	
		%	Million\$	%	Million\$
Medical Cost Components					
Medical Fee Schedule Changes:					
Physician Fees	\$5,400	-5%	-\$300	-4%	-\$200
Inpatient Fees	\$1,200	+8%	+\$100	-4%	-\$0
Outpatient Facility Fees	\$1,900	-41%	-\$800	-39%	-\$700
Pharmaceutical Fees	\$600	-37%	-\$200	-13%	-\$100
Medical Utilization Provisions:					
Physical Therapy Limitation	\$700	-40%	-\$300	-66%	-\$400
Chiropractic Limitation	\$1,000	-40%	-\$400	-82%	-\$800
Other Utilization Provisions	\$8,100 ¹²	-25% ¹³	-\$2,000	-25% ¹⁴	-\$2,000
Immediate Medical Pay	\$9,800 ¹⁵	+1%	+\$100	0%	\$0
Medical Legal	\$400	-14%	-\$100	N/A	N/A
Indemnity Cost Components					
Temporary Disability Limitation	\$2,300	-16%	-\$400	N/A	N/A

¹⁰ Based on pre-Assembly Bill (AB) 227 and pre-Senate Bill (SB) 228 \$20.8 billion estimate (insured employers only) of statewide pre-reform indemnity and medical losses and loss adjustment expenses (with loss adjustment expenses assumed to be 17 percent of losses).

¹¹ Based on various prospective evaluations of benefit costs reflected in WCIRB's pure premium rate filings.

¹² This reflects total medical treatment costs excluding physical therapy and chiropractic costs.

¹³ See WCIRB's January 1, 2005 pure premium rate filing. Earlier evaluations of some but not all of the medical utilization reforms reflected lesser estimates.

¹⁴ Based on preliminary post-reform information, the growth in medical utilization for two years has been eliminated. The actual reduction in visits per claim (non-physical medicine) is approximately 9 percent. Assuming an approximate 10 percent annual growth rate in medical services, this would equate to an approximate 25 percent reduction in medical utilization costs over the two years that the medical utilization reforms were implemented.

¹⁵ These provisions were assumed to apply to all medical treatment.

SPECIAL REPORT: ESTIMATION OF POST REFORM SAVINGS

	Projected Pre-Reform Annual Cost in millions ¹⁰ (Insured employers only)	Estimated Annual Reform Impact			
		WCIRB Prospective Evaluation ¹¹		September 2007 Retrospective Evaluation	
		%	Million\$	%	Million\$
Temporary Disability Duration	\$2,300	0%	+\$0	-15%	-\$300
Vocational Rehabilitation	\$1,000	-86%	-\$900	-80%	-\$800
Permanent Disability Benefits:	\$3,700				
Apportionment		-10%	-\$400	-5% ¹⁶	-\$200
Change in # of Weeks		-10%	-\$400	-14%	-\$500
Return-to-Work Adjustments		-3%	-\$100	N/A	N/A
January 1, 2005 PDRS		-38% ¹⁷	-\$1,400	-60%	-\$2,200
Indemnity Claim Frequency	\$16,900 ¹⁸	11% ¹⁹	-\$1,900	-36%	-\$6,100
Loss Adjustment Expenses	\$3,000 ²⁰	28% ²¹	-\$800	+0%	+\$0
Total Estimated Cost Impact	-	-49%	-\$10,100	-70%	-\$14,500

As shown by the WCIRB chart above, the estimates of savings from the reforms indicate an annual savings of \$14.5 billion for insured employers. Since self-insured employers comprise approximately 20 percent of the California payroll, the total estimated savings from the reforms are about \$18 billion dollars.

¹⁶ Based on the average of the estimated based on the UC Berkeley Study (Attachment H) and the estimate based on WCIRB permanent disability claim survey date.

¹⁷ See WCIRB's January 1, 2006 pure premium rate filing. The July 1, 2005 pure premium rate filing evaluation reflected a lesser estimate. The July 1, 2007 and January 1, 2008 pure premium rate filing evaluations reflected greater savings estimates.

¹⁸ Reflects the total cost of losses incurred on indemnity claims.

¹⁹ Based on WCIRB's January 1, 2004 pure premium rate filing, loss adjustment expenses were estimated at 17 percent of losses.

²⁰ In WCIRB's January 1, 2004 pure premium rate filing, loss adjustment expenses were estimated at 17 percent of losses.

²¹ In WCIRB's legislative evaluations, it was assumed that loss adjustment expenses would decline proportionately with losses. In total, including the AB 749 benefit increases, WCIRB prospectively estimated an approximate 25 percent decrease in losses.

SPECIAL REPORT: 2007 LEGISLATION

The following health and safety and workers' compensation bills were signed into law in 2007:

AB 338 (Coto, co-author Benoit)
Labor Code Section 4656
Temporary disability payments.

Existing law prohibits aggregate disability payments for a single injury occurring on or after April 19, 2004, from extending for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment, except if an employee suffers from certain injuries or conditions.

For an injury occurring on or after January 1, 2008, this bill increases the period of time during which an employee can receive up to 104 weeks of aggregate disability payments to 5 years from the date of injury.

After the bill was signed, the Workers' Compensation Insurance Rating Bureau (WCIRB) added 1.2 percent to its recommended pure premium rate increase for policies incepting in 2008. As of the end of October 2007, the Insurance Commissioner had not yet made a determination on the WCIRB's recommendation.

AB 812 (Hernandez)
Insurance Code Section 11760.1
Insurance premium, payroll audits, employer's failure to provide records.

Existing law provides that workers' compensation insurers generally perform a payroll verification audit to compare the actual premium to the estimated premium. This information is generally supplied by the insured employer.

This bill provides that if an employer fails to provide for access by the insurer or its authorized representative to its records, to enable the insurer to perform an audit, the employer shall be liable to pay to the insurer a total premium for the policy equal to three times the insurer's then-current estimate of the annual premium on the expiration date of the policy. The employer shall also be liable for costs, as specified.

AB 1073 (Nava)
Labor Code Section 4604.5
Medical treatment utilization schedule: 24-visit caps on physical medicine.

Existing law requires that the Administrative Director (AD) of the Division of Workers' Compensation (DWC) adopt a medical treatment utilization schedule. Existing law provides that, notwithstanding the medical treatment utilization schedule, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury, but specifies that this limit shall not apply when an employer authorizes, in writing, additional visits to a health care practitioner for physical medicine services.

This bill provides that the limit on the number of chiropractic, occupational therapy, and physical therapy visits shall not apply to visits that are in compliance with a post-surgical treatment utilization schedule that is to be established by the AD.

DWC proposed regulations for discussion on its website on October 24, 2007.

AB 1269 (Hernandez)

Labor Code Section 5307.1

Medical fee schedule for inpatient facility, burn cases.

Existing law requires that the AD to adopt and revise periodically an official medical fee schedule based on the Medicare payment system, which includes fees for inpatient hospital services based on diagnostic related groups (DRGs) rather than on itemized fees for services.

Commencing January 1, 2008, and continuing until January 1, 2011, this bill authorizes the AD, after public hearings, to adopt and revise, no less frequently than biennially, an official medical fee schedule for inpatient facility fees for burn cases which need not be based on the Medicare payment system.

AB 1364 (Benoit)

Insurance Code Section 11691

Security deposits for insurers writing large deductible policies

Existing law requires that each workers' compensation insurer admitted to do business in California must place specified deposits with the state to secure the payment of the insurer's liability for claims in the event of the insurer's insolvency. This bill provides that, in the calculation of the insurer's liability, an insurer is not allowed to take credit for the amount of any security given by a policyholder for a large deductible policy if, under the laws of the state where the insurer is domiciled, the policyholder's security deposit would become general assets of the insolvent insurer's estate.

AB 1401 (Aghazarian)

Insurance Code Section 1872.86 and other sections

Funding the Fraud Division of the Department of Insurance

Existing law provides funding for the Fraud Division from several sources, including an annual assessment of \$1,300 on each insurer. Among other provisions, this bill adds Section 1872.86, raising the annual assessment on each insurer to \$5,100 for funding the Fraud Division. The bill does not amend Insurance Code Section 1872.83, which separately provides for funding specific to workers' compensation fraud and willful noninsurance.

SB 316 (Yee)

Insurance Code Sections 923.5, 11558, Labor Code Section 77.7

Workers' compensation insurers: solvency requirements and CHSWC study of insolvencies.

Existing law requires insurers to maintain certain minimum reserves for outstanding losses and loss expenses for various coverages included in the lines of business described in the annual statement. Existing law also requires workers' compensation insurers to meet risk-based capital requirements as an indicator of financial solvency.

This bill deletes workers' compensation insurance from the minimum reserve requirement.

Existing law provides that the Commission on Health and Safety and Workers' Compensation shall conduct a continuing examination of the workers' compensation system, as specified, and issue an annual report to be made available to the Governor, the Legislature, and the public, upon request.

This bill requires the Commission to examine the causes of the number of insolvencies among workers' compensation insurers within the past 10 years. It requires that by June 1, 2009, the report be published on its Internet website, and the Legislature and Governor be informed of its availability.

SB 783 (Torlakson)

**Labor Code Sections 7912, 7914, 7915, 7916, 7917, 7918, and 7919
Amusement rides safety law.**

Existing law under the Permanent Amusement Ride Safety Inspection Program prohibits the operation of a permanent amusement ride without a policy of insurance in an amount of not less than \$1,000,000 per occurrence insuring the owner or operator against liability for injury or death to persons arising out of the use of the permanent amusement ride. The Amusement Rides Safety Law prohibits the operation of an amusement ride without a policy of insurance in an amount of not less than \$500,000 insuring the owner or operator against liability for injury suffered by persons riding the amusement ride.

This bill would increase the minimum policy of insurance in an amount not less than \$1,000,000.00 per occurrence for temporary amusement rides. In addition to the current requirement that the amusement ride operator report to the Division of Occupational Safety and Health by telephone each known incident where the maintenance, operation, or use of the ride results in a fatality or injury to a person that requires medical service other than ordinary first aid treatment, this bill would also require a report for incidents involving a loss of consciousness that requires medical service other than ordinary first aid, a mechanical malfunction, or a patron falling from a moving ride or falling from a ride that has temporarily stopped in an elevated position. The bill would require that the owner of a temporary amusement ride provide training for employees in the safe operation and maintenance of amusement rides as recognized by a specified standard setting agency and consistent with requirements for an injury and illness prevention program. The bill would require that the provisions of the law pertaining to temporary amusement rides shall be enforced by the issuance of a citation and notice of a civil penalty, which an owner or operator could appeal to the Occupational Safety and Health Appeals Board. The bill was amended to allow enforcement in some other manner deemed appropriate by the Division (Underscored language added by amendments on June 7). Initially the bill proposed repeal of the misdemeanor sanction for violation of statutory and regulatory provisions pertaining to temporary amusement rides but the proposed repeal was subsequently withdrawn in the May 9 amended version. The bill was amended on April 9 and 16, 2007, to require the owner of an amusement ride to maintain all training records necessary to demonstrate that training requirements have been fulfilled and to require a report of a specified incident to be submitted within 24 hours (rather than the previous five days).

SB 869 (Ridley-Thomas)

**Labor Code Section 62.5, 90.3, Unemployment Insurance Code Section 1095
Workers' compensation insurance coverage program.**

Existing law requires the Labor Commissioner to establish and maintain a workers' compensation insurance coverage program for targeting employers in industries with the highest incidence of unlawfully uninsured employers and annually report to the Legislature concerning the effectiveness of the program. The report is required to include specified information.

This bill revises these provisions to require the program to systematically identify unlawfully uninsured employers and would authorize the Labor Commissioner to prioritize targets for the program in consideration of available resources. The bill would revise the reporting requirements to, among other things, require the report to be posted on the Labor Commissioner's website.

Existing law establishes the Workers' Compensation Administration Revolving Fund in the State Treasury. Money in the fund may be expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the administration of the workers' compensation program, except as provided, and for the Return-to-Work Program.

This bill authorizes these funds to be used for the enforcement of the insurance coverage program maintained by the Labor Commissioner.

SPECIAL REPORT: 2007 LEGISLATION

Existing law requires the Director of Employment Development to permit the use of any information in his or her possession to the extent necessary for specified purposes.

This bill additionally requires the director to permit the use of any information in his or her possession to the extent necessary to enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify unlawfully uninsured employers.

SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

Introduction

Compensation for permanent partial disability remains one of the more disputed areas of workers' compensation at the policy-making level and at the individual case level. Other disability insurance systems, such as social security or long-term disability insurance policies, cover only total disability, however that may be defined. Among social insurance systems, workers' compensation is unusual in its attempt to comprehensively address partial disabilities. Of all indemnity and medical benefits paid by insurers in 2006, 1 percent went to permanent total disability while 22 percent went to permanent partial disability.²² Discussions of permanent disability (PD) usually are focused on the evaluation and compensation of permanent partial disability.

At the public policy level, there is no general agreement on the appropriate level of compensation for PD. For temporary disability (TD), the benchmark is replacement of two-thirds of wage loss. There is no similarly accepted standard for compensation of permanent partial disability. Similarly, there is no agreement on an acceptable level of cost to employers. California employers have enjoyed dramatic reductions in workers' compensation costs since 2003. At the same time, injured workers have seen the first substantial decline in PD compensation in decades, possibly in the history of worker's compensation. PD policy need not be entirely a zero-sum debate. Improved return-to-work (RTW) performance can reduce the losses for injured workers without requiring increased disability compensation payments from employers. Ongoing research provides objective information that can help policymakers optimize the balance between the interests of employers and workers, seeking solutions that meet the needs of all principal stakeholders.

At the individual level, case outcomes remain unpredictable due to unresolved issues over the application of the "new" (2005) rating schedule versus the "old" (1997) rating schedule, the interpretation of the new schedule, and a host of other questions that remain to be answered in the wake of dramatic reforms. Unpredictability promotes litigation and inefficiency, and it can add to dissatisfaction with the system. The reduction in PD awards, which are the traditional source of attorney fees, has constricted the availability of legal representation for injured workers. Whether the remaining benefits are appropriately targeted to the workers, who need them, remains to be seen. Other social insurance programs or individuals may be bearing the burden if compensation has been cut too far, while employers may still be paying for excessive benefits in some cases.

Research continues to provide more information on the performance of the PD system and the wage losses that the system is designed to address, and further changes in the permanent disability rating system are expected.

²² Based on Workers' Compensation Insurance Rating Bureau (WCIRB) "[2006 California Workers' Compensation Losses and Expenses](#)" released June 18, 2007. In calendar year 2006, insurers paid \$1,568,018,000 in permanent partial disability indemnity. An additional \$43,948,000 was paid in life pensions, which are benefits added to permanent partial disability awards of 70 percent or greater. Insurers paid \$98,745,000 in permanent total disability benefits. The total paid for these three categories of PD benefits was \$1,710,711,000. Permanent total disability indemnity represents 5.8 percent of that total. In the same year, insurers paid \$1.9 billion for TD and other indemnity (non-medical) benefits and \$3.8 billion for medical services. These figures do not include self-insured employers or the state government, but the relative distribution is assumed to be similar, and system-wide expenditures are estimated as 1.25 times the insurers' expenditures.

SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

Evaluation of 2004 – 2005 Reforms

Key points of the PD reforms enacted in 2004 were:

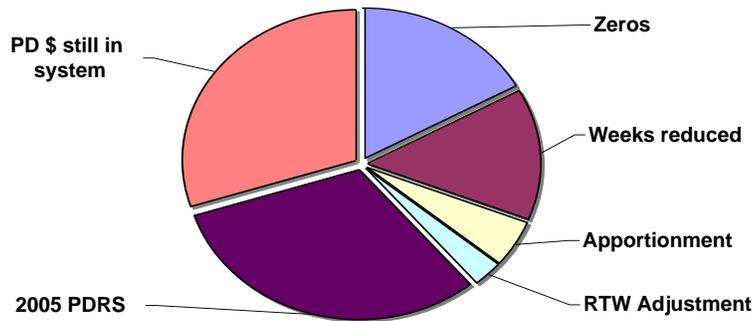
- Disability evaluation shall be based on the American Medical Association (AMA) *Guides*, 5th edition.
- The number of weeks of benefits is reduced for all but the most severe ratings.
- Where a disability has multiple causes, apportionment is based on causation.
- PD payments may be increased or decreased by 15 percent depending on whether the employer offers a suitable RTW.

In addition, an administrative revision of the rating schedule was required to implement the legislative changes.

Evaluation of the new PD compensation system begins with comparison to the former system because past experience is an inescapable point of reference. Until the new system becomes as well understood as the former system, these comparisons are a means of attempting to understand the performance of the new system.

The legislative changes were estimated to reduce the aggregate amount of PD benefits by about one-third. In addition, the rating schedule had to be revised to implement the AMA *Guides* with an adjustment for diminished future earning capacity (FEC). Compared to the former rating schedule, the 2005 schedule reduced the remaining benefits by 54 percent. Altogether, the aggregate dollar amount of PD benefits was reduced to one-third of what it would have been without the 2004 and 2005 changes.

PD reductions per SB 899 and 2005 PDRS

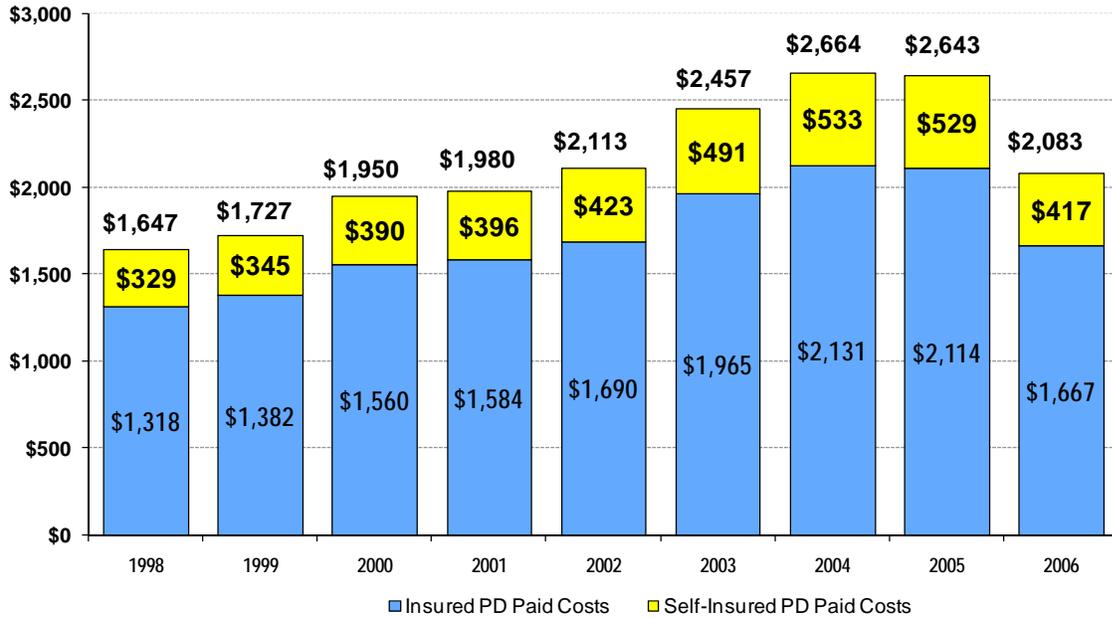


These effects of the changes to the PD system have been explained in greater detail in the Systems Overview section of this Annual Report. These estimates are based on empirical data from thousands of Disability Evaluation Unit (DEU) case ratings, combined with a benefit simulation model that simulates the performance of the PD system.

Another way to examine the changes in the PD system is to look at actual paid losses. The data from the Workers' Compensation Insurance Rating Bureau (WCIRB), extrapolated to include self-insured employers, indicate that the amounts paid in PD benefits did decline, although the decrease in paid losses is smaller than the predicted decrease.

SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

Permanent Disability Paid Costs (Mln\$)



Data Source: WCIRB

One reason the decrease in paid losses is smaller than the two-thirds reduction attributed to the reforms is the fact that the amounts paid in any particular year include payments on older claims that were determined according to the law prior to reforms. The full effect of the reforms has not yet shown up in the yearly payment data. Additional factors that may affect the amount of paid losses have not been thoroughly analyzed; however, it is clear that the reforms have substantially reduced employers' costs for PD benefits.

DWC Research

Moving beyond comparisons to the former system, the Division of Workers' Compensation (DWC) has released three studies. These are:

Return to Work Rates for Injured Workers with Permanent Disability
released January, 2007 *[insert hyperlink to DWC report]*

Wage Loss for Injured Workers with Permanent Disabilities
released March, 2007 *[insert hyperlink to DWC report]*

Uncompensated Wage Loss for Injured Workers with Permanent Disabilities
released May, 2007 *[insert hyperlink to DWC report]*

DWC Return-to-Work Study

In the first study, DWC looked at Employment Development Department (EDD) earnings records of workers who had received PD ratings within 18 months of their dates of injury. A worker would be counted as having returned to work in some fashion if the worker showed any earnings in the EDD

SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

quarterly record four quarters after the date of injury. This approximation of the 12-month RTW rate is believed to be a strong predictor of the long-term economic outcome of an injury. The findings indicate that RTW rates improved to 70.0 percent in 2005 after holding steady at 64.8 percent in 2003-2004 and 64.8 percent in 2000-2002.

The significance of these findings is difficult to establish. At the risk of over-interpretation, one might argue that a modest amelioration of the average economic consequences of injury could warrant a modest reduction in average compensation.

A remarkable incidental finding is that the number of PD ratings meeting the 18-month cutoff fell from over 15,000 cases a year in 2003-2004 to only 3,323 cases in 2005. This suggests that there may be a difference in the sample characteristics that undermines any conclusions drawn from the sample.

It will be informative to observe how the findings evolve if the RTW study is repeated from year to year, possibly with broader inclusion criteria.

DWC Wage-Loss Study

In the second study, DWC examined proportional wage losses and PD ratings for 28,593 workers with dates of injury from October 2000 through June 2003. The DWC study, like the RAND study before it, provides an important picture of the differences in average severity of economic impacts across different types of injuries. One function of the rating schedule is to achieve equity across types of injuries, so that the average compensation is proportional to the average loss of earning capacity regardless of type of injury.

DWC methodology was not identical to the methodology employed in the RAND study of 108,373 workers with dates of injury from 1991 to 1996, so the results are not entirely comparable. DWC used adjusted final ratings where RAND used standard ratings. DWC estimated the earnings that would have been expected in the absence of injury based on the earnings of uninjured workers matched by propensity score, where RAND's estimate was based on the earnings of workers at the same firm with matching pre-injury histories. Comparisons are further complicated by misunderstandings regarding data methods.²³ It is difficult to identify whether differences in results of the two studies are attributable to the differences in methodology, or to real changes in the economic consequences of injury, or to a combination of factors. The results of the two studies, however, are generally consistent. Given the differences in methodology, one must be careful not to over-interpret the small differences in results.

Future studies repeating the DWC methodology can be compared to one another for more detailed analysis of trends over time. The DWC wage-loss study provides an important baseline for future research.

DWC Uncompensated Wage-Loss Study

The third report adds two more steps. It calculates the uncompensated wage losses under the 1997 rating schedule, and it compares average final ratings under the 2005 rating schedule to average final ratings under the 1997 schedule.

The DWC calculation finds a smaller change in average ratings than the Commission on Health and Safety and Workers' Compensation (CHSWC) studies. The differences may be related to differences in sample selection criteria and weighting the sample. CHSWC finds approximately 40 percent reduction in average ratings based on 30,537 reports rated under the 2005 PDRS through January 17, 2007, and weighted in an effort to normalize the distribution of maturity. DWC finds approximately 30 percent

²³ DWC made a statement that "The RAND methodology used only quarters of earnings where the reported earnings of the injured workers were greater than zero." According to Robert Reville, author of the RAND study, this is not correct; all quarters in the three years after date of injury were used in the RAND calculation of wage loss.

SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

reduction in average ratings based on 3,311 cases with dates of injury prior to October 1, 2003, a cut-off date that results from an effort to select for a representative distribution of maturity.

The calculation of uncompensated wage loss for workers injured in 2002 is shown in the table on page 5 of the DWC report.²⁴ The average total wage loss over a three-year period (column 7) is determined for each type of injury by subtracting the average actual earnings over that period (column 3) from the expected earnings (column 2). The average PD benefits (column 4) and TD benefits (column 5) are subtracted from the wage loss to arrive at the uncompensated wage loss (column 8). As discussed in the report, TD compensation rates have increased since 2002. This would tend to allow PD compensation to be reduced without changing the net amount of uncompensated wage loss.

Another aspect of the rating schedule is the adjustment for the age of the worker at the time of injury. California has historically maintained upward adjustments for older workers and downward adjustments for younger workers, on the theory that it takes longer for older workers to adapt to disabilities. The RAND study demonstrated that younger workers sustained the greatest three-year wage loss, not to mention the fact that their wage losses would continue for many more years than the losses of workers who are already nearing retirement. DWC studies have confirmed the fact that the existing age adjustments are not empirically justifiable. The next revision of the schedule should abandon the traditional age adjustment table.

The Administrative Director (AD) of the DWC is expected to adopt a revision of the rating schedule in 2008 to reflect additional studies that have become available since the 2005 schedule was adopted. The exact nature of the revisions has not been announced.

Anticipated Changes, Further Research, Open Questions

The full impacts of the 2005 reforms will not be precisely known for years. In the meanwhile, a revised rating schedule may arise from the research already discussed. Research will continue to elucidate the effect of changes already enacted and to inform the discussion of future changes.

Broad measurements of changes in benefits do not reveal all the impacts on employers and workers. The price of insurance for insured employers has not fallen by as much as benefits have dropped, perhaps due in part to uncertainty whether the savings are really as great as they appear and whether the reforms will remain substantially intact. Improvements in RTW rates and increases in TD compensation rates may be improving the economic consequences of industrial injuries for some workers, although injuries can still bring economic ruin to others. The public policy goal, how much compensation should be paid for permanent partial disability, remains indistinct, and the data remain incomplete. Measurements of three-year wage loss do not distinguish the TD phase, during which benefits replace two-thirds of lost income, from the PD phase, during which the benchmark level of compensation is undefined. Three-year-wage losses have been shown to be useful predictors of longer-term wage losses, and three years is a feasible period for observational study, but the actual dollar losses may continue indefinitely for some partially disabled workers.

Many questions remain. One striking phenomenon is the drop-off in the number of PD ratings when the new schedule was adopted. Could it be that the number of cases that get zero-rated under the AMA *Guides* have been greatly underestimated and drop out of the system? Are there thousands of PD cases just waiting in hope of a more generous rating climate? Have other aspects of reforms, such as the advent of evidence-based medicine to treat injuries, reduced the number of needless claims? Have reforms strengthened the California economy? Has the true cost of occupational injuries dropped, or has it just been shifted? What further changes will make California an even better place to live, work, and do business?

²⁴ The DWC Report "Uncompensated wage loss for injured workers with permanent disabilities." can be found at: <http://www.dir.ca.gov/dwc/dwcrep.htm>. (See Table 1 of this report).

SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

While the expected 2008 revision of the rating schedule will be a fine-tuning or perhaps a mid-course correction of the reforms to the PD rating system, further research and further changes are likely as California continues to seek a system that serves the needs of both employers and workers.

SPECIAL REPORT: SUMMARY OF NOVEMBER 17, 2006 RETURN-TO-WORK ROUNDTABLE

Background

Research supports the observation that return to work (RTW) at the earliest appropriate time reduces the long-term wage loss of an injured worker and the costs borne by employers. Earlier Commission on Health and Safety and Workers' Compensation (CHSWC) studies by RAND found that California consistently had poor RTW rates for permanent workplace injuries when compared with other states. California's injured workers are far more likely to be out of work after their injury, and in the long run, the benefits could not compensate the resulting lower earnings.

Assembly Bill (AB) 227 and Senate Bill (SB) 899 provided rules and programs that encourage employers to offer work to their injured employees. These programs include monetary incentives to return the injured worker back to work, supplemental job displacement benefit (SJDB) vouchers, and the RTW workplace-modification reimbursement program.

At the request of 2006 CHSWC Chair Angie Wei, CHSWC staff held a RTW roundtable meeting on November 17, 2006, in Oakland, to discuss the operational and technical aspects of the RTW program. The roundtable involved 30 stakeholders of the workers' compensation system representing insured and self-insured employers, labor, insurance carriers, medical providers, and attorneys. The discussion centered on identifying the current issues with respect to RTW in California, as well as identifying potential solutions.

Key areas identified in advance of the roundtable included:

- *Timing of the SJDB vouchers.* The current statutes provide for SJDB vouchers very late in a claim, because the voucher amounts can only be determined after an award of permanent partial disability (PPD) benefits is made.
- *Disability rights.* State and federal laws, the Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA) require the employer to engage in a timely, good faith interactive process with the injured worker to determine reasonable accommodations. These requirements need to be coordinated with workers' compensation claims.
- *RTW reimbursement.* State law authorizes the Division of Workers' Compensation (DWC) to reimburse eligible employees to make workplace modifications to accommodate an injured employee's return to modified or alternative work.
- *Notices.* Requirements for notices need to be clarified and coordinated. These include: notices about final temporary disability (TD) benefits; initial permanent disability (PD) benefits; potential rights to a voucher; the interactive process to determine reasonable accommodations; offers of regular, modified, or alternative work; eligibility for a voucher; and 15 percent increased or decreased PD benefits.
- *Carve-Outs.* Statutes need to be updated to require that workers' access to SJDB vouchers are not diminished in a carve-out.

Preliminary results of a RAND survey of 40 large California employers with RTW programs indicated the trends in RTW. Use of RTW programs has been rising since 1980 and before many of the recent reforms or incentives. By 2000, 75 percent of the sampled employers had a RTW program, defined either as an informal program, a written program, or a written program with rules. Characteristics of RTW programs varied, with modified tasks being quite common, but modified equipment and modified work schedules

being far less common. The effects of the RTW programs on costs varied in this preliminary study, with some support for modified tasks and less certainty for other changes. It was noted that employer provision of some form of healthcare could lead to reduced costs.

Both technical problems with the current 15 percent PD adjustment incentive and the SJDB voucher, as well as larger systemic problems with RTW, included the issues below:

Goals and Priorities

- Early intervention.
- Accountability of all participants.
- RTW (direct placement) with the at-injury employer as first choice: this requires management buy-in; and small employers need assistance.
- RTW with any employer (training and placement).

Key Issues

Key issues include the following:

Role of Physicians

- There is a need for physicians to be more aware of the wider needs of patients, including RTW.²⁵ This is difficult because of the lack of time and/or any financial incentives for physicians to take on the issue of RTW with their patients.
- Physicians should be aware of needs of both employees and employers regarding RTW.
- Medical reports are delayed and are often received too late to meet the SJDB deadline.
- Physicians are not sufficiently trained on American Medical Association (AMA) *Guides*, which is used to determine impairment ratings and related incentives to RTW.

Offers of RTW

- To avoid liability for the SJDB voucher, an employer/insurer may make an offer of work based on the ending of TD, which could be too early because the employee could still be recovering in transitional work.
- Medical report delays prevent employers from understanding work restrictions and offering work within the deadlines.
- With temporary workers, employers cannot offer 12 months of work.
- Some employers are willing but not able to offer RTW; other employers are able but not willing to offer it. The circumstances vary among employers.
- Employees are not offered work where the employer-employee relationship is not good; the voucher may be used as a pretext to terminate older workers or unwanted workers.
- It is difficult for small employers to offer RTW.

²⁵ The American College of Environmental Medicine (ACOEM) Guideline September 2006 article entitled "Preventing Needless Work Disability by Helping People Stay Employed."

SPECIAL REPORT: RTW ROUNDTABLE SUMMARY NOVEMBER 17, 2006

Vouchers

- It is unclear whether a compromise and release (C&R) is an award for purposes of determining the time frame for providing the voucher.
- It is unclear whether a voucher is required when the employee leaves, retires, or is terminated.
- It is unclear whether a voucher is required when there are work restrictions but no ratable PD.
- Vouchers are not working, so most parties settle instead.
- Vouchers may not be successful without some of the mechanisms that were included in vocational rehabilitation.
- There is no maintenance allowance for the worker.
- Vouchers have no time limit or expiration date.
- Statutory employers (such as temporary agencies) are required to pay a voucher even if the employee gets another job.
- The 12-month timeline to offer modified work is not compatible with the job descriptions of daily hires (e.g., agricultural and entertainment industries).

PD Adjustment, 15 Percent Increase or Decrease

- The 15 percent PD adjustment does not create sufficient incentive for employers to offer RTW.
- Sometimes PD has already accrued before the deadline to offer RTW, so there is no incentive to offer RTW.
- The time frame of the PD incentive is not well coordinated with SJDB voucher deadlines.

Fair Employment and Housing Act

- Improved coordination is needed between workers' compensation and FEHA/ADA requirements.
- The deadline to offer RTW may cut off the interactive process between the employer and the employee.

Small Business Issues with Return to Work

- RTW laws are focused only on the at-injury employer.
- Small and medium-size employers lack resources to implement RTW programs.
- Employers, particularly small businesses, do not know where to start.
- Coordination between workers' compensation and FEHA/ADA protections is lacking.
- Poor relations hinder the RTW process; i.e., some companies use the injury as an opportunity to lay off older workers or other "problem employees," and some injured employees drag out the process with no intention of returning to work.
- Insured employers do not directly experience the reduction in workers' compensation liabilities that self-insured employers experience, so most of the existing incentives have no direct effect on insured employers. Incentives are needed that will reach insured employers.

Roundtable Recommendations

Short-term and long-term technical and systemic recommendations to the RTW process include:

Short-Term Suggestions

- Establish educational programs for employers:
 - Educate about the Division of Workers' Compensation (DWC) reimbursement program.
- Provide an information database (e.g., sample programs, policies, procedures) and mentors.
- Train physicians:
 - To understand that what makes the injured worker happy is not necessarily what is right for the worker.
 - To address RTW issues using ACOEM "Preventing Needless Disability" guideline.
 - How to use the *AMA Guides*.
- Make technical changes regarding the SJDB and tiered PD benefit. These include coordinating:
 - Deadlines and timing of notices, such as notices of potential right to SJDB.
 - Eligibility criteria for the offers of regular, modified, or alternative work.
 - Timing of the offer of regular, modified, or alternative work.
 - Timing of the PD adjustment of 15 percent.
 - Timing of the SJDB voucher.
- Conduct needs assessment on RTW practices for small and medium-sized businesses.
- Provide incentives to physicians to spend the time needed to assist in the RTW process; for example, reimburse them for completing a functional capacity evaluation form.
- Create outcome-based medical fee schedules (pay-for-performance).
- Require that necessary medical care be authorized promptly; do not require that utilization review treatment follow the ACOEM guidelines.
- Extend the TD ending date (e.g., limit the aggregate weeks of payment instead of limiting the period of payment), so the injured worker is motivated to attempt RTW.
- Explore how to specify requirements involving:
 - Seasonal and temporary employment (e.g., farm workers, entertainment industry, daily hires).
 - General and special employment.

Long-Term Suggestions

- Consider a mentoring role between large companies with RTW programs and small companies without these programs in place.
- Assess the adequacy of the funding of the RTW reimbursement fund.
- Provide employers with an "off-the-shelf" RTW solution or guide for what an RTW program should look like.
- Assess the need for publicity about the reimbursement fund for worksite modifications at employers with fewer than 50 employees. Most employers do not know about this fund.
- Consider the ends and means of compliance with the process requirements versus RTW outcomes that are not being facilitated or coordinated.

SPECIAL REPORT: RTW ROUNDTABLE SUMMARY NOVEMBER 17, 2006

- Redesign the existing RTW and voucher system, potentially using funds from existing programs and redirecting them to a more functional program.
- Examine sources of funding for RTW programs. Suggest funding to include redirecting current funding and looking for additional funds.
- Examine best practices in early intervention programs and pre-injury management for RTW.
- Examine other states' RTW programs, such as Oregon and Texas.
- Examine California State Department of Rehabilitation programs for possible coordination with workers' compensation.
- Examine California State Department of Fair Employment and Housing programs for possible coordination with workers' compensation.
- Explore incentives/support for job placement, including services and/or resources from the Department of Rehabilitation, the Labor and Workforce Development Agency, and CalJobs.
- Consider an integrated disability-management approach to treating injuries.
- Separate the medical-treatment process from the medical-legal process, including the determination of PD (e.g., as in the state of Nevada).
- Provide education/training on RTW to all stakeholders of the workers' compensation system, particularly small businesses.
- Involve the State needs in the RTW process providing funding, coordination, information and training.
- Consider including the services of an RTW counselor, ombudsman, or specialist.
- Track outcomes on RTW and establish performance measures for the RTW counselor.
- Require employers to justify why transitional duty is not available, as in, for example, the American Disabilities Act (ADA) model.

Next Steps

- Develop legislative proposals to carry out short-term recommendations for technical changes.
- Continue to research, analyze and develop alternative proposals to carry out the long-term recommendations.

SPECIAL REPORT: SUMMARY OF THE DECEMBER 7, 2006 CHSWC 24-HOUR CARE ROUNDTABLE

Introduction

At the request of the Commission on Health and Safety and Workers' Compensation (CHSWC) 2006 Chair Angie Wei, CHSWC staff held a 24-Hour Care Roundtable meeting on December 7, 2006, in Oakland, to provide an update on the state of 24-hour care programs, to discuss the operational and technical aspects of a 24-hour care system, and to investigate the options for integration, such as integrating health care services or integrating health care services with both group health insurance and workers' compensation insurance. The roundtable included 26 stakeholders in the workers' compensation system representing insured and self-insured employers, labor, insurance carriers, and medical providers.

Discussion centered on identifying the current issues and challenges with respect to 24-hour care in California:

- Successful models in other states, as well as in California.
- Challenges to implementing a 24-hour care system.
- Recommendations and objectives when moving toward a 24-hour care system such as implementation in the public sector, voluntary participation with incentives in the private sector, and implementation within carve-outs.

Summary of Background and Research Presentations

William Molmen, General Counsel of the Integrated Benefits Institute (IBI), provided an overview of studies and surveys on integrated care. The presentation focused on ways that health care plays an important role in the cost structure and bottom-line workforce productivity of a business. IBI has measured and benchmarked this issue in a number of studies. Some of the surveys and findings²⁶ included:

- A 2002 study by IBI found that employee group health is the largest benefits program, while workers' compensation is a relatively smaller program.
- A survey of employers found that employers do not always understand that injuries and illnesses create lost productivity costs and that lost productivity results in much larger costs to the employer than paid benefits. IBI uses a "lost-productivity multiplier model" to calculate total costs from absence.

The HPQ study by Ron Kessler of Harvard Medical School looked at the conditions that drove "presenteeism," which is defined as an underperforming workforce which is at work but not fully productive because of health-related conditions. The results of the Kessler study indicate that the majority of the costs to employers are related to presenteeism.

- An IBI survey in 2004 asked employers about health care costs. Employers replied that they were using two approaches: shifting responsibility and costs to workers; and promoting health. Only 15 percent of employers replied that in the future, they would continue to try to minimize costs year-to-year. However, 61 percent of employers said that they wanted to manage the burden of ill health by managing absence, disability and productivity.

²⁶ IBI research publications are available at: www.ibiweb.org/publications/research

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- Another IBI survey in 2006 of Chief Financial Officers (CFOs) revealed that almost 50 percent believe that absenteeism and presenteeism already have a meaningful effect on their company's business performance.
- A seminal study in 1994 by the California Workers' Compensation Institute (CWCI) compared group health with workers' compensation medical treatment in California, looking at about 70,000 claims from each of the systems from the years 1990-1991. Results showed that workers' compensation costs and utilization were higher than in group health, but that workers' compensation medical treatment duration was much shorter than in group health.
- An IBI study utilizing a survey of physicians conducted by Cornell University was conducted in 2002 to capture the physician's viewpoint. Almost all physicians surveyed agreed that return to work (RTW) should be part of treatment. In addition, an Intracorp/CIGNA study from 2001 looked at days off work by occupation for both workers' compensation and non-occupational patients. In general, workers' compensation patients stay off work much longer than non-occupational patients.
- A 1998 IBI report focused on a Pacific Bell pilot which involved four health plans, including Kaiser, based in Orange County, California. The health plans in the pilot were used by injured employees to determine compensability for and to treat workers' compensation injuries. Each plan was required to have a nurse case manager, the third-party administrator (TPA) had a case manager, and RTW and disability management were stressed by Pacific Bell as part of the pilot.

Conclusions from the pilot included that: patient satisfaction is the key to results; communication is critical; injured workers stayed within the networks; the primary care physician (PCP) needs access to expertise and case management; and start-up investment in training of medical care providers is needed to ensure success.

- IBI also surveyed over 100 employers for an integrated benefits best-practices survey, 77 of whom had integrated disability-management programs covering workers' compensation and short-term disability programs. The survey indicated that the best practices for an integrated system included: transitional RTW; strong integrated case management; common claim intake; and comprehensive communication.

24-Hour Coverage: How Can We Get There From Here?

Mark Webb, Vice President, Governmental Relations, Employers Direct Insurance, focused on the federal Employee Retirement Income Security Act (ERISA), the Health Insurance Portability and Accountability Act (HIPAA), and traditional institutionalized health care delivery products. His presentation raised many questions and issues including:

- The California Labor Code prohibits employee contributions in the workers' compensation system and mandates that costs be fully paid by the employer. Carve-outs also do not allow cost sharing.
- Federal law also impedes state-designed 24-hour care programs. ERISA governs employee benefit plans; even if a plan is voluntary, it means that it is voluntary to the employee and not sponsored by the employer; if it is an ERISA plan, then the employer cannot contribute.
- Outcomes of past 24-hour care pilot projects were inconclusive. Discussion of coordination vs. integration weighs heavily on current legal, political and institutional hurdles that need to be cleared (for example, litigation in Maine over 24-hour care).

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- In California, evaluation of a 24-hour care pilot concluded that more outreach to employees would be needed but recognized that ERISA preempts such activities. Finally, HIPAA might apply if both systems were truly integrated, and that would result in questions of who owns patient data.
- Additional issues raised included the question of payment, for example, whether the employer at the time of injury would still be responsible for the entire costs of a workers' compensation claim even if the employee changes jobs following an injury or illness. This raises questions such as:
 - Will broader spreading of risk reduce safety incentives?
 - Will medical costs still be included for purposes of experience rating?
 - How do various models for determining health care premiums (not based on occupational classification) shift the equities in the workers' compensation system?
 - How could risk-adjusted rates affect safety incentives for small employers? (See Insurance Code Section 10714 relating to premium calculations for small-employer health plans.)
 - Will RTW initiatives be more difficult to implement if the treating physician is not immediately aware that the injury or illness is occupational?
 - To what degree will the workers' compensation "infrastructure" still need to be maintained regarding injury and illness reporting to Cal/OSHA?
 - How will special programs be maintained (e.g., asbestosis)?
 - Is the current medical provider network (MPN)/utilization review (UR)/Medical Treatment Utilization Schedule (MTUS)/medical-legal structure the best way to maximize both outcomes and efficiencies? Private carriers are already integrating short-term disability (STD)/long-term disability (LTD)/workers' compensation programs where the insurer has a disability and workers' compensation certificate of authority or pursuant to joint marketing opportunities. STD/LTD may or may not be covered by ERISA given that the programs are coordinated rather than integrated.

California is unique in that the State is exempt from ERISA and is legally uninsured for workers' compensation. This allows for far greater flexibility in fashioning benefit programs. The State is already offering private sector-administered, voluntary LTD programs where benefits are offset by workers' compensation, social security, and other payments including CalPERS and CalSTRS disability retirement income. A program is offered for excluded employees.

The presentation concluded with additional questions:

- What are the objectives of 24-hour care?
- What does a 24-hour care medical system eliminate in terms of costs when there is still an obligation on the part of the employer to provide lifetime benefits, a need to make specific determinations for the purposes of disability evaluation, and a need to maintain two sets of medical records to address privacy concerns under HIPAA?
- Would a 24-hour care system mean that occupational medicine is no different from non-occupational medicine or that both can be embraced in the concept of "medical necessity"?
- Would a review of current laws governing workers' compensation medical treatment result in recommendations that further the goals of providing prompt quality medical care without raising preemption issues?

Integrating Occupational and Non-Occupational Health Care

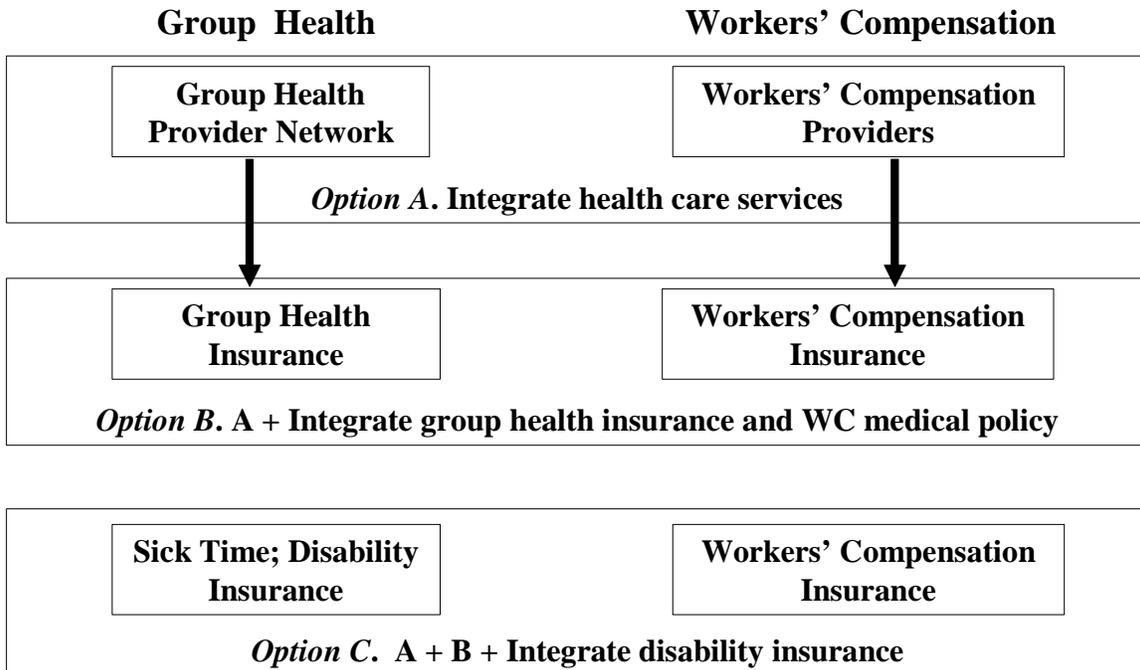
Executive Officer Christine Baker and Judge Lachlan Taylor of CHSWC emphasized the potential benefits of 24-hour care and options for an integrated system, as well as ways to address barriers to establishing a 24-hour care.

Potential Benefits of 24-hour coverage could include:

- Improved quality and coordination of care:
 - Elimination of duplicative medical procedures, such as diagnostic tests.
 - Elimination of uncoordinated and potentially incompatible treatments, such as medications.
 - Improved communication between physicians and other health care professionals.
- Lower overall medical expenditures.
- Reduction in administrative costs of the two systems:
 - Definition of “appropriate care” consistent in both systems.
 - Fewer disputes and delays over treatment.
 - Less litigation.
- Savings for employers and improved affordability for workers.

Options for an Integrated System include:

- Option A:* Integrate health care services
- Option B:* *Option A* + integrate group health insurance policy and workers’ compensation medical insurance policy
- Option C:* *Option A* + *Option B* + integrate disability insurance (disability integration is not subject to discussion in this roundtable).



24-Hour Care System: Potential Barriers

- ERISA.
- Differences between occupational and non-occupational health care.
- Availability and affordability of group health insurance.

ERISA

- Under ERISA, the U.S. government regulates private sector, employer-based pension plans and welfare plans that include health insurance and other types of benefits.
- An exemption in ERISA allows states to regulate employer-provided benefits that are intended solely to comply with workers' compensation laws; however, states are not permitted to regulate private-sector, employer-based plans offering general health care for non-occupational medical conditions.
- Addressing ERISA barriers:
 - Focus on voluntary integration.
 - Enable all private sector employers to integrate both occupational and non-occupational health care services, but keep health insurance and workers' compensation insurance policies separate.
 - Enable private sector employers to voluntarily integrate both occupational and non-occupational medical services and workers' compensation insurance and group health care insurance policies.
 - Focus on public sector employers because they are not regulated by ERISA.
 - Evaluate consequences of complying with ERISA.

Differences Between Occupational and Non-Occupational Health Benefits

- Workers' compensation covers medical benefits for claims based on date of injury without a specific time limit on medical services, whereas general health insurance pays for medical services that are provided during the policy period.
- Workers' compensation usually involves full payment by the employer for required treatment, whereas general health insurance usually requires the individual to share in premium costs and pay co-payments and/or deductibles.
- The two systems have different criteria for necessary tests and appropriate treatments and methods to resolve medical treatment disputes.

Not All Workers Have Group Health Insurance

- Nearly one half of all Californians are ineligible for employer-based group health insurance, either because their employers do not offer health insurance as a benefit or the individual is unemployed.
- Group health insurance is not available or affordable to all workers.
- Addressing group health barriers:
 - Focus on voluntary integration.
 - Integration could provide incentives for employees and employers to participate in group health by making it more affordable.
 - Can incentives be sufficient?

Roundtable Discussion Points

- *Cost of Injuries and Illnesses*
 - The workers' compensation system does not currently look at the total costs. Productivity costs are at least as important as medical costs.
 - Employers need to calculate or understand how absenteeism and presenteeism relate to the enterprise as a whole.
- *Disputes*
 - Disputes about treatments and ratings should be reduced and savings captured.
- *Employee-Centric Model*
 - An employee-centric model would treat the whole employee, not the specific injury. The goal of the model would be to create a win/win for employers and employees.
- *Legal Challenges*
 - Legal challenges include federal legislation, particularly ERISA and HIPAA.
 - Federal ERISA is a present barrier; an integration model would have to receive a legal exemption.
 - A pilot would have to be conducted in a currently exempted pool, such as the State of California. If it becomes a mandated program, ERISA would not apply.
 - Federal HIPAA might apply to an integrated system and is part of the administrative burden of a non-integrated system.
- *Administrative Challenges*
 - HIPAA protections might apply to all patient information, including workers' compensation reporting, possibly requiring two sets of medical records for the purposes of disability evaluation.
 - Administrative processes need to be integrated:
 - The differences in medical care between occupational and non-occupational medicine are the reporting requirements. The majority of non-occupational physicians are not given adequate time to handle that reporting, and they are not trained in permanent disability (PD) reporting.
 - The lack of uniformity in documenting information is also a challenge. Keeping up with what the payers want is difficult, especially because requirements keep changing.
- *Environmental/External Factors*
 - Nearly 50 percent of Californians do not have group health insurance, either because their employers do not offer health insurance as a benefit or the individual is unemployed.
 - Additional workers do not participate in available group health plans because the cost is too high. It will be important to consider the effect of an integrated system on benefits if only half the population is covered by group health.
- *Policy*
 - Integration would need to preserve the incentives of creating a safe workplace.
 - The issue of RTW would need to be at the forefront.
 - The distinction between occupational and non-occupational medicine, if any, would have to be decided.

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- Incentives need to be carefully reviewed.
 - PD, as another example, drives indemnity incentives, including medical incentives. The injury of multiple body parts will maximize the PD rating, leading to some medical treatment that would never be permitted in a group health system.
 - Reporting requirements to Cal/OSHA would need to be coordinated or otherwise captured. This issue was raised; however, sample collection would continue regardless of the system.
 - The distribution mechanism of health care products usually requires licensing brokers and agents, so the delivery of coordinated products might complicate the current process.
 - Cost drivers and friction costs need to be analyzed. A small number of claims account for a large proportion of the costs. A common appeal process would eliminate friction. Eighty percent of costs are medical-only, without medical friction. The other 20 percent could be treated differently.
 - An emphasis by the employer community on functional restoration and RTW would create an environment for broader access to healthcare.
- *Models*

It was suggested that health care may operate in an integrated fashion more in spite of the system than because of the system.

- **Option A** (integrate health care services).

Some people believe that this model is already in place through predesignation and because workers' compensation providers are held to Knox-Keene rules which regulate health care maintenance organizations (HMOs).

Further, adoption of medical provider networks (MPNs) was a decision to adopt the group health model. The challenge would be to make integration more explicit/intentional for all parties.

- **Option B** (integrate A with both insurance policies).

- **Option C** (integrate A + B + disability insurance).

This model was viewed as a useful option to allow measurement of total costs in the system.

Roundtable Recommendations

Short-Term Objectives:

- Coordinate existing administrative functions, forms and reporting requirements through common intake, common integration of processes, including the RTW process and case management, and a common appeal process.
- Identify to what extent the current system fits Option A as well as what could be modified to fit the model. Currently, some people believe that we are already approaching Option A as workers' compensation medical services are integrated through provisions such as predesignation and medical provider networks (short-term objective).
- Gather statistics and data that would include:
 - The number of workers who are covered through employer-based group health and who are not covered, as well as the demographics of these workers.

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- The number of workers of large vs. medium vs. small employers who are covered by group health.
- The number of people who need to seek treatment for the long-term and the cost of this treatment.
- The number of people who change employers and/or plans.
- The number of people who need to seek treatment out of state and the costs involved.
- Employer demographics, such as the percentage of employers with 500 or more employees, number of employers with up to 10 employees who do not offer health benefits, and the percentage of employees without benefits who could potentially be helped by 24-hour care.
- Consider potential avenues to implement 24-hour care, such as within carve-outs and/or in the public sector where ERISA preemption will not be an issue.

Long-Term Objectives:

- Resolve frictional costs. Option B, which looks at integrating insurance plans as well as medical services, will lend itself to discussion of how to resolve frictional costs and what types of dispute resolution mechanisms need to be put in place.
- Maintain a perspective that incorporates all system costs.
- Consider the following areas:
 - Incentives or reimbursements to providers in order to avoid cost shifting.
 - Additional statistics and data on:
 - The total outcomes to the system from both medical/disability and productivity to determine what the total costs would be if 24-hour care were not implemented.
 - The type and quantity of physical medicine that are provided under workers' compensation compared to group health.
 - The decrease in claims which may be caused by workers' compensation claims being shifted into group health.
 - The performance and dynamics of Labor Code Section 5402 (90-day/\$10,000 cap).
 - Analysis of other models:
 - The health care organization (HCO) model which has elements of the group health model, especially the internal dispute resolution system and quality assurance.
 - Programs in other states, especially Oregon and Washington.

For further information ...

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SPECIAL REPORT: FRAUD STUDIES

Recent and ongoing fraud studies are described in the Community Concerns Section on Fraud. The major findings of the fraud studies that have been completed are summarized here.

Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? How are Honest Employers Affected?

Summary

The study finds substantial under-reporting of payroll in jobs where the employer pays high workers' compensation premium rates. The underreporting becomes increasingly more severe as the cost of workers' compensation increases. The level of underreporting results in much higher premiums for firms employing workers in high-risk jobs. Honest employers consequently face inappropriately high premium costs that are not adequately mitigated by experience modification, especially for small employers.

The end result is pressure on honest employers to underreport in order to stay competitive. This in turn raises premium rates, increasing the incentive for dishonest employers to under-report or misreport payroll in high-risk classes. This process can lead to a vicious cycle, driving the very high premium rates and the underreporting observed for high-risk classes of workers.

Findings

Extent of under-reporting

- During the study period of 1997 to 2002, the level of underreporting increased from between 6-10 percent of private industry payroll when premium levels were low (\$2.47/\$100 payroll) to 19-23 percent when premium levels were high (\$4.28/\$100 payroll).
- This translates to a change from \$19.5-\$31.3 billion in 1997 to as much as \$100 billion in under-reported payroll in 2002.

Under-reporting and misreporting by class code and premium level

Besides under-reporting payroll, employers can fraudulently misreport, by reporting workers in high-risk, high-premium classes as earning wages in lower-risk occupations.

- By linking unique data sources, it can be shown that under-reporting and misreporting increase dramatically as the premium rate for a class of workers increases.
- For very low-risk classes of workers, for example clerical and professional employees, misreporting of payroll might even lead to over-reporting of payroll for some premium classes as employers fraudulent shift payroll from higher-premium rate classes.
- On the other hand, for very high-risk classes, as much as 65 percent to 75 percent of payroll is being under-reported or misreported.

Impact on honest employers' premium rates

If employers misreport payroll to reduce premiums, but report injuries accurately when they occur, premiums for high-risk class codes will be inappropriately high.

- Above the median premium level for all classes, honest employers were consistently facing premium levels that were inappropriately high as a result of fraudulent reporting by dishonest employers.

SPECIAL REPORT: FRAUD STUDIES

- Employers in the highest class codes were paying rates up to eight times the rate expected to be seen under full reporting.
- These multiples to the appropriate premium levels are surprising, but they were confirmed by other data sources that showed that actual occupational medical costs rose much less steeply than employers' premium rates when comparing low-risk and high-risk classes of workers.
- The use of experience modification (Ex-mod) factors to adjust employers' premium rates based on past experience does reduce the impact of fraud on honest employers. However, the impact is limited, and only a fraction of employers have premiums adjusted by an Ex-mod.

Misreporting

Under-reporting/misreporting defined

Absent effective auditing or accountability mechanisms, an employer, seeking to minimize insurance costs, has an incentive to under-report or misreport the payroll for different types of employees. For example, a construction firm owner might underreport the payroll for his roofers in order to avoid paying premiums. He might mis-report those payroll dollars as paid to other classes of workers with lower premium rates (e.g. secretaries). Alternatively, the employer might not report this portion of payroll at all (e.g., defining the worker as an independent contractor), thereby avoiding payroll insurance costs altogether.

Misreporting seems to occur

"Exposure" is the term used in workers' compensation for employers' payroll subject to insurance premium. Exposure is reported to the Workers' Compensation Insurance Rating Bureau (WCIRB) by all workers' compensation insurance companies writing policies in California. An inverse relationship is observed between premium and reported payroll, consistent with increasing employer incentive to avoid premium payments when premium rates are higher. As premium levels rise, growth in reported exposure falls, and as premium levels fall, growth in reported exposure rises.

More suggestive evidence of misreporting

Incentives to cheat are greater when the potential savings from doing so are greater. The potential for savings from fraudulent reporting are the greatest in the highest-risk insurance classes. Workers' compensation premiums vary by a factor of 100 over the risk categories defined by the WCIRB and the California Department of Insurance (CDI).²⁷ Therefore, greater cheating is expected (1) in high-risk, higher-premium classes and (2) when the overall rate level is higher.

In the long-term, premium rates are endogenous to reported payroll. If cheating behavior has been occurring for many years, then a divergence in premium rates should be observed. Cheating leads to higher premiums and higher premiums and thus encourage more cheating. In the short-term, changes in employer cheating might be expected, though at a lower level than the long-term accommodation.

Premium fraud and competitive advantage

Employers seeking to minimize total costs have incentives to avoid paying insurance premiums, especially if the workers' compensation system provides a relatively easy and risk-free mechanism for doing so. Indeed, by misreporting payroll costs, employers are able to avoid the higher premiums they

²⁷ For 2003, WCIRB premium rates varied from \$0.43/\$100 for real estate agencies to \$52.16/\$100 for roofers. Pure premium rates include only the direct cost of benefits. Actual premiums, including administrative costs, brokerage fees, profits and taxes, are typically higher than pure premium rates, typically 20 percent to 40 percent higher. See the WCIRB rate filing for 1/1/2003 pure premium rates.

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would incur with full reporting of payroll. Employer savings come from under-reporting or misreporting payroll, and potential savings are greatest for the highest-risk (i.e., highest-cost) employees.

WCIRB recommends premium rates by evaluating historic experience within a risk class of workers (referred to as a Class Code). Experience is composed of reported payroll for a previous period and the estimated ultimate medical and indemnity costs for claims occurring during the period. If employers under-report payroll in a class but accurately report the class code of injured workers, the premium rate estimated by the WCIRB for that class code will be artificially high. Employers who report truthfully for these classes are faced with artificially high premiums and incur higher costs than their cheating competitors. This effect is amplified if the higher premiums in turn encourage more employers to under-report or dishonest employers to under-report to a greater extent.

Insurer incentive to audit reporting

Insurers are required to audit policy holders if the premium exceeds a threshold, currently \$10,000. However, the aggressiveness of the auditing process is subject to question. Even if premium avoidance becomes endemic, workers' compensation insurers may have limited incentive to seek out and punish cheaters as long as premiums rates are artificially high enough to create sufficient total premium to cover costs and profit. An aggressive insurer risks losing a significant fraction of business that, while subject to a relatively high rate of fraudulent behavior, is still profitable because of artificially high premium rates. In addition, insurers incur higher costs if they audit more aggressively.

WCIRB does have an aggressive program of evaluating insurer audits, trying to ensure both employer and insurer compliance. Called the Test Audit Program (WCIRB, 2003), it involves re-auditing approximately 3,000 of the 600,000 policies issued by insurers in California each year. WCRIB results are compared to those reported by insurers, and discrepancies can result in fines, increased audits and other penalties. Insurers meeting high standards are given a pass on audits for eight quarters.

While concerns have been raised that there are certain gaps in the Test Audit Program (e.g., larger employers domiciled out of state often avoid audits), the program is probably the most aggressive effort in the country aimed at ensuring effective auditing by insurers. However, the estimates of premium avoidance in this study may challenge observers' perceptions of both the insurer methods and WCIRB's efforts to measure of the effectiveness of insurer audits.

Among the issues raised by observers are problems with auditing "non-standard" policies, particularly large deductible policies and policies written for non-standard class codes. Also considerable concern has been raised about the impact of professional employer organizations (PEOs) which assume the payroll requirements, including payroll taxes and insurance and contract employees to employers. This arms-length relationship complicates the process of auditing the risk of the underlying employment. This is frequently raised as a growing concern; however, it does not appear that any analysis quantifying the extent or change over time in PEO penetration among high-risk occupations has been done.

If responsibility for monitoring is primarily located in an agent (insurer) that has less-than-perfect incentive to monitor, monitoring will be less-than-perfect and will be increasingly imperfect as the incentive to monitor closely decreases. Limited incentives might also explain why there has been little research into the extent of fraudulent activity.

Estimation of misreporting/under-reporting

The paper details the Current Population Survey (CPS) "true payroll" data sources, WCIRB class codes, payroll and exposure data, as well as adjustments. Estimated "true premium rate" calculation are described. Additional data from the Agency for Healthcare Research and Quality (AHRQ) is also described. Regression results are then explained.

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Insurance pricing modification

Insurance pricing includes modifications for employer experience, referred to as “experience modification” or Ex-mod. The Ex-mod is a factor, centered around 1.0, which adjusts an employer’s actual premium up or down based on an employer’s historic payroll and estimated ultimate losses relative to the average experience of all other employers in the same classes. A portion of an employer’s past experience is used to calculate the Ex-mod with the aim of forcing employers to internalize their injury costs.

Experience rating does reduce the impact on honest employers of under-reporting by dishonest employers. However, it does not eliminate the impact, especially for small employers. In one example, if dishonest employers misreport half of their high-risk payroll in a low-risk class and honest and dishonest employers are among the 80 percent of employers too small to be experience rated, the honest employer will face approximately twice the premium paid by the dishonest employer. If employers are large enough to have experience rating account for 25 percent of the Ex-mod, 50 percent misreporting by dishonest employers results in honest employers paying about 1.5 times the rate of the dishonest employers.

Conclusion

These analyses find that despite auditing by insurers and WCIRB and penalties for fraudulent reporting imposed by statute and regulation, dishonest employers are significantly and substantially under-reporting or misreporting payroll to insurers. In so doing, dishonest employers are gaining unfair advantage relative to honest employers in two ways. First, dishonest employers shift part of their premium payment onto honest employers. Second, by avoiding premiums, dishonest employers can price their products or services unfairly relative to honest employers.

The study concludes with recommendations and caveats on the methodology and addressing of concerns.

Recommendations

CHSWC recommendations include:

- The Legislature, CDI, Department of Industrial Relations/Division of Labor Standards and Enforcement could push for more aggressive enforcement against under-reporting and misreporting. This could include:
 - Focusing more Fraud Assessment Commission (FAC) funding on premium fraud;
 - Raising the civil penalties for premium fraud; and/or
 - Raising the criminal penalties for premium fraud.
- The Test Audit Program that monitors insurer audits of policyholders is currently operated by WCIRB, an insurance industry association. CDI might consider the suggestion of some observers and have this process conducted by a separate, private contractor.
- Employers report payroll data to the Employment Development Department (EDD) for tax withholding and unemployment and disability insurance. These records could be matched to employers’ reporting to insurers for premium purposes. Currently, this avenue is limited by restrictions on insurer access to EDD data. Legislation could simplify this basic audit procedure.
- The Franchise Tax Board receives large amounts of information that could be used to identify fraudulent under-reporting. These data include income information from both employers and workers that could be used to identify fraudulent use of independent contractor status. Again, access to these data is heavily restricted, and legislation might be needed to facilitate access for investigators.
- PEOs have been cited as a frequent avenue for employers to avoid the consequences of high Ex-mods or to disguise the risky nature of workers’ occupations. However, to date, there has been

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no systematic study of the size or scope of the PEO market or the claims experience of PEOs. The State could undertake a study to gauge the impact of PEOs in the workers' compensation market.

- Recently, at least one very large national insurer was fined for systematically under-reporting premium in several states (Bloomberg News, 5/26/07). It is unclear whether the under-reporting extended to payroll and occurred in California. If this extended to California, then the estimates of under-reporting could include fraudulent behavior by at least one insurer, not just employers. This could be a topic for study by CHSWC and CDI.
- If one or more insurers under-reported payroll and premium, there is a possibility that this action could have affected individual employers' Ex-mods. In the aggregate, insurer under-reporting could also have altered pure premium rates set by the WCIRB and CDI. This could be a topic for study by CHSWC and CDI.

“Split” Class Codes: Evidence of Fraudulent Payroll Reporting

The general findings of fraud in payroll reporting (above) have been extended to the specific case of split classes.

Summary

In the 1980s, workers' compensation premiums were rising rapidly, eventually reaching what were then historic highs in the early 1990s. The construction industry, with traditionally high premium rates was especially hard hit. In addition, within the construction industry, union employers felt they were particularly disadvantaged relative to non-union employers in the same industry with whom they competed for contracts.

Union employers saw this disadvantage as a consequence of several factors:

- Workers' compensation premiums are calculated as a percent of an employers' payroll.
- Union employers typically paid substantially higher wages under collective bargaining agreements than were paid by non-union contractors. Hence, for the same number of hours worked, a union employer paid more in workers' compensation premiums, even though the workers were not exposed to any greater period of occupational risk.
- Unions and union contractors also contended that because of better training, longer tenure and a better safety environment, union workers experienced fewer injuries.
- Finally, union contractors pay benefits (e.g., group health and pensions) into accounts for each worker. These benefits are paid directly to joint union-management health and welfare trusts based on hours worked by each worker. Consequently, there was virtually complete payroll and employment reporting by union contractors. Non-union contractors were thought to under-report a substantial fraction of payroll and employment. Non-union contractors might also misreport payroll between high-rate and low-rate classes, something that is unlikely within the union building trades sector.

This combination of factors meant the union contractors were paying higher premium rates than experience justified, simply because they were pooled with non-union contractors. Experience rating, while common for the construction industry, only offsets a fraction of the impact from the low-wage, under-reporting, non-union sector.

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The construction industry and building trades unions requested that WCIRB use split class codes for the construction industry based on the hourly wage paid to the worker. WCIRB examined industry data and determined class codes with bi-modal distributions in the wages paid that represented good candidates for split classification. Segregated classes were developed for: carpentry, electrical wiring, sheet metal, painting, plumbing, masonry, concrete/cement work, wallboard, glaziers, plastering, roofing, excavation, sewer construction, water main construction, automatic sprinkler installation, steel framing—residential, and steel framing—commercial. WCIRB has investigated other classes; however, no others were found suitable for segregation based on wage.

The splitting of classes was meant to establish more equitable premium rates for employers that pay very different wages. It was also meant to make union labor and employers more competitive with the lower-wage, non-union sector. However, there have been ongoing concerns by union employers that non-union employers are fraudulently misclassifying low-wage workers into high-wage classes in order to pay lower premiums. This could also lead to inappropriately higher premium rates for higher-wage employers if injuries and related costs are also assigned to the inappropriate class.

Split Class Premium Rates

Splitting class codes has resulted in substantially different premium rates for similar work but different underlying wage rates. The low-wage classes have higher premium rates, often more than double the rates for the high-wage classes. The difference in premium rates offers a significant incentive for low-wage employers to misreport payroll by shifting it from low-wage classes into high-wage classes.

It should be noted that, while split classes are often thought to be synonymous with union and non-union labor, this is not completely true. Apprentices often earn a wage just below the split-wage threshold in the initial training period, meaning that some union workers will have wages included in the low-wage class. Some non-union workers are paid at a level that places them in high-wage classes. In addition, non-union contractors when working on government contracts are usually required to pay the prevailing wage, which places workers in the high-wage class.²⁸

Findings

Study findings included: that:

- 25 percent to 30 percent of low-wage payroll is being under-reported or misreported.
- Reported payroll is about 10 percent higher than actual payroll and 14 to 18 percent higher than expected reporting for premium purposes.
- The misclassification of payroll gives low-wage employers an unfair competitive advantage relative to high-wage employers.

Conclusion: Evidence of Abuse

The study found evidence that payroll for low-wage workers is:

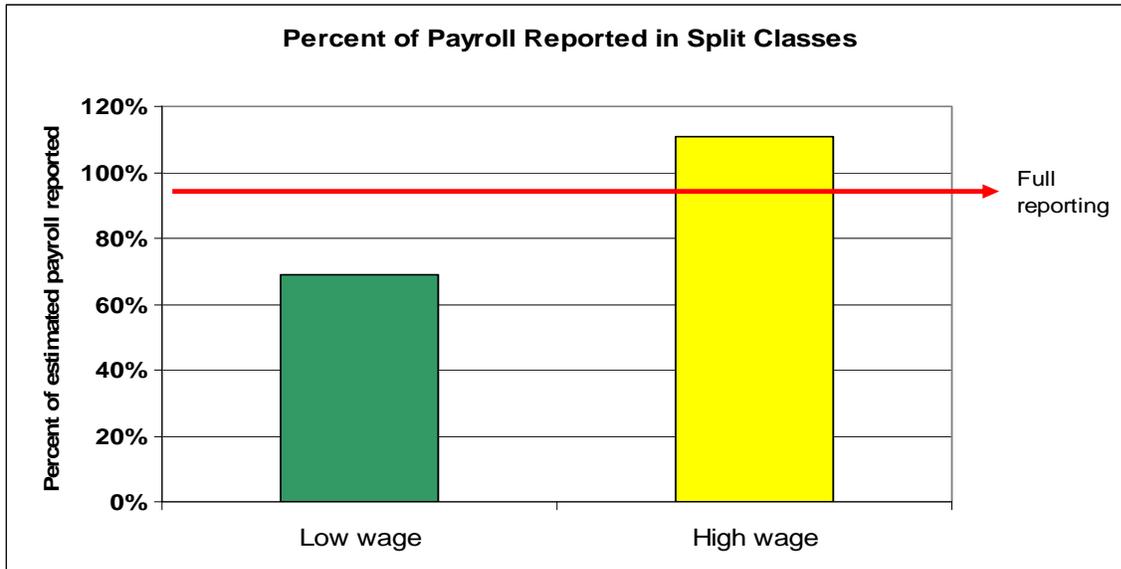
- Being systematically under-reported in the low-wage class codes.
- Some of that payroll may be misreported, shifted from the low-wage class to the high-wage class to avoid the higher premium rates in the low-wage classes.

²⁸ Prevailing wage rules are often referred to as Davis-Bacon wage determinations after the authors of the original federal legislation. For more information see: <http://www.gpo.gov/davisbacon/index.html>

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The chart below summarizes the data. First, note that across all low-wage classes, aggregate payroll reported reflects only about 65 percent of the payroll that we would expect to observe based on wages reported by workers in the survey. Payroll reported to WCIRB is not expected to equal wages reported by workers. Some wages are excluded from reporting for premium calculations (e.g., over-time and shift premiums). Overall, payroll reported to WCIRB for insured employers is expected to be about 92 to 96 percent of actual payroll. This still suggests that 25 to 30 percent of low-wage payroll is being under-reported or misreported.

On the other hand, more payroll has been observed as being reported in the high-wage classes than was observed for all of the high-wage workers in the survey. Reported payroll is about 10 percent higher than actual payroll and 14 to 18 percent higher than expected reporting for premium purposes.



This evidence is consistent with misclassification of low-wage payroll in high-wage class codes. It is expected that high-wage payroll will be nearly perfectly reported because the union employers have an obligation to pay hourly premiums to the health and welfare trusts. However, reported payroll is observed to exceed even this high expectation.

The misclassification of payroll gives low-wage employers an unfair competitive advantage relative to high-wage employers. It does so by reducing their premium costs. It may result in an additional disadvantage to high wage employers if injuries and related costs are also misclassified into high-wage classes. If injuries are misclassified, premium rates in the high-wage class would most likely be inappropriately high (for high-wage workers). There is evidence that reporting can skew the premium rates for classes more generally. This happens because, if an injury is reported to the workers' compensation insurer, the occupation of the worker is likely to be accurately reported by the doctor in her First Report of Injury. It is less clear whether the injury will be misclassified in the case of split classes. If the worker is paid indemnity benefits based on actual wages, it is more likely that the injury will be correctly sorted into the correct wage classification. The impact of misreporting on premium rates for high-wage classes is unclear.

SPECIAL REPORT: UNINSURED EMPLOYERS BENEFITS TRUST FUND

Introduction

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710 through 3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

The workers' compensation community has been expressing concern with several aspects of the UEBTF. In response, the Commission on Health and Safety and Workers' Compensation (CHSWC) has requested that CHSWC staff address some of the emerging issues regarding UEBTF including:

- UEBTF access by injured workers.
- Contributions to UEBTF by self-insured and insured employers.

History of the Uninsured Employer Fund

In 1971, the Legislature created an Uninsured Employers Fund (UEF) with an initial appropriation of \$50,000 to pay workers' compensation awards to injured workers when their employer has failed to secure the payment of compensation and does not pay the award or furnish a bond within 10 days after the award is made.

The initial amount appropriated to UEF was based on the testimony of a representative of the Division of Industrial Accidents that the fund would be self-sustaining. It was expected that the State would be able to recover sufficient monies from illegally uninsured employers. Unfortunately, this conclusion was based on the experience in Ohio, which, unlike California, had a monopoly State Fund.

In August 1973, the California Workers' Compensation *Reporter* reported that the UEF did not have adequate funds to pay the established claims against it. The Legislature subsequently appropriated funds to pay the claims. In 1991, it was provided that penalties assessed against uninsured employers would be deposited in the Fund. In April of 1992, however, the Fund was again exhausted and again replenished by an urgency appropriation on June 22nd. In 1997, Coopers & Lybrand was contracted to prepare a report reviewing the UEF claims management program. Recommendations to reduce payouts, augment training, supervision and staffing, and improve documentation were made, many of which were implemented to the benefit of the UEF program.

A study by CHSWC in 1998 reported that recoveries and penalties from uninsured employers averaged only \$2.3 million per year, while payment of claims on behalf of uninsured employers resulted in a net loss to the State's General Fund of over \$100 million during the five-year period.

In 2003, the name of the Fund was changed to the Uninsured Employers Benefits Trust Fund (UEBTF). As of 2004, Fund losses previously incurred by the General Fund are now incurred by the UEBTF and are now funded by a surcharge on all insured employers and self-insured employers, by penalties to non-compliant employers, and by recoveries from uninsured employers for actual worker injuries.

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Administration of the UEBTF Program

The UEBTF is administered by the director of the Department of Industrial Relations (DIR). Claims are adjusted for the DIR director by the Special Funds Unit in the Division of Workers' Compensation (DWC). UEBTF pursues reimbursement of expenditures from the responsible employers through all available avenues, including filing liens against their property. Litigation for UEBTF is conducted in the name of the Director of the DIR represented by the Office of the Director of the Legal Unit.

Over the years, the DIR director has been successful in obtaining legislation to ease the burden on DIR legal staff (OD-Legal). For example, Labor Code Section 3714 was amended to provide that cases involving the Fund may only be heard by the Workers' Compensation Appeals Board (WCAB) of San Francisco, Los Angeles, Van Nuys, Anaheim, Sacramento, or San Diego in the absence of good cause and the consent of the director. UEBTF, moreover, cannot be joined in a proceeding unless the alleged uninsured employer has come under the jurisdiction of the WCAB, either by making a general appearance or by being served with the application and a notice of lawsuit per Labor Code Section 3716.²⁹

Current Funding Liabilities and Collections

UEBTF Funding Mechanisms

The total program budget for UEBTF in fiscal year 2006-2007 is \$37.6 million. Funding comes from assessments on all insured and self-insured employers annually, from fines and penalties imposed on illegally uninsured employers when they get caught, and from recoveries from illegally uninsured employers when UEBTF has paid benefits and is able to obtain reimbursement from responsible employers.

Funding for UEBTF comes primarily from assessments on both insured and self-insured employers. According to Labor Code Section 62.5(e), the "total amount of the assessment is allocated between the employers in proportion to the payroll paid in the most recent year for which payroll information is available."³⁰

The assessment for the insured employers is based on a percentage of the premium, while the percentage for self-insured employers is based on a percentage of indemnity paid during the most recent year. The total assessment for fiscal year 2006-07 is \$33,818,877. The actual amount to be collected this year is reduced to \$9,276,968 as a result of a one-time balance carryover. An explanation of the assessment and the calculations may be found at <http://www.dir.ca.gov/dwc/06UFund.pdf>

Apart from the assessments on employers required by Labor Code Section 62.5, UEBTF is funded by two other sources:

- Fines and penalties collected by the DIR. These include both Division of Labor Standards and Enforcement (DLSE) penalties and Labor Code Section 3701.7 penalties on self-insured employers.
- Recoveries from illegally uninsured employers per Labor Code Section 3717.

²⁹ For further information on jurisdiction, see McGinty, Steven and Anthony Mischel, "How to Properly Obtain Jurisdiction Over an Uninsured Employer in Workers' Compensation Cases," *Workers' Compensation Quarterly*, Vol. 12, No. 2, Summer 1999.

³⁰ Prior to the workers' compensation reforms of 2004, the funding for UEBTF came from the General Fund.

SPECIAL REPORT: UNINSURED EMPLOYERS BENEFIT TRUST

Table 1 shows monies collected by the source of the revenue.

Table 1: UEBTF Revenues: Fiscal Years 2003-04 to 2005-06

Source of Revenue	FY 2003-04	FY 2004-05	FY 2005-06
Assessments Collected Pursuant to Labor Code Section 62.5	\$32,420,274	\$21,445,206	\$32,250,790
Fines and Penalties Collected	\$3,365,105	\$3,302,956	\$3,931,198
Revenue Collected Pursuant to Labor Code Section 3717	\$5,079,900	\$4,790,639	\$5,448,238
Total Revenue	\$40,865,279	\$29,538,801	\$41,630,226

UEBTF Payment Procedures

- If an illegally uninsured employer does not pay an award against it within 10 days or post bond to secure the payment, the injured worker can make a written demand on UEBTF for payment of the award. Detailed instructions for injured workers are provided at <http://www.dir.ca.gov/dwc/IWguides.html>.
- A valid demand on UEBTF cannot be made unless the illegally uninsured employer either appeared or was served with the application and a notice of lawsuit before the regular hearing.
- On receipt of the demand and a copy of the findings and award, UEBTF is mandated to begin payment of the award.
- To facilitate prompt delivery of benefits, the DIR director has the discretion to pay compensation and provide medical treatment before the WCAB makes an award.
- UEBTF can make payments before the award issues if the injury, disability, and lack of insurance are not seriously in dispute.
- If the uninsured employer has filed for bankruptcy, the injured worker must show that he or she filed a proof of claim in the bankruptcy proceeding and requested relief from the automatic stay of proceedings issued by the bankruptcy court. [*Ortiz v. WCAB* (1992) 4 CA4th 392, 57 CCC 172.]

UEBTF Liability and Collections

- UEBTF is not liable for any penalties or for the payment of interest on awards. (Labor Code Section 3716.2)
- UEBTF is not liable for contributions to insurance carriers or self-insured employers; it is liable in occupational disease or cumulative-injury cases only when there is no other employer with liability. UEBTF is also not liable for treatment that is the liability of Medi-Cal. [Labor Code Section 3716(c)]
- UEBTF is relieved from the obligation to pay further compensation up to the entire amount of any satisfied judgment that the injured worker obtains in a civil action against the uninsured employer. (Labor Code Section 3709.5)

SPECIAL REPORT: UNINSURED EMPLOYERS BENEFIT TRUST

- The DIR director, as the administrator of UEBTF, may institute a civil action against the employer for the collection of the award or may obtain a judgment against the employer pursuant to Section 5806. (Labor Code Section 3717)
- The DIR director may also file a certificate of lien in any county where the employer is likely to have property. The lien continues until the employer pays the award, prevails in the litigation before the WCAB, or posts a bond. (Labor Code Section 3721)
- The DIR director may also enforce any judgment against an uninsured employer by non-judicial foreclosure of the judgment debtor's real property. [Labor Code Section 3716.3(a)]
- UEBTF is also authorized to bring an action against a third party that caused the injury. (Labor Code Section 3732)

Costs of the Uninsured Employers Benefits Trust Fund

Within the past three years, the number of uninsured claims paid increased 64 percent from 1,348 in fiscal year 2003-04 to 2,205 in fiscal year 2005-06. The cost of claims increased 57 percent from \$18.6 million to \$29.2 million per year over the same period. Administrative costs associated with claim-payment activities have increased 27 percent from \$6.8 million to \$8.6 million per year over the same period. Details are provided in Table 2.

Table 2: UEBTF Claims and Costs: Fiscal Years 2003-04 to 2005-06

	FY 2003-04	FY 2004-05	FY 2005-06
Number of UEBTF Claims Paid	1348	2166	2205
Costs of UEBTF Claims	\$18,585,681	\$29,871,617	\$29,251,234
Administrative Costs of UEBTF Claim Payments	\$6,771,602	\$7,382,111	\$8,634,933
Total UEBTF Administrative and Claim Costs	\$25,357,283	\$37,253,728	\$37,886,167

The projected UEBTF annual program cost for the most recent fiscal year 2006-07 is \$37.6 million.³¹ This cost includes the administrative costs associated with claims payment activities as well as the payout on claims filed by injured workers of illegally uninsured employers.

³¹ Division of Workers' Compensation, "Report of the Uninsured Employers Benefit Trust Fund in Compliance with Labor Code Section 3716.1(c) for Fiscal Year 2005-06."

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As shown in Table 3, the number of new UEBTF claims is increasing each year.

Table 3: UEBTF New and Closed Claims Fiscal Years 2001-02 to 2005-06

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
Number of New UEBTF Claims	1,001	1,083	1,263	1,451	1,794
Number of Closed UEBTF Claims	553	661	823	550	820

Table 4 provides data on the ratio of money paid out by employers and insurers compared to that paid out by UEBTF in claims where UEBTF was joined in a WCAB case. The table demonstrates that in these cases, more money is paid to injured workers from employers and insurers than from UEBTF.³²

Table 4: UEBTF Cases Closed by OD-Legal Fiscal Years 2004-05 to 2005-06

	FY 2004-05	FY 2005-06
Amount Paid by UEBTF	\$2,990,720	\$2,453,915
Amount Paid by Employers/Insurers	\$6,246,701	\$5,824,741

Stakeholder Concerns

Concerns have been raised about UEBTF (still commonly called the UEF) from both employers and workers. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers, and workers are concerned about the difficulties in obtaining benefits from UEBTF.

UEBTF Costs and Cost-Shifting

UEBTF costs are driven primarily by the frequency of claims, which are a result of the prevalence of uninsured employers. In the CHSWC 1998 study on Illegally Uninsured Employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured. CHSWC is planning to update this study this year.

A small contribution to the cost may be the cases where a worker obtains disability benefits based on improbably high earnings claimed, and UEBTF is unable to refute the claim because the employer is unavailable or uncooperative. In some cases, substantial indemnity costs for temporary disability or vocational rehabilitation maintenance allowance may accrue before UEBTF ever gets notice of a claim.

Whatever the ultimate costs of the UEBTF program, those costs are shifted to law-abiding employers because some employers will be illegally uninsured. The costs are shifted to all insured and self-insured

³² Data provided by Office of the Director legal staff (OD-Legal) on cases closed for fiscal years 2004-05 and 2005-06.

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employers (including the State, although it is technically not “self-insured”) through assessments. Any one segment of the employer population could argue that it should be exempt from sharing in this cost because it does not generate uninsured claims. Any proposal to redistribute the cost shifting should be evaluated for the impact on those who will continue to bear the burden and for compatibility with sound public policy.

Access to UEBTF

Employee concerns with UEBTF involve the difficulty in obtaining benefits when an employer is uninsured. Representatives of injured workers have suggested that it should be possible to make a claim to UEBTF as simply as making a claim to an insurer. They complain that the additional procedural steps are complicated, difficult to understand and time-consuming, and that benefits are seldom paid voluntarily prior to a WCAB award.

UEBTF is Not Intended to Act like an Insurer

There are reasons for the additional safeguards to obtaining benefits from UEBTF. First and foremost, UEBTF is not an insurer. An insurer usually knows the identity of its insured employers, an insurer pays claims which are reasonably certain without waiting for WCAB awards, and an insurer submits itself to the jurisdiction of the WCAB upon notice by mail if a dispute arises. By contrast, UEBTF must ascertain that the employer is indeed uninsured before it even considers making payments. Frequently, employers do business under fictitious names that may or may not be formally recorded, and an insurance policy may be found once the correct identity of the employer is revealed. Correctly identifying the employer is vital not only to rule out the possibility of finding coverage, but also to establish civil jurisdiction over that employer to enforce any subsequent judgment.

Proof of Coverage Verification and Delays

Once the employer is correctly identified, the employee must investigate whether the employer is actually insured. This requires submitting a written request to the Workers’ Compensation Insurance Rating Bureau (WCIRB), which receives data on all insurance policies written for workers’ compensation coverage in California. WCIRB will reply by mail, either identifying the insurer or advising that there is no record of coverage. Sometimes, this step must be repeated with additional identifying information on the employer. This delay of one to three weeks may occur even with an insured employer who is cooperative, as it is inherent in most UEBTF cases.

Serving Legal Documents for UEBTF by an Injured Worker or Attorney

Once it appears that the employer is illegally uninsured, the injured worker begins the steps toward seeking benefits from UEBTF. Before UEBTF can be joined in a WCAB case, however, the injured worker usually needs to have papers personally served on the employer by a process server in the same manner as service of a civil summons. Often, injured workers do not serve the employer in the name of the correct business entity. Currently, every case that is opened by UEBTF goes over to the investigators for investigation of the employer, and the employer is served if it has not been done correctly. The turnaround time is approximately two to three weeks. It may be necessary to repeat the coverage investigation with WCIRB after UEBTF helps the worker find the correct name for the employer.

Serving the employer is routine in the civil arena, but it is unfamiliar to some workers’ compensation practitioners because it is rarely necessary in routine workers’ compensation cases. Once the employer is served, the administration of UEBTF benefits is still more difficult than the administration of insured benefits, for several reasons. Often, the uninsured employer is not cooperative in confirming the facts of employment, injury, or earnings.

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An insurer has the contractual right to administer the claim in its discretion (to some extent), while UEBTF has no such right. For UEBTF to secure its right to recover from the employer any benefits it pays to the injured worker, UEBTF must clearly establish the employer's liability for those benefits. With few exceptions, that fact is established only by a WCAB award. Even in a case that UEBTF has no reason to contest, it must assure that the employer has notice of the intended award and an opportunity to object before it can pay a benefit to the worker.

The service of process and formal joinder does have a very positive effect on inducing payments of claims by the parties to a claim. Employers are more willing to pay what is owed once they are shown what will happen to them in collection, penalties, and the problems in avoiding these liabilities once in bankruptcy. The solvent employers would rather pay one claimant (and medical provider) than two attorneys and the State. Insurers who have denied the claim because the employer was incorrectly identified by the applicant are also more willing to pay a claim once the correct policyholder is identified. Likewise, insurers who denied a claim because they canceled coverage on the correct employer should not have to agree to payment once their error is documented.

Statistics from DIR's OD-Legal (Table 4 above) indicate that in claims where UEBTF is joined, more money is paid to injured workers by employers and insurers than by UEBTF. Generally speaking, litigators representing UEBTF report experiencing a payout ratio close to two-to-one, or better, from employers and insurers vs. UEBTF. Further, during the process of investigating and litigating claims, OD-Legal reports are often able to identify parties who are responsible and/or persuade parties to take responsibility for payment of these claims.

Findings

CHSWC findings include:

- The identification and location of uninsured employers along with proper enforcement would reduce the costs to the stakeholders of the workers' compensation system.
- The surest way to reduce the long-term cost of UEBTF is to reduce the prevalence of illegally uninsured employers. In the CHSWC 1998 study on Illegally Uninsured Employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured.
- Labor Code Section 90.3 provided for a program to identify illegally uninsured employers. Due to lack of resources, this program was never implemented.
- There is a lack of knowledge of UEBTF and civil procedure in the workers' compensation community.
- Unrepresented applicants lack easy access to UEBTF. Of some 1800 claims filed during the past fiscal year, only four or five were filed by unrepresented applicants according to UEBTF. Injured workers will probably continue to require attorneys if they wish to pursue any of the additional remedies available against illegally uninsured employers.
- Applicants' attorneys have consistently complained about the many technicalities and formalities with which they must comply to file a valid claim. The process cannot be greatly streamlined because it is necessary to build a case that can ultimately lead to a civil judgment against the illegally uninsured employer.
- Medical providers incur increased losses on liens while waiting to get paid:
 - UEBTF does not get involved early enough in the claims.
 - According to UEBTF, it learns of a claim on an average of 10 months after the injury.

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- Frequently, the claim is not promptly pursued by the injured worker because the employer pays bills directly for a while.
- Other times, the injured worker goes without treatment until a critical situation arises or he or she initially receives treatment from Medi-Cal or another program.

Recommendations

CHSWC recommendations include:

- Publicize and enforce the workers' compensation coverage requirement:
 - Continue and expand efforts to ensure that all employers comply with the requirement to provide workers' compensation coverage.
 - Conduct outreach to workers, employers, medical providers, clinics, and social service programs regarding workers' compensation coverage requirements and reporting of uninsured employers.
 - Establish and fund a systematic enforcement of coverage program.
- Provide workers' compensation coverage information:
 - Continue the effort to provide convenient and rapid public access to workers' compensation insurance coverage information. Currently, 26 states provide proof of coverage verification online.
 - Ensure that proof of coverage data are presented in a standardized, uniform format so as to be easily utilized.
 - Provide rapid access to coverage information without processing written requests to WCIRB.
 - Ensure that non-confidential information on DLSE investigations is publicly available and accessible online.
- Improve methods to help workers access benefits from UEBTF:
 - Develop a simplified guide on the UEBTF claims process for injured workers.
 - Educate Information and Assistance (I&A) Officers on UEBTF procedures to improve access for injured workers.
- Encourage reporting of suspected illegally uninsured employers:
 - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, require medical providers to report suspected uninsured employers to the California Department of Insurance (CDI) on the FD-1 fraud form.
 - Require UEBTF to report suspected uninsured employers to CDI and other enforcement agencies.
 - Establish a "hotline" number for employees, employers and others to report uninsured employers and trigger an investigation of coverage by DLSE.

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- Protect and improve the UEBTF:
 - Improve UEBTF procedure while preserving the authority of UEBTF to recover funds from illegally uninsured employers.
 - Create a presumption of earnings, not to exceed the average wage of the occupation, so that UEBTF is protected from workers' uncorroborated claims of weekly wages that were not reported by the employer.
 - Research ideas to measure performance, identify double billing, and identify opportunities for earlier identification of likely UEBTF claimants.

- Further educate the workers' compensation community:
 - Although DWC provides ample information online on UEBTF guidelines, the process is still complicated. I&A Officers may benefit from additional training on advising workers on how to handle the UEBTF claim process.
 - Education for practitioners would facilitate their handling of basic civil procedures.
 - I&A officers, attorneys and the community would benefit from briefings regarding the UEBTF process. While the UEBTF process is necessarily different from the process of submitting an insured claim, it can be manageable if the participants understand the requirements.

SPECIAL REPORT: PAY-FOR-PERFORMANCE IN CALIFORNIA'S WORKERS' COMPENSATION MEDICAL TREATMENT SYSTEM

Introduction

The Commission on Health and Safety and Workers' Compensation (CHSWC) asked RAND to examine the major considerations that would be involved in developing a pay-for-performance program. This study drew on the literature and interviews from an earlier RAND study, a roundtable discussion among workers' compensation stakeholders, and interviews with stakeholders performed as part of the study evaluating the impact of the reform provisions.

The goal of a medical treatment system is value-based care. The efficient delivery of high-quality care improves the health and functional status of injured workers and enables rapid and sustained return to work (RTW). One way to promote this is to align financial incentives for physicians with the provision of value-based care.

The key mechanism of a pay-for-performance system is to reward health care providers on a set of specified measures related to quality, efficiency, compliance with administrative processes, adoption of information technology, and patient satisfaction. Other non-financial ways to promote value-based care that frequently are part of a pay-for-performance program include reduced administration burden, such as exemption from the utilization review (UR) process and public reporting. Public reporting puts peer pressure and public market pressure on physicians to improve and can be available to guide consumer choice; however, unless properly done, public reporting can lead to unintended consequences where physicians might avoid treating more complex patients if there is no appropriate risk adjustment. Performance measures can also be used to select narrow high-performing networks. In group health, this has been mostly based on an efficiency measure up to now, but some quality measurements are being taken into consideration.

Pay-for-performance programs incorporate four stages: (1) the planning and design stage, which specifies the key components of the program; (2) the implementation stage, which leads to data collection and performance measurement; (3) the assessment of performance, which then leads to the payment of rewards; and (4) program evaluation, which ideally occurs throughout implementation and the findings of which may lead to refinements in the program design. In reality, there has been little formal evaluation of pay-for-performance programs, so that it is not known for sure how well they actually work and which design elements are likely to be most successful and produce the desired results.

Generally, a program's goals and objectives will determine what is measured and what the reward structure looks like. However, other constraints, such as data availability and the availability of sound evidence-based measures, will also affect program design.

Background

Existing Pay-for-Performance Programs

Existing pay-for-performance programs have elements that might be relevant for California workers' compensation. A nationally prominent pay-for-performance program in California is sponsored by the Integrated Healthcare Association (IHA). It involves 7 health plans, over 225 physician groups, and 35,000 physicians. This program measures performance in three areas: clinical measures; patient satisfaction; and investment in information technology. It includes a standard set of core measures and pooled data to measure performance. Pooling of data overcomes the obstacle of each plan having an insufficient number of observations to obtain reliable measures. This is an important concern for the workers' compensation system where there are multiple payers and a number of physicians who treat only a few injured workers each year. Another important feature is the use of a core set of measures to

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measure performance, with the flexibility given to each plan to add additional measures and determine how it will reward high-performing physicians. The program also includes public reporting of physician group scores, not individual group scores, which can be informative for patients in selecting their physician and can help plans in putting together the network. The early results from this program are promising and show improvements in quality scores. It was recently announced that the program would begin to measure efficiency for episodes of care on a population basis.

Washington State, which is one of the few single-payer states, has the only pay-for-performance program for workers' compensation that could be evaluated, the Occupational Health Services (OHS) Project. This is a community-based delivery system in two sites. The goals are to enhance timeliness of treatment, encourage return to work, and promote "best practices." The targeted conditions are low-back sprain, carpal tunnel syndrome and fractures, the three most frequent conditions occurring within the California system. The initial focus was on measures common across all three conditions, such as: timeliness of submitting the Report of Accident; the prevalence of two-way communication with the employer about RTW; activity prescription at each evaluation; and a regular assessment of impediments to returning to work. Condition-specific quality indicators are still under development. The reward structure covers pay for previously unreimbursed services such as telephoning the employer and higher fees for certain services. The results of this program are promising. There have been improvements across all three conditions: timeliness of accident reports; activity prescription occurring; and significant reduction in disability days and therefore in total cost. The work-related outcomes were better for those physicians who showed higher adherence to the measures and for physicians with a higher workers' compensation case load.

An example of a type of program that California workers' compensation might want to leverage off of is a program just starting which is for physicians treating low-back pain. This is the Back Pain Recognition Program that the National Committee for Quality Assurance (NCQA) recently established for any physician specialty treating low-back pain. The program includes 16 measures for quality of care, such as overuse (appropriate imaging for acute back pain) or under-use (advice against bed rest). Physicians self-report measures to NCQA, and this process can be seen on a website; those meeting performance criteria for the measures receive recognition. Another program, Bridges to Excellence (BTE), is a coalition program of very large employers. They have established the Spine Care Link Pay-for-Performance Program, which pays more to physicians who are NCQA-accredited. Physicians meeting quality standards receive higher payments and will be listed on the physician-rating website so consumers will know that those physician's efforts have been recognized by the NCQA.

Findings

There are a number of reasons to consider pay-for-performance in the California workers' compensation system. Very little is known about the quality of care provided to injured workers. Workers' compensation reforms have emphasized evidence-based treatment; however, a recent University of California, Los Angeles (UCLA) access survey found that only 10 percent of physicians thought that quality has improved, and 30 percent of physicians in internal medicine and family practice thought quality of care actually has declined. The current payment system does not reward quality or efficiency, and the Official Medical Fee Schedule (OMFS) does not reward disability management, prevention activities, or care coordination. Currently, payment levels are based on outdated fee schedules rather than the actual cost of providing the services, which creates perverse incentives. In fact, fee-for-service encourages unnecessary services.

This is a critical time for establishing a pay-for-performance program. Employers forming medical networks do not have the information needed to select high-quality providers, and physicians have a high administrative burden and are using this as a reason for not treating worker's compensation patients. A proactive system based on report cards may be less costly than an administrative system based on UR.

Significant effort is needed to implement a pay-for-performance system. In California, potential roadblocks include: the complexity of the current system due to implementation of recent legislative provisions; the level of distrust among parties in the system; the lack of consistent, ongoing monitoring and evaluation; and the multiple payers in the system, which means data pooling may be necessary for reliable

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measurement and even then, there may be a problem because some physicians may treat only a few injured workers each year; and some physicians in occupational medicine have little exposure to non-occupational health-quality initiatives.

Some lessons learned from another RAND study which interviewed pay-for-performance sponsors included that it is important to: engage providers from the beginning of program development; strive for transparency in how performance is assessed, which is critical for getting trust and buy-in; pilot test measures; be open to stakeholder suggestions and willing to change; and recognize that changes will be needed over time, as pay-for-performance can not create a perfect system but has to be part of a multi-pronged strategy to improve health care.

A pay-for-performance system can have multiple goals including: improve the quality of care through clinical outcomes, processes of care, and care coordination; improve the efficiency of care including providing the least costly care alternatives and reducing administrative burden; increase patient satisfaction; and improve work-related outcomes, specifically days lost from work and RTW.

Two approaches that need to be considered for a pay-for-performance program are either rewarding truly excellent physicians or engaging all physicians and encouraging quality improvement. If only top physicians are rewarded, other physicians may not be motivated to work for improvement. It is possible to create a multi-faceted approach where all physicians are rewarded for improvement and top performers are also rewarded. The choice of approach will determine how the financial rewards are structured.

Mandatory and Voluntary Program Models

Another key decision is whether a pay-for-performance program should be mandatory or voluntary. A mandatory program requires regulatory action and therefore means that: all payers and self-insured employers would be required to participate; physician participants, performance measures, and performance targets would be uniformly defined; and the reward structure could be either determined uniformly or left to each payer. One of the main advantages of a mandatory program is that it could facilitate pooled data and public reporting. In contrast, a voluntary program could be undertaken by payers individually or collectively and would not require government involvement, would likely result in more experimentation, and would likely be a little more nimble in responding to issues that arose in implementation. An individual payer voluntary program, which could be implemented by an individual payer at any time, could cause multiple reporting requirements for physicians and therefore increase administrative burden and weaken incentives. A collective action would facilitate pooling of data and uniform measures.

Potential measures for a pay-for-performance program include: clinical process and outcome measures, such as the number of surgeries or repeat surgeries; efficiency measures on the total cost of the claim; patient experience, both patient satisfaction measures and time between referral and an appointment; administrative measures, such as timely filing of reports and compliance with medical treatment guidelines; work-related outcomes of care; and structural measures. Key issues related to measures include: the kind of conditions that should be the initial focus; the level of focus, that is, either the individual physician, or the medical group, or the network; and who the care should be attributed to, either the primary treating physician, or the physician who provides treatment, or all the physicians who provide care.

In addition, several decisions need to be made about a reward structure, including: the form of financial reward, whether it will be a modified fee schedule payment, which is the easiest form, or a bonus payment at the end of the year; the criteria for receiving a reward, whether a fee-for-service basis, an absolute threshold, or a relative threshold; and the financing mechanism, whether insurance premiums, a bonus pool created through withholds, or a shared cost-savings formula. A shared savings formula would be difficult to generate in the workers' compensation system as cases extend over time.

Financing a mandatory program may require changes in the Official Medical Fee Schedule (OMFS). OMFS modifications required to reward physicians include: performing specific services that do not have explicit maximum allowable fees; and rewarding top performers through higher payments or bonus

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payments. Several options for financing through the OMFS include: savings from improved performance; lower payments to poor performers; and fee schedule adjustments to pay less for specific services.

A voluntary program would not require changes in the OMFS. Payers and providers may contract for different amounts than levels allowed by the OMFS. Several options are available for finance mechanisms, such as savings generated by improved performance or negotiated fee schedule reductions. Additional savings from the program would be passed on to employers through lower fees.

Pay-for-Performance Data Models

Two main data systems could be used to support the infrastructure for a pay-for-performance program in workers' compensation. One data system is the database maintained by the California Worker' Compensation Institute (CWCI), a private, non-profit organization of insurers and self-insured employers. Members voluntarily submit data to CWCI for research, and access to the data is restricted. The second system would build on the Workers' Compensation Information System (WCIS) which is maintained by the Division of Workers' Compensation (DWC). There has been a recent requirement for reporting medical data; at this time, the consistency and quality of the data are unknown and still have to be evaluated. Building on an existing data structure is recommended; however, that evaluation could be through a third-party independent system, as this would create more trust in the system.

There are several potential pay-for-performance data models including: a mandatory program that would pay fee-for-service rewards; a mandatory program rewarding overall performance; and a collective voluntary program with payer-determined rewards. All models assume that the pay-for-performance program would be cost-effective but that there would be a need to pilot test the model to confirm cost-effectiveness. An individual payer voluntary model is not being discussed because it can be implemented without workers' compensation policy changes, though that may be the most feasible model for the short-term.

The mandatory program model would modify the OMFS to include explicit fees for disability prevention and disability management activities, such as separate payment for permanent and stationary reports filed by the primary treating physician and rewards for all physicians for engaging in desired activity. This system would be the easiest to implement, as it does not create changes in the data structure, and the measures do not require risk-adjustment or rate calculations. Therefore, this model could be implemented in the short-term.

The mandatory program rewarding overall performance requires pooling of data to identify "gold star" physicians; it could be broadly applicable or could target specific conditions or specialties, and initial measures should not require risk-adjustment. This model also requires the infrastructure to collect and pool the data. An alternative to this would be to tie into an existing program such as the NCQA spinal recognition program. The reward could be either a two-tier fee schedule or payers supplementing with additional payments. Depending on the policies, this model could be implemented in the short-term to intermediate-term, and it could lay the groundwork for more sophisticated programs in the longer-term.

The third model would be a collective voluntary program with payer-determined rewards modeled after the IHA initiative. This requires data pooling and common evaluation for a core set of measures. Potential conditions could be low-back pain and carpal tunnel syndrome. This model requires physician/payer agreement on reporting requirements and financial reward. This is a longer-term model that requires more infrastructure and the most collaboration among stakeholders. It is unlikely to be feasible in the near-term on other than a pilot basis.

Key Elements for a "Win-Win" Program

From the interviews conducted, the key steps that might lead to a "win-win" pay-for-performance program include: (1) establish safeguards and processes that build trust among stakeholders; (2) choose performance measures that will generate overall savings through improved quality and better work-related outcomes; (3) use a pilot test to determine realistic goals, measures, and reporting burden; (4)

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create financial incentives that provide bonuses for good performers without reducing payments below current levels for poor performers; and (5) build on existing data infrastructure and reporting systems.

Progress is being made in the areas which would support improving value-based medical care including that: the WCIS is being established and could eventually lead to an ongoing monitoring system; RAND is doing more work on developing quality indicators for carpal tunnel syndrome; NCQA has established quality indicators for low-back pain; DWC recently released additional medical treatment guidelines for acupuncture and should be providing guidelines for chronic pain; and DWC has started work on a new OMFS.

Recommended Next Steps

Several recommended next steps include:

- Convene a workgroup with representatives of stakeholder groups to gauge the level of interest in pay-for-performance, to flesh out “straw man” models for further discussion, and to identify “idea champions” to promote the concept.
- Assure that the WCIS is structured to support ongoing monitoring and performance measurement at the physician level.
- Consider how pay-for-performance incentives might be incorporated into the new physician fee schedule.

For further information...

 CHSWC Report: “Pay-for-Performance in California’s Workers’ Compensation Medical Treatment System, RAND, August 2007([Pdf](#)).

 Check out: http://www.dir.ca.gov/chswc/Reports/Pay_for_Performance_Report_2007.pdf

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Background

In California, approximately two-thirds of the total payroll in the state is covered for workers' compensation through insurance policies, while the remainder is through self-insurance. There are more than 100 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (SCIF).

The California Department of Insurance (CDI) oversees these insurers. To accomplish its principal objective of protecting insurance policyholders in the state, CDI examines insurance companies to ensure that operations are consistent with the requirements of the Insurance Code.

Minimum Rate Law and Open Rating

In 1993, workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it beginning in 1995 with an open-competition system of rate regulation in which insurers set their own rates based on "pure premium advisory rates" developed by the Workers' Compensation Insurance Rating Bureau (WCIRB). These rates, approved by the Insurance Commissioner (IC) and subject to annual adjustment, are based on historical loss data for more than 500 job categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates that are intended to cover other costs and expenses, including unallocated loss-adjustment expenses.

Insurance Market after Elimination of Minimum Rate Law

Subsequent to the repeal of the minimum rate law effective January 1995, changes were noted in the actions of insurers and employers.

Price Competition

Open rating apparently spurred competition among insurers seeking to retain or add to their market share. Some insurers attempted to increase their market share by writing coverage at low prices that eventually proved to be below loss costs. This deregulated market kept premium rates near their historic lows throughout the latter half of the 1990s, even though losses were no longer declining.

As the link between the price of insurance and loss costs became more and more tenuous, some insurers left the state, others ceased writing workers' compensation or were merged or acquired by other carriers, and still others, including several of the largest insurers in the State, became insolvent and had to be taken over or supervised by the State. As a result, the workers' compensation market became much more concentrated than in the past, with only a few insurers, aside from SCIF, which were mostly large, national carriers, accounting for the largest portion of statewide premium.

Insurers Liquidated since 2000

2000

California Compensation Insurance Company
 Combined Benefits Insurance Company
 Commercial Compensation Casualty Insurance Company
 Credit General Indemnity Company
 LMI Insurance Company
 Superior National Insurance Company
 Superior Pacific Insurance Company

2001

Credit General Insurance Company
 Great States Insurance Company
 HIH America Compensation & Liability Insurance Company
 Amwest Surety Insurance Company
 Sable Insurance Company
 Reliance Insurance Company
 Far West Insurance Company
 Frontier Pacific Insurance Company

2002

PHICO
 National Auto Casualty Insurance Company
 Paula Insurance Company
 Alistar Insurance Company
 Consolidated Freightways

2003

Western Growers Insurance Company
 Legion Insurance Company
 Villanova Insurance Company
 Home Insurance Company
 Fremont General Corporation
 Wasatch Crest Insurance Co. (No WC policies)
 Pacific National Insurance Company

2004

Protective National Insurance Company
 Holland-America Insurance Company
 Casualty Reciprocal Exchange

2005

Cascade National Insurance Company/Washington
 South Carolina Insurance Company/South Carolina
 Consolidated American Insurance Company/South Carolina

2006

Vesta Fire Insurance Company
 Hawaiian Insurance & Guaranty Company
 Municipal Mutual Insurance Company

Insurance Market Changes

Since 2000, a significant number of workers' compensation insurance companies have experienced problems with payment of workers' compensation claims. Thirty-six insurance companies have gone under liquidation and 11 companies have withdrawn from offering workers' compensation insurance during that time. However, since 2004, 16 insurance/reinsurance companies have entered the California workers' compensation market, while only 6 companies withdrew from the market.

Changing Insurers

WCIRB estimated that before open rating, about 25 percent of California employers with experience modifications (Ex-mods) changed insurance carriers each year. After open rating, about 35 percent of the employers did so. However, in many post-open rating situations, employers had no choice but to change insurers, as the market had deteriorated to the point that many carriers, including several of the largest workers' compensation insurers in the State, ceased to exist or stopped writing workers' compensation in California.

Reinsurance

After open rating, many carriers shifted the risk of their workers' compensation claims to other insurance companies, some of which were inexperienced with the California workers' compensation insurance market. It was reported that many carriers used reinsurance aggressively in order to mitigate the risk of having to make large future payoffs. Some primary workers' compensation carriers offered extremely low rates that proved to be inadequate in the face of soaring losses. Some reinsurance companies also sold off their risk to other reinsurers in a process called "retrocession." During 1999, several major reinsurance pools experienced financial difficulty and ceased operations.

Impact of Recent Workers' Compensation Reforms on Insurance Companies

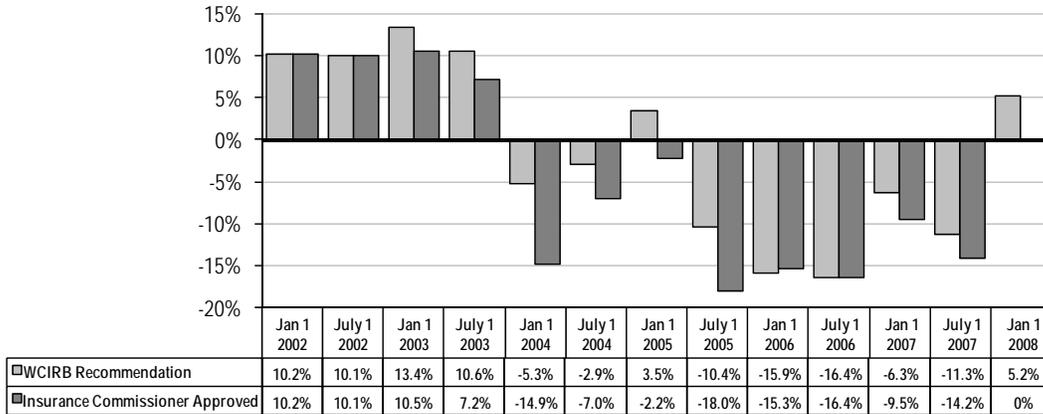
The workers' compensation reform legislation, Senate Bill (SB) 228, Assembly Bill (AB) 227, and SB 899, were enacted with the intent of controlling costs and improving the benefit-delivery process in the workers' compensation system.

SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

Workers' Compensation Advisory Premium Rates

As a result of the reforms, WCIRB recommended changes and the IC approved decreases in the pure premium advisory rates since 2004, as shown on the following chart. There has been a 64 percent reduction in advisory rates since January of 2004. A history of pure premium rates since 1993 appears later in this section.

**Changes in Workers' Compensation Advisory Premium Rates
WCIRB Recommendation v. Insurance Commissioner Approval**

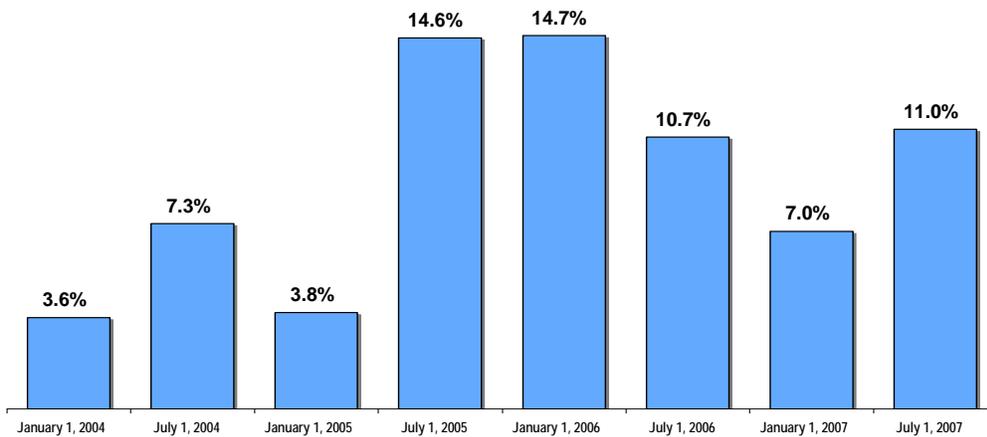


Data Source: WCIRB

California Workers' Compensation Filed Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the IC on advisory premium rates, workers' compensation insurers have reduced their average filed rates as indicated in the chart below.

Average Workers' Compensation Rate Reductions Filed by Insurers



Source: California Department of Insurance

SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

California Workers' Compensation Rate Changes

As of July 1, 2007, the cumulative premium weighted average rate reduction filed by insurers with CDI since the reforms is 55 percent for all writers including SCIF.

WCIRB reports that actual rates charged in the market place as of March 31, 2007, had fallen by 54 percent since the enactment of AB 227, SB 228, and SB 899. The average rate per \$100 of payroll fell from \$6.35 in the second half of 2003 to \$2.93 in the first quarter of 2007.³³

California Workers' Compensation Top 10 Insurers Rate Filing Changes

COMPANY NAME	GROUP NAME	Market Share 2006	Cumulative Rate Change 1-04 to 7-07	7-1-2007 % Filed Rate Change	1-1-2007 % Filed Rate Change	7-1-2006 % Filed Rate Change	1-1-2006 % Filed Rate Change
STATE COMPENSATION INSURANCE FUND		31.97%	-54.83%	-11.0%	-9.0%	-10.00%	-16.00%
AMERICAN HOME ASSURANCE COMPANY	AIG Group	4.98%	-52.65%	-14.20%	-10.9%	-9.00%	-8.00%
NATIONAL LIABILITY & FIRE INSURANCE CO.	Berkshire Hathaway	3.58%	-44.7%	<i>n/a</i>	-10.0%	-7.6%	-10.0%
REDWOOD FIRE & CASUALTY INS CO	Berkshire Hathaway	3.53%	-66.99%	-14.9%	-8.1%	-5.3%	-15.3%
ZENITH INSURANCE COMPANY	Zenith National Group	3.51%	-38.43%	<i>n/a</i>	-4.4%	-5.00%	-13.10%
ZURICH AMERICAN INSURANCE COMPANY	Zurich Ins. Group	2.77%	-63.59%	-14.2	-7.9%	-16.40%	-7.70%
EMPLOYERS COMPENSATION INSURANCE COMPANY	Employers Group	2.59%	-60.51%	<i>n/a</i>	-9.9%	-21.86%	-15.6%
VIRGINIA SURETY COMPANY, INC.	Aon Corporation	1.77%	-46.89%	<i>n/a</i>	-9.5%	-16.40%	-15.30%
REPUBLIC INDEMNITY COMPANY OF CALIFORNIA	Great American Group	1.65%	-63.33%	-10.0%	-7.0%	-11.20%	-15.00%
ZNAT INS CO	Zenith National Group	1.64%	-43.99%	<i>n/a</i>	-4.4%	-5.00%	-13.10%

Since the first reform package was chaptered, 21 new insurers have entered the market and existing private insurers have increased their writings. The significant rate reductions totaling 55 percent since the first reforms were enacted, coupled with the reduced market share of SCIF (which peaked at 53 percent in 2003, has declined to 32 percent in 2006, and is expected to drop to the low 20 percent range in 2007), combined with a 2006 accident year combined loss and expense ratio of 65 percent, point to the dramatic success of the cost-containment reforms and a stabilizing market with increased capacity and greater rate competition.

³³ Source: WCIRB Bulletin 2007-08: Summary of March 31, 2007 Insurer Experience, issued June 19, 2007.

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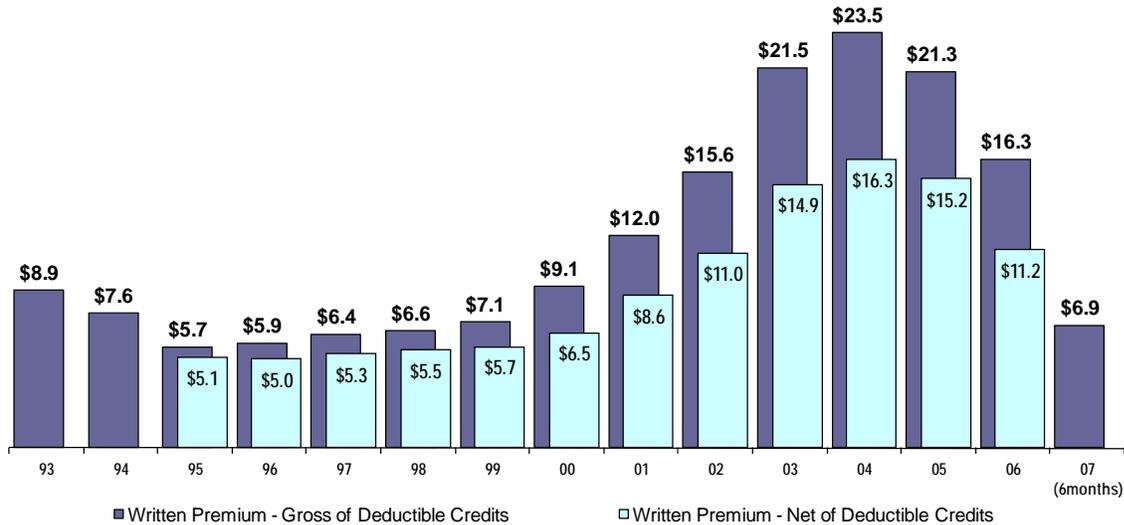
Workers' Compensation Premiums

After elimination of the minimum rate law, the total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth, movement from self-insurance to insurance and other factors rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the decade.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The total written premium has increased by 37.8 percent to \$21.5 billion from 2002 to 2003 and to \$23.5 billion from 2002 to 2004. The written premium declined by 30.6 percent from 23.5 billion to 16.3 billion between 2004 and 2006 due to rate decreases.

The chart below shows the California workers' compensation written premium before and after the application of deductible credits. Please note that these amounts are exclusive of dividends.

**Workers' Compensation Written Premium
(in billion\$, as of June 30, 2007)**



Data Source: WCIRB

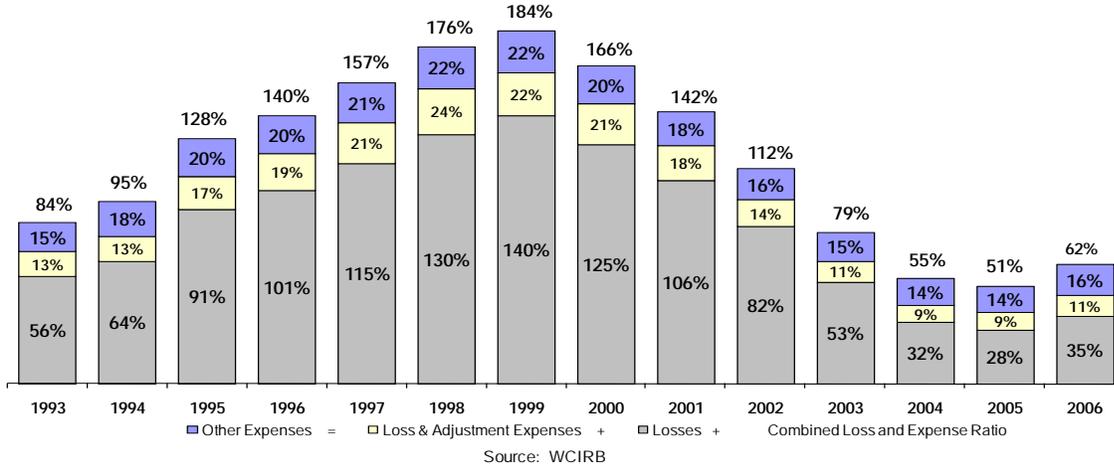
SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

Combined Loss and Expense Ratio

The accident year combined loss and expense ratio, which measures workers' compensation claims payments and administrative expenses against earned premium, increased during the late 1990s, declined from 1999-2005, and increased slightly in 2006.

In accident year 2006, insurers' claim costs and expenses amounted to \$0.62 for every dollar of premium they collected.

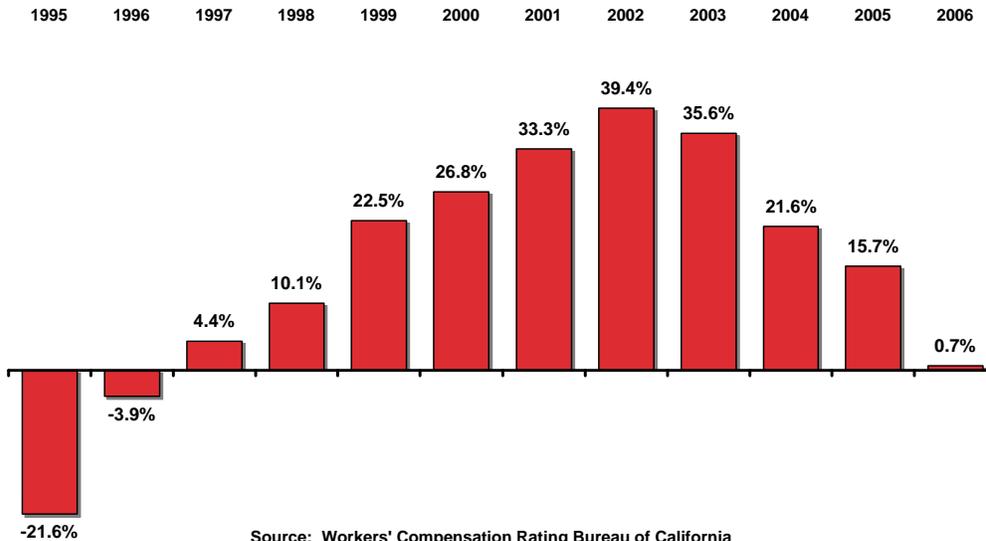
California Workers' Compensation Combined Loss and Expense Ratios
 Reflecting the Estimated Impact of AB 227, SB 228 & SB 899
 (as of June 30, 2007)



Insurance Companies' Reserves

After initially drawing from reserves, insurers added to their reserves from 1997 through 2005. Only a small increase in reserves was seen in 2006.

Change in Insurer Reserves as a Percentage of Earned Premium

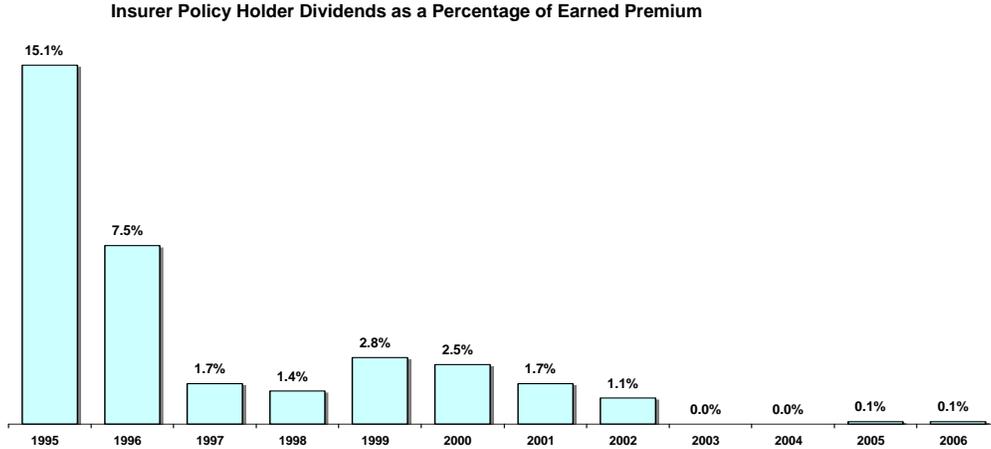


SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

WCIRB estimates that the total cost of benefits on injuries occurring prior to January 1, 2007, is \$6.4 billion less than insurer-reported loss amounts.

Policy Holder Dividends

Dividends paid to policyholders dropped dramatically from 1995 to 1997, were less than 3 percent from 1997 to 2002, were not paid at all in 2003 and 2004, and then were reinstated in 2005 and 2006 at a very low rate.

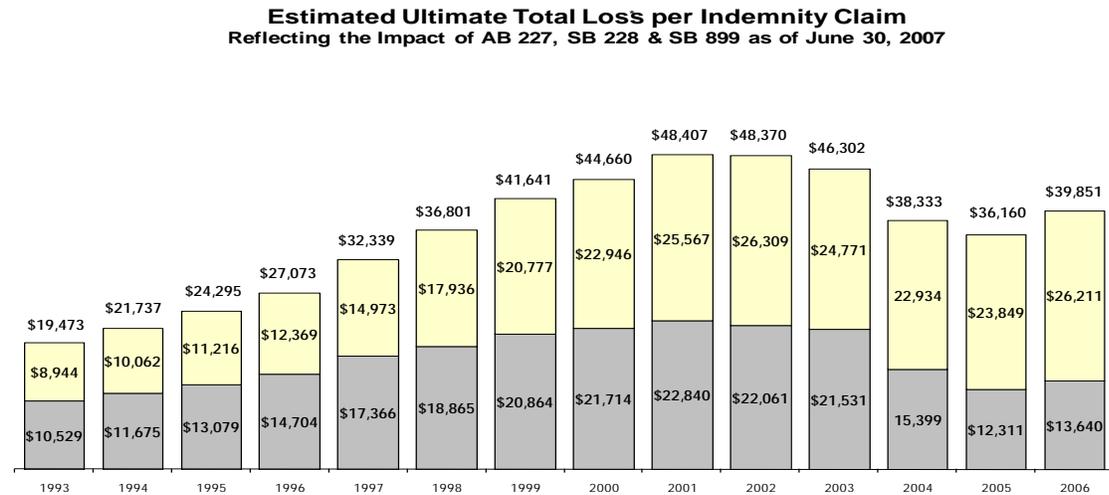


Source: Workers' Compensation Rating Bureau of California

Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply due to increases in the average cost of an indemnity claim, which rose dramatically during the late 1990s.

The total average cost of indemnity claims decreased by 25.3 percent from 2001 to 2005, reflecting the impact of AB 227, SB 228 and SB 899. However, the total indemnity and medical average costs per claim increased between 2005 and 2006. Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.



* Excludes medical-only
Source: WCIRB

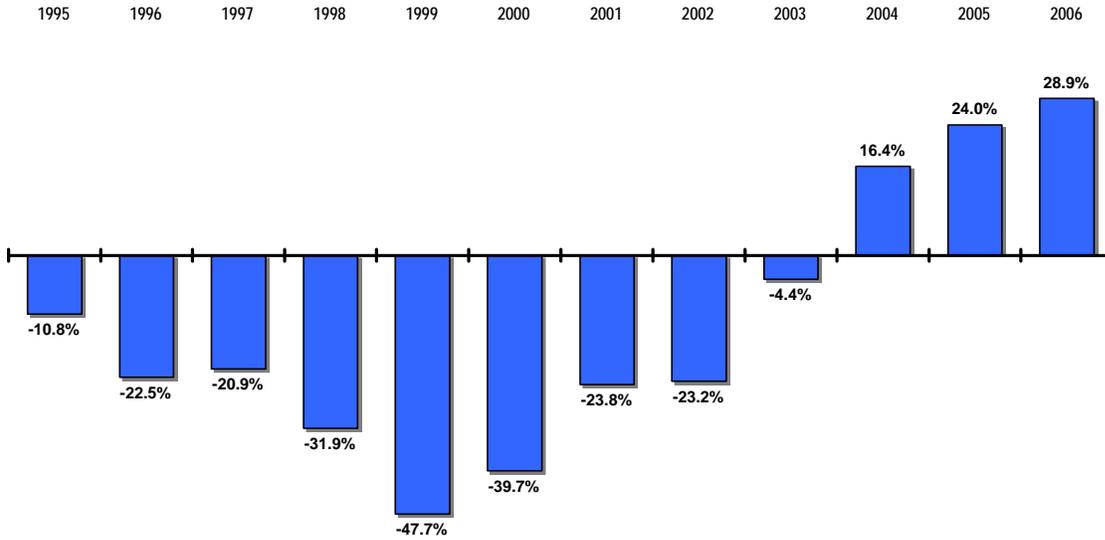
■ Estimated ultimate indemnity per indemnity claim =
 □ Estimated ultimate medical per indemnity claim +
 Estimated Ultimate Total Losses per Indemnity Claim (excluding Medical-Only)

SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

Insurer Profit/Loss

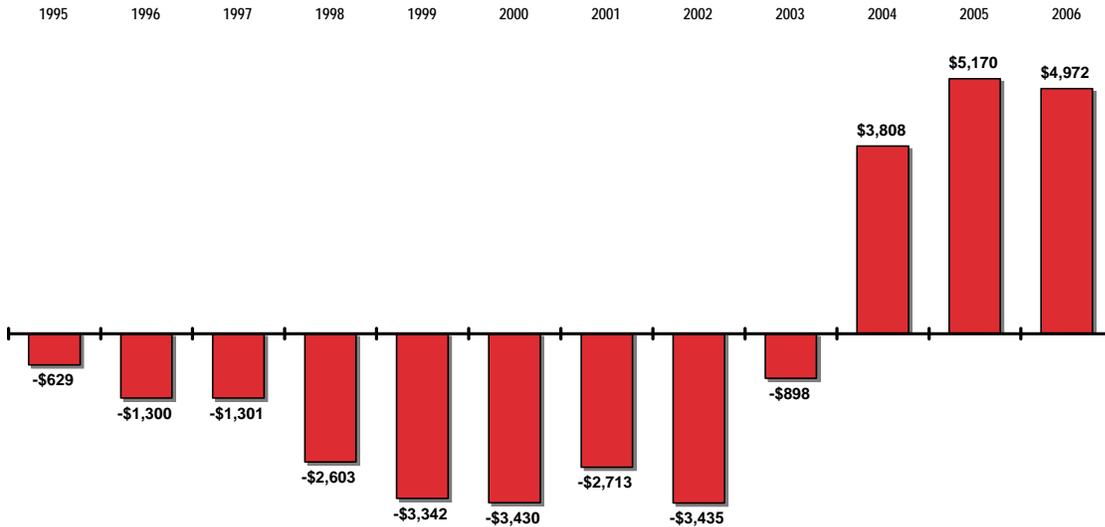
Workers' compensation insurers experienced large fluctuations in profit and losses during the past decade, as measured by actual dollars and percentage of earned premium.

Insurer Pre-Tax Underwriting Profit/Loss as a percentage of Earned Premium



Source: Workers' Compensation Rating Bureau of California

Insurer Pre-Tax Underwriting Profit/Loss in Million\$



Source: Workers' Compensation Rating Bureau of California

SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

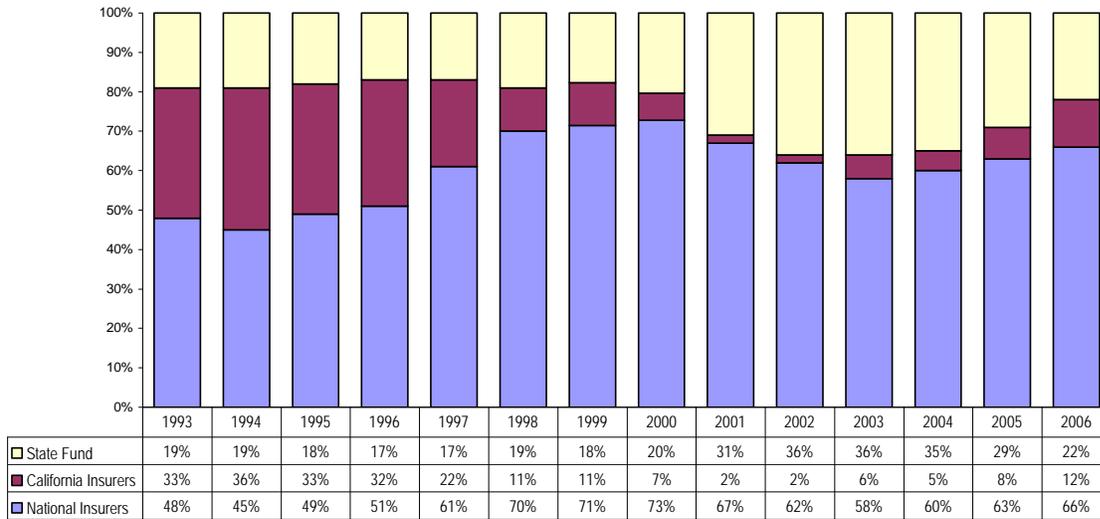
Current State of the Insurance Industry

Market Share

A number of California insurers left the market or reduced their writings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993, as shown in the following chart.

According to WCIRB, from 2002 through 2004, SCIF attained about 35 percent of the California workers' compensation insurance market, double the market share it had in the 1990s. However, between 2004 and 2006, SCIF's market share decreased to 22 percent. On the other hand, the market share of California companies (excluding SCIF) between 2004 and 2006 increased from 5 percent to 12 percent.

WC Insurance Market Share in California by Type of Insurer
Based on Written Premium Prior to Deductible Credits



Source: WCIRB
Please note that totals may not equal 100% due to rounding.

"California Insurers" are defined as private insurers who write at least 80% of their workers' compensation business in California

"September 11" Impact on Insurance Industry

The recent problems in the reinsurance market caused by the events of September 11, 2001, have significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, have a significant effect on the cost of workers' compensation insurance. This effect extends to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace.

**Advisory Workers' Compensation Pure Premium Rates
A History Since the 1993 Reform Legislation**

Page 1 of 5

1993

Insurance Commissioner approval:

Pure premium rate reduction of 7 percent effective July 16, 1993, due to a statutory mandate.

1994

WCIRB recommendation:

No change in pure premium rates.

Insurance Commissioner approval:

Two pure premium rate decreases: a decrease of 12.7 percent effective January 1, 1994; and a second decrease of 16 percent effective October 1, 1994.

1995

WCIRB recommendation:

A 7.4 percent decrease from the pure premium rates that were in effect on January 1, 1994.

Insurance Commissioner approval:

A total of 18 percent decrease to the premium rates in effect on January 1, 1994, approved effective January 1, 1995 (including the already approved 16 percent decrease effective October 1, 1994).

1996

WCIRB recommendation:

An 18.7 percent increase in pure premium rates.

Insurance Commissioner approval:

An 11.3 percent increase effective January 1, 1996.

1997

WCIRB recommendation:

A 2.6 percent decrease in pure premium rates.

Insurance Commissioner approval:

A 6.2 percent decrease effective January 1, 1997.

1998

WCIRB recommendation:

The initial recommendation for a 1.4 percent decrease was later amended to a 0.5 percent increase.

Insurance Commissioner approval:

A 2.5 percent decrease effective January 1, 1998.

1999

WCIRB recommendation:

The WCIRB initial recommendation of a 3.6 percent pure premium rate increase for 1999 was later amended to a recommendation for a 5.8 percent increase.

Insurance Commissioner approval:

No change in pure premium rates in 1999.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation**

Page 2 of 5

2000

WCIRB recommendation:

An 18.4 percent increase in the pure premium rate for 2000.

Insurance Commissioner approval:

An 18.4 percent increase effective January 1, 2000.

2001

WCIRB recommendation:

The WCIRB initial recommendation of a 5.5 percent increase in the pure premium rate was later amended to a recommendation for a 10.1 percent increase.

Insurance Commissioner approval:

A 10.1 percent increase effective January 1, 2001.

January 1, 2002

WCIRB Recommendations:

The WCIRB initial recommendation of a 9 percent increase in the pure premium rate was later amended to a recommendation for a 10.2 percent increase effective January 1, 2002.

Insurance Commissioner Approvals:

The Insurance Commissioner approved a 10.2 percent increase effective January 1, 2002. .

April 1, 2002

WCIRB Recommendations:

On January 16, 2002, the WCIRB submitted recommended changes to the California Workers' Compensation Uniform Statistical Reporting Plan – 1995, effective March 1, 2002 and the California Workers' Compensation Experience Rating Plan – 1995, effective April 1, 2002, related to insolvent insurers and losses associated with the September 11, 2001, terrorist actions. No increase in advisory premium rates was proposed.

Insurance Commissioner Approvals:

The Insurance Commissioner approved the WCIRB's requests effective April 1, 2002.

July 1, 2002

WCIRB Recommendations:

The WCIRB filed a mid-term recommendation that pure premium rates be increased by 10.1 percent effective July 1, 2002, for new and renewal policies with anniversary rating dates on or after July 1, 2002.

Insurance Commissioner Approvals:

On May 20, 2002, the Insurance Commissioner approved a mid-term increase of 10.1 percent effective July 1, 2002.

January 1, 2003

WCIRB recommendation:

On July 31, 2002, the WCIRB proposed an average increase in pure premium rates of 11.9 percent for 2003. On September 16, 2002, the WCIRB amended the proposed 2003 pure premium rates submitted to the California Department of Insurance (CDI). Based on updated loss experience valued as of June 30, 2002, the WCIRB proposed an average increase of 13.4 percent in pure premium rates to be effective on January 1, 2003, and later policies.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation**

Page 3 of 5

January 1, 2003

Insurance Commissioner Approval:

On October 18, 2002, the Insurance Commissioner approved a 10.5 percent increase in pure premium rates applicable to policies with anniversary rating dates in 2003. This increase takes into account the increases in workers' compensation benefits enacted by AB 749 for 2003.

July 1, 2003

WCIRB recommendation:

The WCIRB filed a mid-term recommendation on April 2, 2003, that pure premium rates be increased by 10.6 percent effective July 1, 2003, for policies with anniversary dates on or after July 1, 2003.

Insurance Commissioner Approval:

The Insurance Commissioner approved a 7.2 percent increase in pure premium rates applicable to new and renewal policies with anniversary rating dates on or after July 1, 2003.

January 1, 2004

WCIRB Recommendations:

On July 30, 2003, the WCIRB proposed an average increase in advisory pure premium rates of 12.0 percent to be effective on January 1, 2004, for new and renewal policies with anniversary rating dates on or after January 1, 2004.

The original WCIRB filing of an average increase of 12 percent on July 30, 2003, was later amended on September 29, 2003, to an average decrease of 2.9 percent to reflect the WCIRB's initial evaluation of AB 227 and SB 228.

In an amended filing made on November 3, 2003, the WCIRB recommended that pure premium rates be reduced, on average, from 2.9 percent to 5.3 percent.

Insurance Commissioner Approval:

On November 7, 2003, the Insurance Commissioner approved a 14.9 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2004.

July 1, 2004

WCIRB Recommendations:

On May 13, 2004, the WCIRB proposed advisory pure premium rates that are a 2.9 percent decrease from the January 1, 2004, approved pure premium rates. These rates reflect the WCIRB's analysis of the impact of provisions of SB 899 on advisory pure premium rates.

Insurance Commissioner Approval:

In a decision issued May 28, 2004, the Insurance Commissioner approved a 7.0 percent decrease in pure premium rates, effective July 1, 2004, with respect to new and renewal policies, as compared to the approved January 1, 2004, pure premium rates.

January 1, 2005

WCIRB Recommendations:

On July 28, 2004, the WCIRB proposed advisory premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005, that are, on average, 3.5 percent greater than the July 1, 2004, advisory pure premium rates approved by the Insurance Commissioner.

Insurance Commissioner Approval:

In a decision issued November 17, 2004, the Insurance Commissioner approved a total 2.2 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation**

Page 4 of 5

July 1, 2005

WCIRB Recommendations:

On March 25, 2005, the WCIRB submitted a filing to the California Insurance Commissioner recommending a 10.4 percent decrease in advisory pure premium rates effective July 1, 2005, on new and renewal policies.

On May 19, 2005, in recognition of the cost impact of the new Permanent Disability Rating Schedule adopted pursuant to SB 899, the WCIRB amended its recommendation. In lieu of the 10.4 percent reduction originally proposed in March, the WCIRB recommended a 13.8 percent reduction in pure premium rates effective July 1, 2005. In addition, the WCIRB recommended a 3.8 percent reduction in the pure premium rates effective July 1, 2005, with respect to the outstanding portion of policies incepting January 1, 2005, through June 30, 2005.

Insurance Commissioner Approvals

On May 31, 2005, the Insurance Commissioner approved an 18 percent decrease in advisory pure premium rates effective July 1, 2005, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2005. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$23,288. The Insurance Commissioner also approved a 7.9 percent decrease in pure premium rates, effective July 1, 2005, applicable to policies that are outstanding as of July 1, 2005. The reduction in pure premium rates applicable to these policies reflects the estimated impact on the cost of benefits of the new Permanent Disability Rating Schedule.

January 1, 2006

WCIRB Recommendations:

On July 28, 2005, the WCIRB submitted to the California Insurance Commissioner a proposed 5.2 percent average decrease in advisory pure premium rates as well as changes to the California Workers' Compensation Uniform Statistical Reporting Plan -1995 and the California Workers' Compensation Experience Rating Plan - 1995.

On September 15, 2005, the WCIRB amended its filing to propose an average 15.9 percent decrease in pure premium rates based on insurer loss experience valued as of June 30, 2005, and a re-evaluation of the cost impact of the January 1, 2005 Permanent Disability Rating Schedule.

Insurance Commissioner Approvals

On November 10, 2005, the Insurance Commissioner approved an average 15.3 percent decrease in advisory pure premium rates effective January 1, 2006, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2006. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$20,300.

July 1, 2006

WCIRB Recommendations:

On March 24, 2006, the WCIRB submitted a rate filing to the California Department of Insurance recommending a 16.4 percent decrease in advisory pure premium rates to be effective on policies incepting on or after July 1, 2006. The recommended decrease in pure premium rates is based on an analysis of loss experience valued as of December 31, 2005. The WCIRB filing also includes an amendment to the California Workers' Compensation Experience Rating Plan-1995, effective July 1, 2006, to adjust the experience rating eligibility threshold to reflect the proposed change in pure premium rates. A public hearing on the matters contained in the WCIRB's filing was held April 27, 2006.

Insurance Commissioner Approvals

On May 31, 2006, the Insurance Commissioner approved a 16.4 percent decrease in advisory pure premium rates effective July 1, 2006, applicable to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2006. In addition, the experience rating eligibility threshold was reduced to \$16,971 to reflect the decrease in pure premium rates.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation**

Page 5 of 5

January 1, 2007

WCIRB Recommendations:

On October 10, 2006, the WCIRB recommended a 6.3 percent decrease in advisory pure premium rates decrease for California policies incepting January 1, 2007.

Insurance Commissioner Approvals

On November 2, 2006, the Insurance Commissioner approved an average 9.5 percent decrease in advisory pure premium rates effective January 1, 2007, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2007. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$16,000.

July 1, 2007

WCIRB Recommendations

On March 30, 2007, the WCIRB recommended an 11.3 percent decrease in advisory pure premium rates for California to be effective on policies incepting on or after July 1, 2007.

Insurance Commissioner Approvals

On May 29, 2007, the Insurance Commissioner approved an average 14.2 percent decrease in advisory pure premium rates effective July 1, 2007, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2007. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$13,728.

January 1, 2008

WCIRB Recommendations

On September 23, 2007, the WCIRB recommended 4.2 percent increase in advisory pure premium rates for California to be effective on policies incepting on or after January 1, 2008.

On October 13, 2007, the Governor signed Assembly Bill (AB) 338 which extends the time period for which temporary disability payments may be taken. On October 19, 2007, the WCIRB amended its January 1, 2008 pure premium rate filing to propose an overall 5.2 percent increase in pure premium rates in lieu of 4.2 percent to incorporate the impact of AB 338.

Insurance Commissioner Approvals

On November 28, 2007, the Insurance Commissioner approved no overall change to the advisory pure premium rates effective January 1, 2008.

See the WCIRB website below for further details and updates to this information.

https://wcirbonline.org/resources/rate_filings/current_rate_filings.html

WORKPLACE SAFETY AND HEALTH

Occupational Injury and Illness Prevention Efforts

Workplace safety and health is of primary importance and the shared goal of all Californians. Ongoing cooperative efforts among workers, employers, employer and labor organizations, government agencies, health and safety professionals, independent researchers and the public have resulted in significant reductions in workplace injuries, illnesses and deaths.

This section will discuss the numbers and incidence rates of occupational injuries and illnesses, injuries and illnesses by occupation and other factors, and the efforts to prevent occupational injuries and illnesses. Also included is an overview of the requirements and methods to record and report occupational injuries and illnesses in the United States and California.

Where data are available, comparisons among private industry, state government and local government are also included.

Occupational Injuries, Illnesses and Fatalities

The numbers of occupational injuries, illnesses and fatalities in the private sector (private industry) and the public sector (state and local government) for the past several years are displayed and discussed in this subsection.

Please note that "lost-work-time" occupational injury and illness cases involve days away from work, job transfer, or days of restricted work activity, and that "days-away-from-work" cases involve days away from work, whether or not there is also job transfer or restricted work activity.

The National Academy of Social Insurance (NASI) estimated that there were 128.1 million workers covered by workers' compensation in the United States in 2005, including 15.0 million in California.

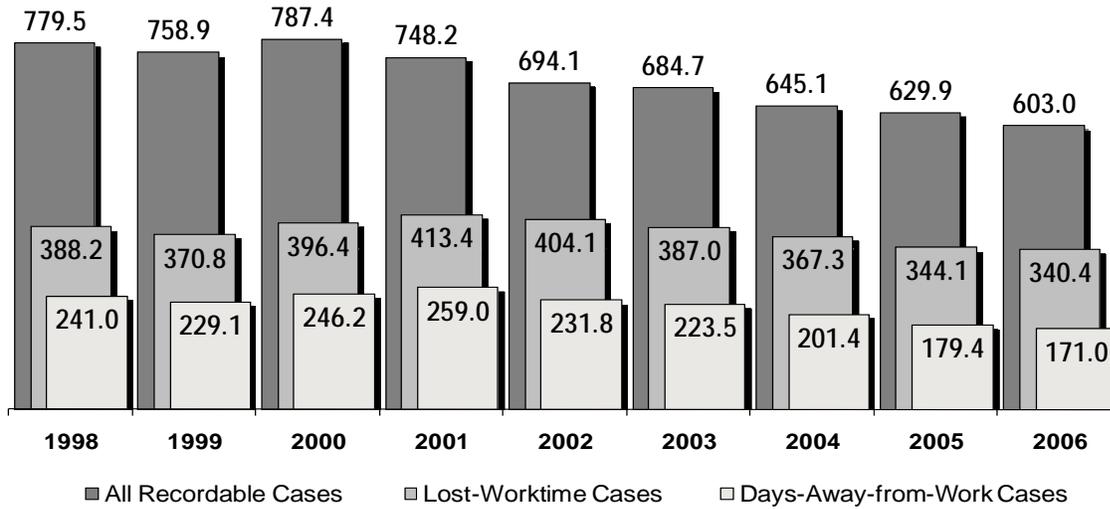
Public and Private Sectors

Non-Fatal Occupational Injuries and Illnesses

The following chart shows occupational injuries and illnesses in California's private industry, state government and local government.

Occupational injuries and illnesses in California have decreased noticeably in the past few years. As shown in the following chart, the number of recordable occupational injury and illness cases, the number of lost-work-time cases, and the number of cases with days away from work have all declined from 2000 to 2006.

**California Non-Fatal Occupational Injuries and Illnesses
Private Industry, State and Local Governments - Thousands of Cases**

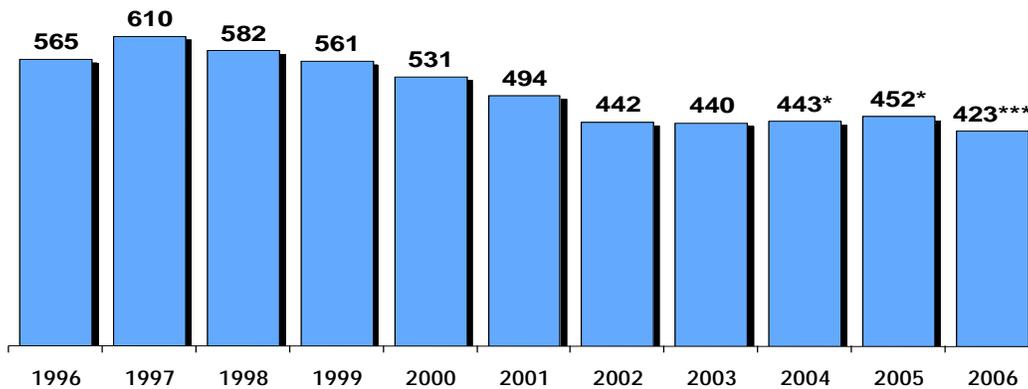


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California have also decreased significantly as depicted in the chart below. Fatal occupational injuries and illnesses in California declined by 28 percent from 1997 to 2003, increased by 2.7 percent from 2003 to 2005, and decreased by 6.4 percent from 2005 to 2006.

**California Fatal Occupational Injuries and Illnesses
Private Industry, State and Local Governments****



Source: DIR Division of Labor Statistics and Research
 * BLS update to 2004 -2006 data
 ** Total, excluding Federal Government
 *** Preliminary data for 2006

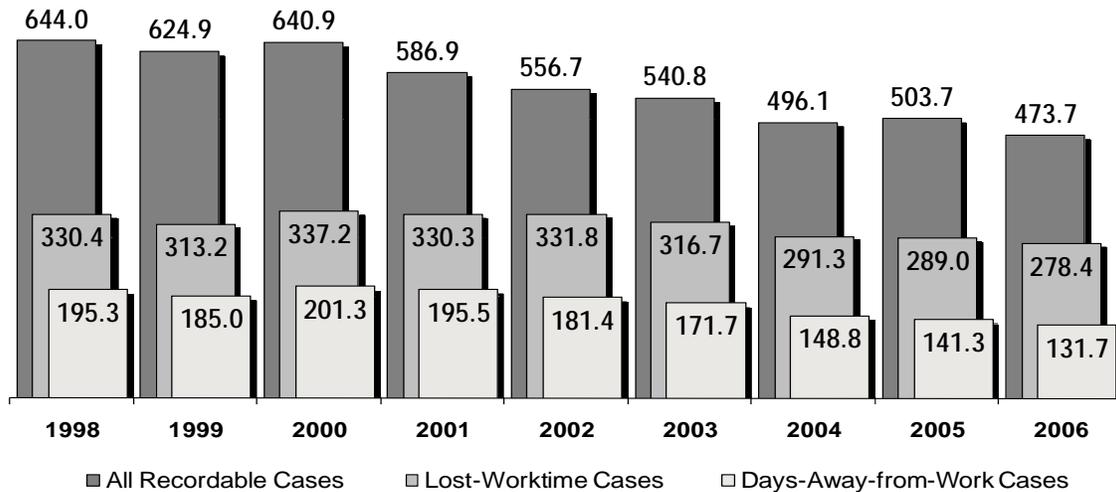
WORKPLACE SAFETY AND HEALTH

Private Sector

Non-Fatal Occupational Injuries and Illnesses

Occupational injuries and illnesses in California's private industry have also decreased noticeably in the past few years. The total number of recordable injury and illness cases dropped by 19.3 percent, the number of lost-work-time cases declined by 15.7 percent, and the number of days-away-from-work cases decreased by 32.6 percent, all from 2001 to 2006.

**California Non-Fatal Occupational Injuries and Illnesses
Private Industry - Thousands of Cases**

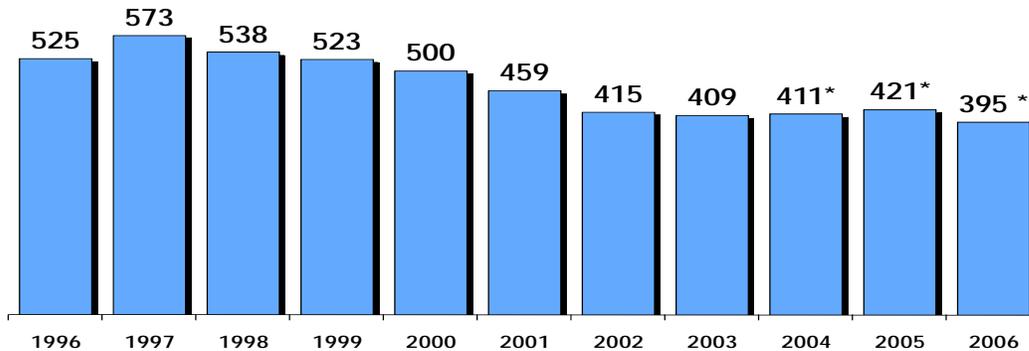


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

From 1997 to 2003, fatal injuries in private industry decreased by 28.6 percent, grew by 2.9 percent from 2003 to 2005, and then decreased by 6.2 percent between 2005 and 2006.

**California Fatal Occupational Injuries and Illnesses
Private Industry**



Source: DIR Division of Labor Statistics and Research
* BLS update to 2004 -2006 data

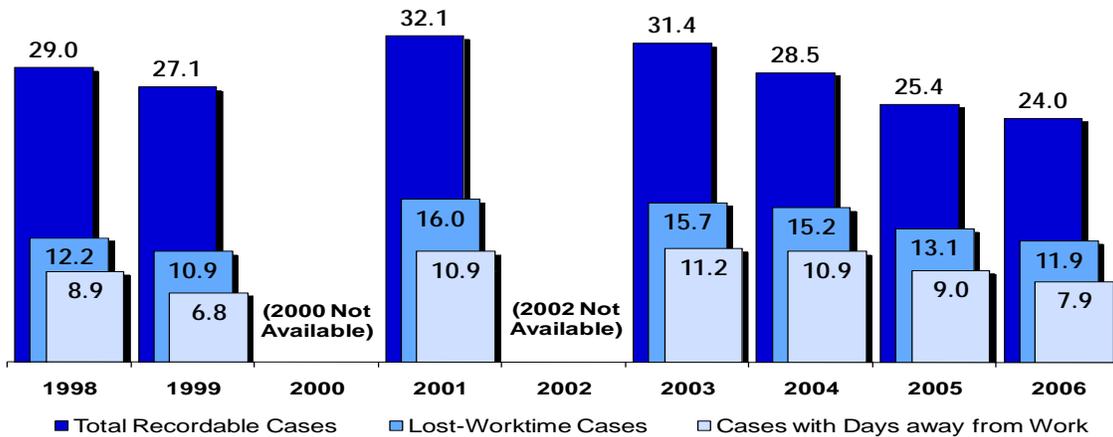
WORKPLACE SAFETY AND HEALTH

Public Sector – State Government

Non-Fatal Occupational Injuries and Illnesses

In contrast to private industry, the numbers of non-fatal occupational injuries and illnesses in state government have changed less appreciably in the past eight years, as shown on the following chart. It should be noted that many state and local government occupations are high-risk, such as law enforcement, fire fighting, rescue, and other public safety operations. However, between 2003 and 2006, the total number of cases declined by about 23.6 percent.

**California Non-Fatal Occupational Injuries and Illnesses
State Government - Thousands of Cases**

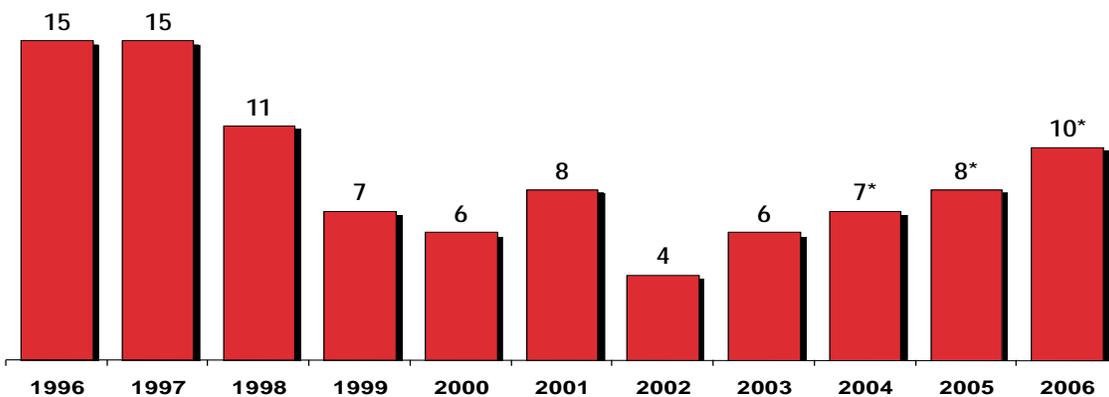


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California state government have decreased since the mid-1990s. The number of annual fatalities from 1996 to 1999 averaged 12.0, while from 2000 to 2006, the annual average was 7, as shown on the following chart.

**California Fatal Occupational Injuries and Illnesses
State Government**



Source: DIR Division of Labor Statistics and Research
* BLS update to 2004-2006 data

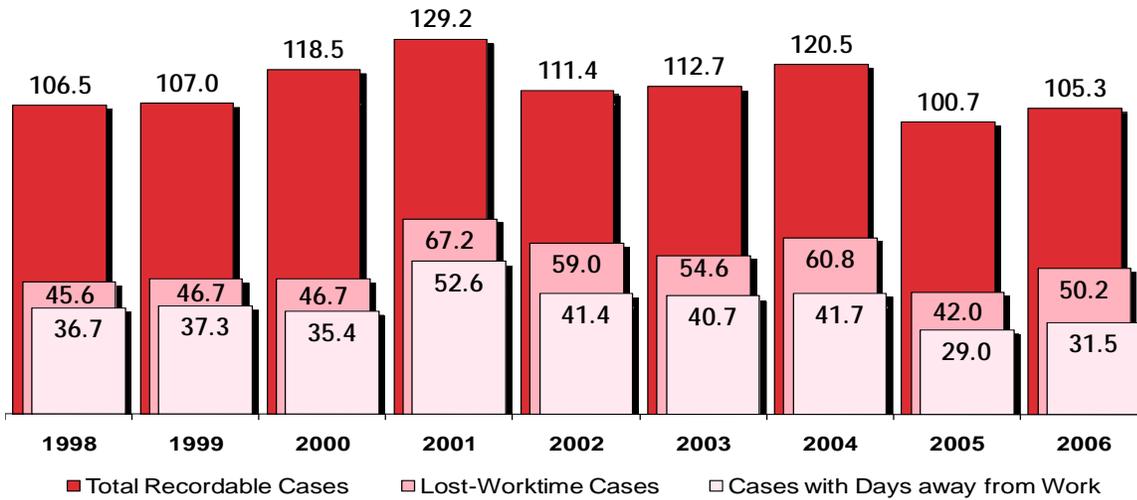
WORKPLACE SAFETY AND HEALTH

Public Sector - Local Government

Non-Fatal Occupational Injuries and Illnesses

The total number of non-fatal occupational injuries and illnesses in local governments has decreased from the 2004 to 2005 by 16 percent and increased by 4.6 percent from 2005 to 2006.

California Non-Fatal Occupational Injuries and Illnesses Local Government - Thousands of Cases

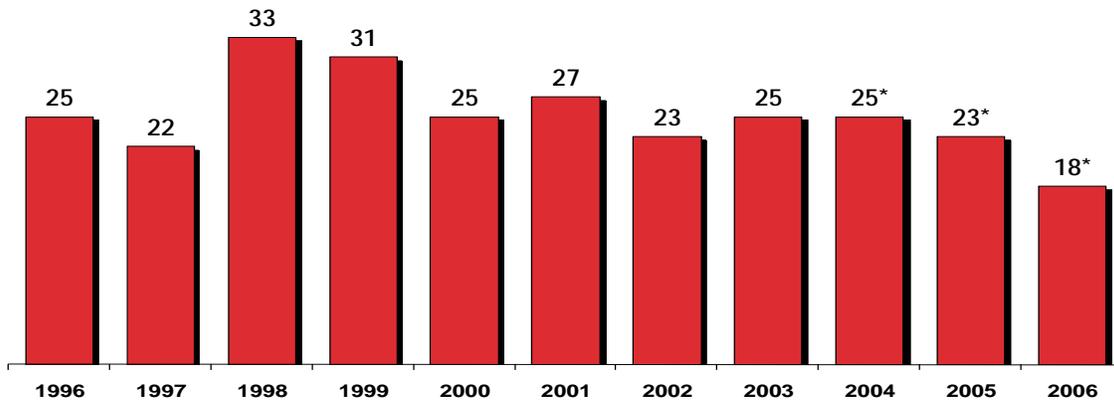


Source: DIR Division of Labor Statistics and Research

Fatal Occupational Injuries and Illnesses

The number of fatal occupational injuries and illnesses in California's local governments from 1996 to 1999 averaged 27.8, while from 2000 to 2006, the annual average was 23.7.

California Fatal Occupational Injuries and Illnesses Local Government



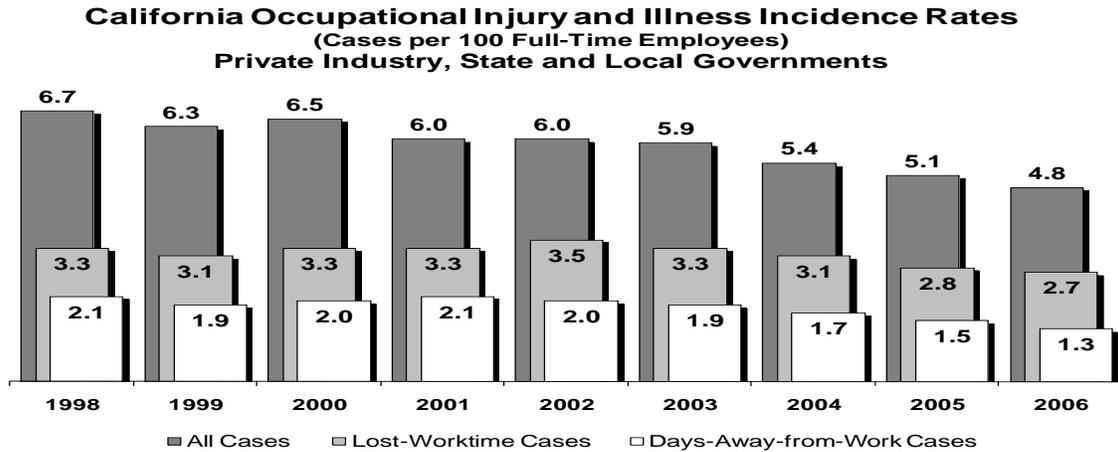
Source: DIR Division of Labor Statistics and Research
* BLS update to 2004-2006 data

WORKPLACE SAFETY AND HEALTH

Occupational Injury and Illness Incidence Rates

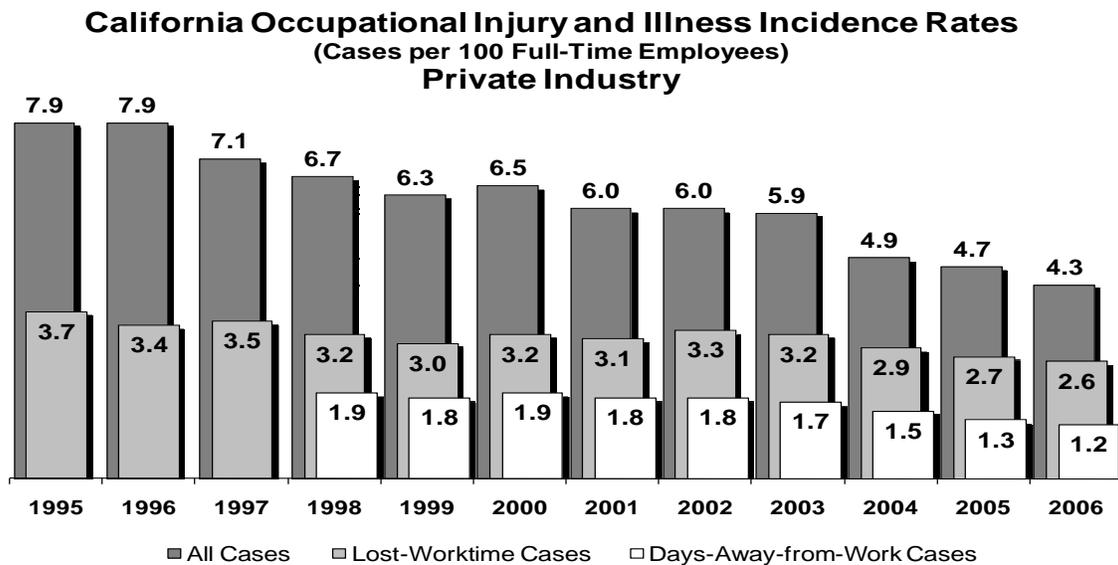
Public and Private Sectors

From 1998 to 2006, incidence rates for all cases and lost-work-time cases in California declined. Between 1998 and 2002, the incidence rates for days-away-from-work cases remained relatively the same but have started to decline since 2002.



Private Sector

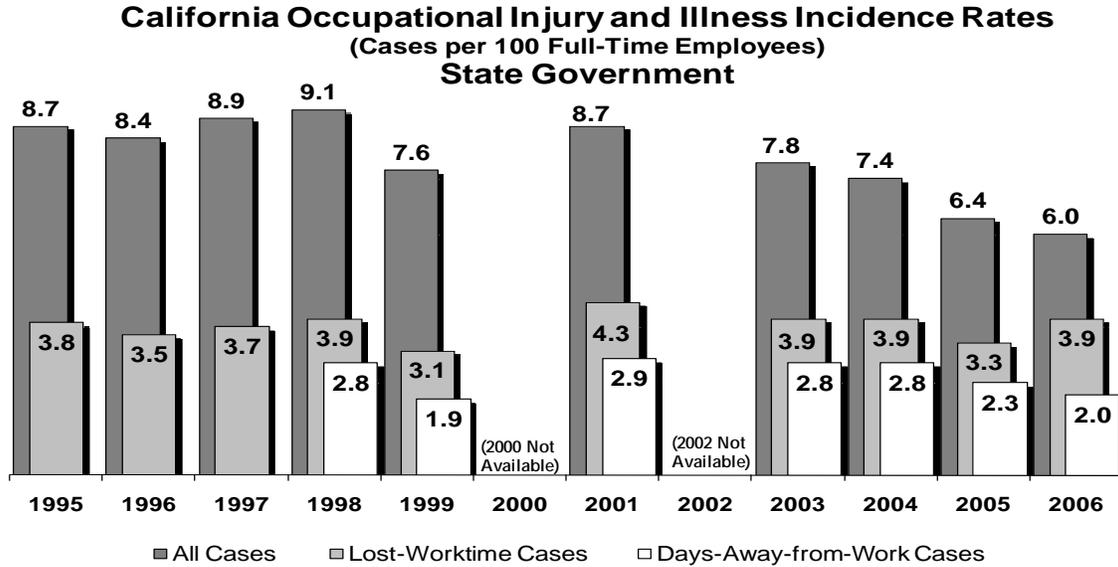
From 1995 to 2006, the occupational injury and illness incidence rate for all cases in California's private industry declined from 7.9 to 4.3, a decrease of 45.6 percent, while the incidence rate for lost-time cases dropped from 3.7 to 2.6, a decrease of 29.7 percent.



WORKPLACE SAFETY AND HEALTH

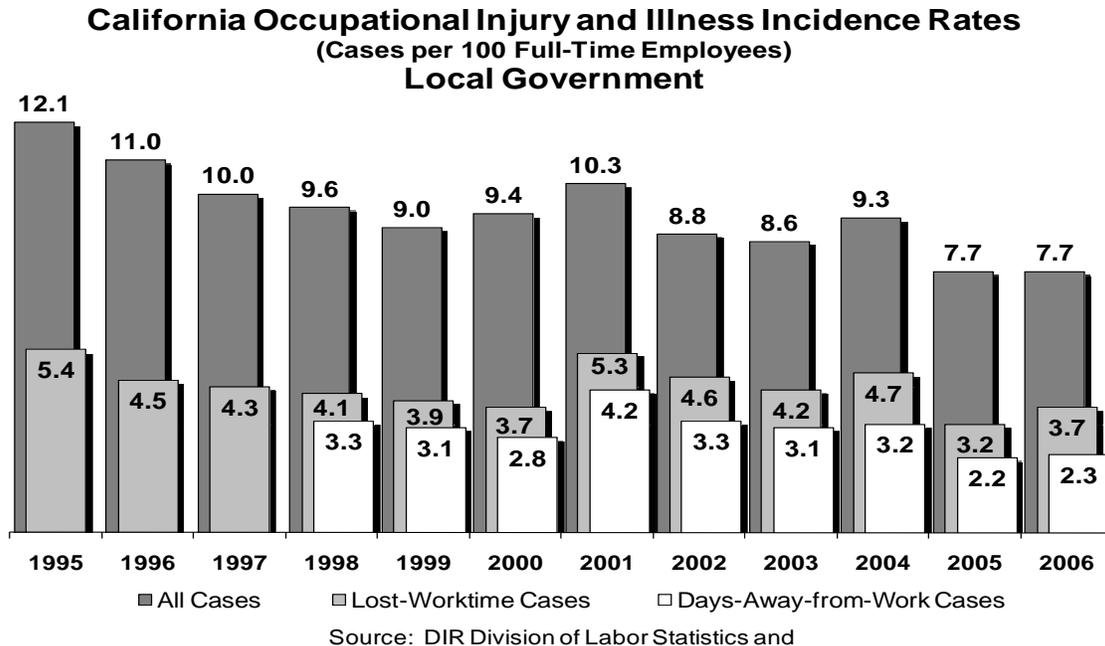
Public Sector - State Government

California state government occupational injury and illness incidence rates have shown a decline between 1995 and 2006.



Public Sector – Local Government

Unlike injury and illness rates for California state government where incidence rates have been generally declining for the past decade, local government occupational injury and illness incidence rates decreased from 1995 to 1999, increased through 2001, decreased through 2003, and then increased again in 2004. From 2004 to 2006, injury and illness rates decreased from 9.3 to 7.7 per 100 full-time employees.

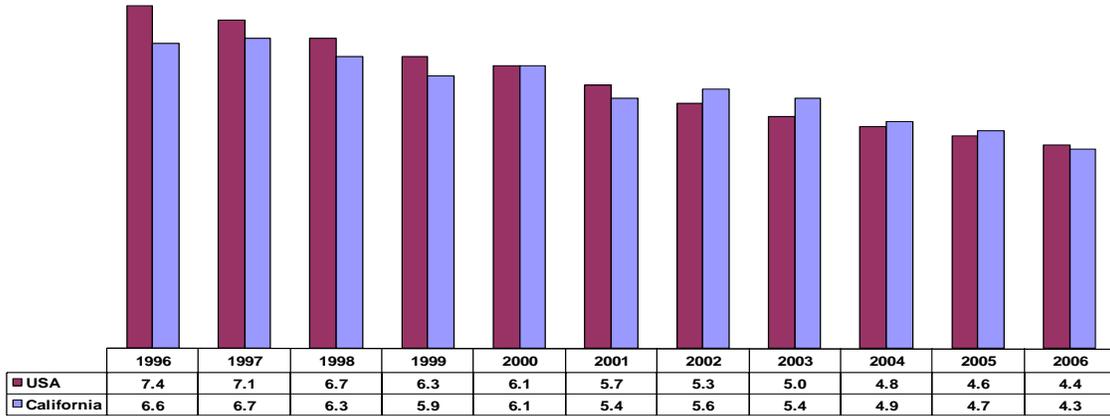


WORKPLACE SAFETY AND HEALTH

United States and California Incidence Rates: A Comparison

Both the United States and California have experienced a decrease in occupational injury and illness incidence rates from 1996 through 2006. During that time, the United States incidence rate dropped by 40.5 percent, while the California rate declined by 34.8 percent. Since 2002, the incidence rate in California has been above the national average. In 2006, the incidence rate in California became slightly lower compared to the national average.

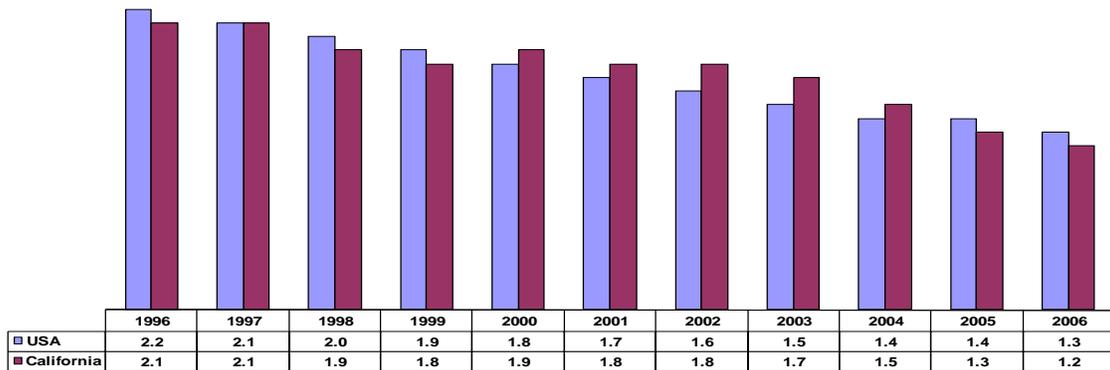
**USA and California
Injury and Illness Incidence Rate per 100 Full-Time Workers
Private Industry - Total Recordable Cases**



Source: US Department of Labor, Bureau of Labor Statistics

The incidence rate of occupational injury and illness days-away-from-work cases has also declined in the United States and California from 1996 through 2006. During that period of time, the rate for the United States decreased by 41 percent, while the California rate dropped by 42.8 percent.

**USA and California
Injury and Illness Incidence Rate per 100 Full-Time Workers
Private Industry - Cases with Days Away from Work**

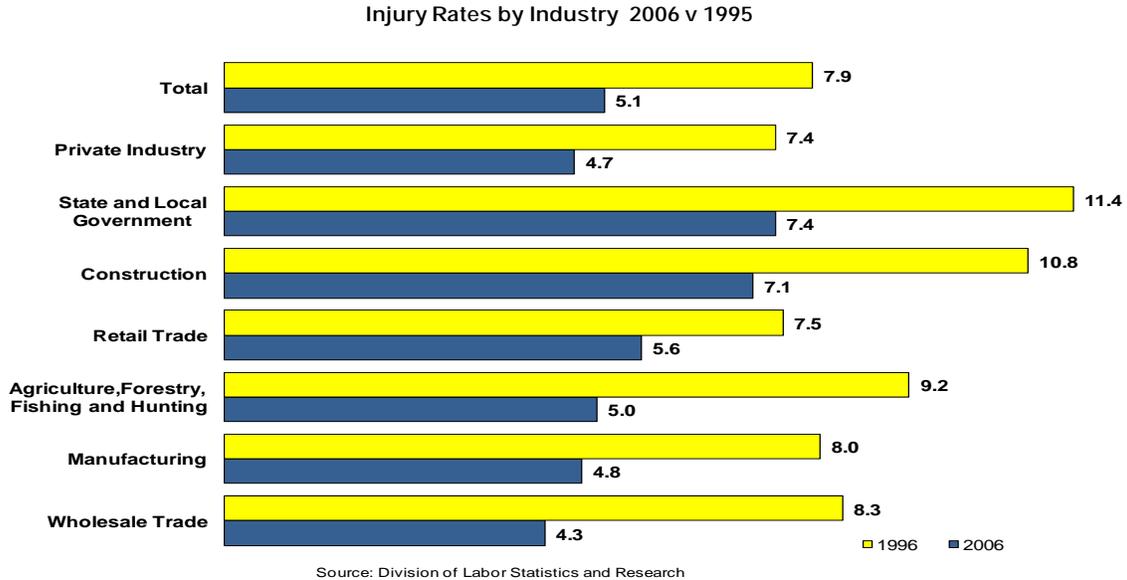


Source: US Department of Labor, Bureau of Labor Statistics

WORKPLACE SAFETY AND HEALTH

Characteristics of California Occupational Injuries and Illnesses

This section compares incidence rates by industry in 1995 with those in 2006 and also illustrates the days-away-from-work incidence rates by industry. Not only have the overall California occupational injury and illness incidence rates declined, but the incidence rates in major industries also have declined. The following charts compare days-away-from-work incidence rates in 1995 and 2006 by type of major industry including state and local government.

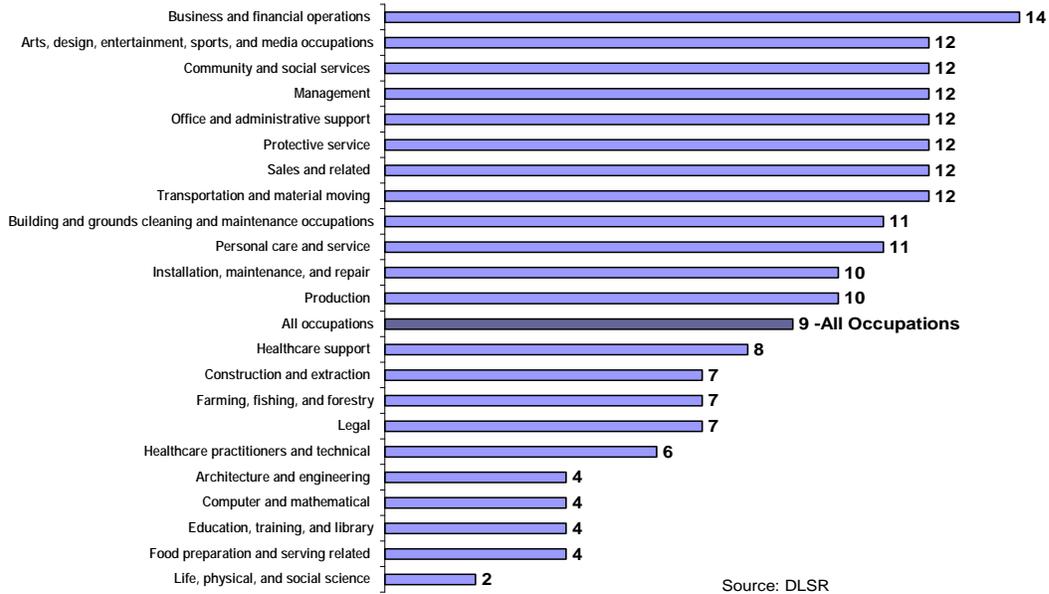


The following charts compare the median days away from work for private industry occupations, local industry occupations, and local industry groups. Business and financial occupations have the greatest median days away from work with 14 median days away from work.³⁴

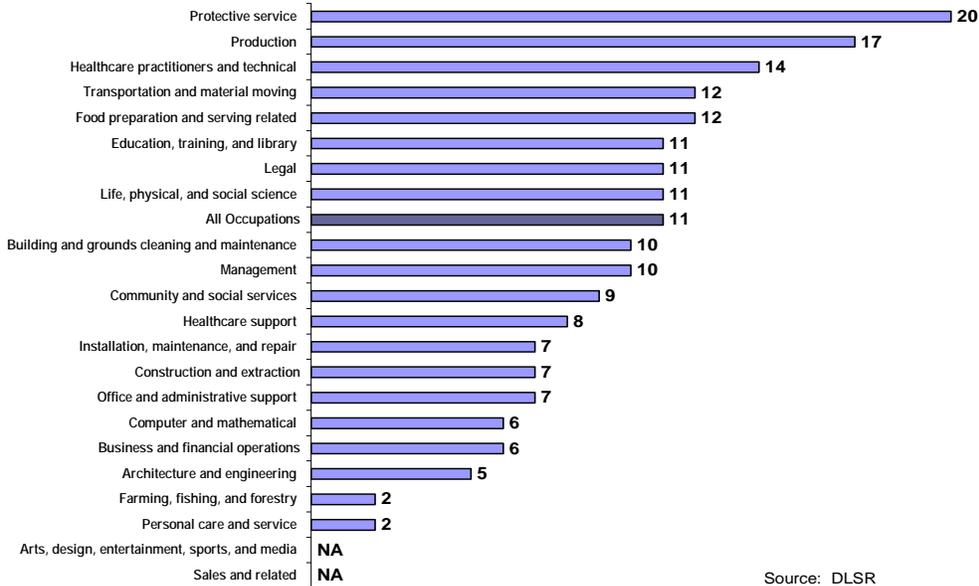
³⁴Recent data on median days away from work was available only for 2005.

WORKPLACE SAFETY AND HEALTH

Private Industry Occupational Groups
Non-Fatal Occupational Injuries and Illnesses Median Days Away from Work - 2005

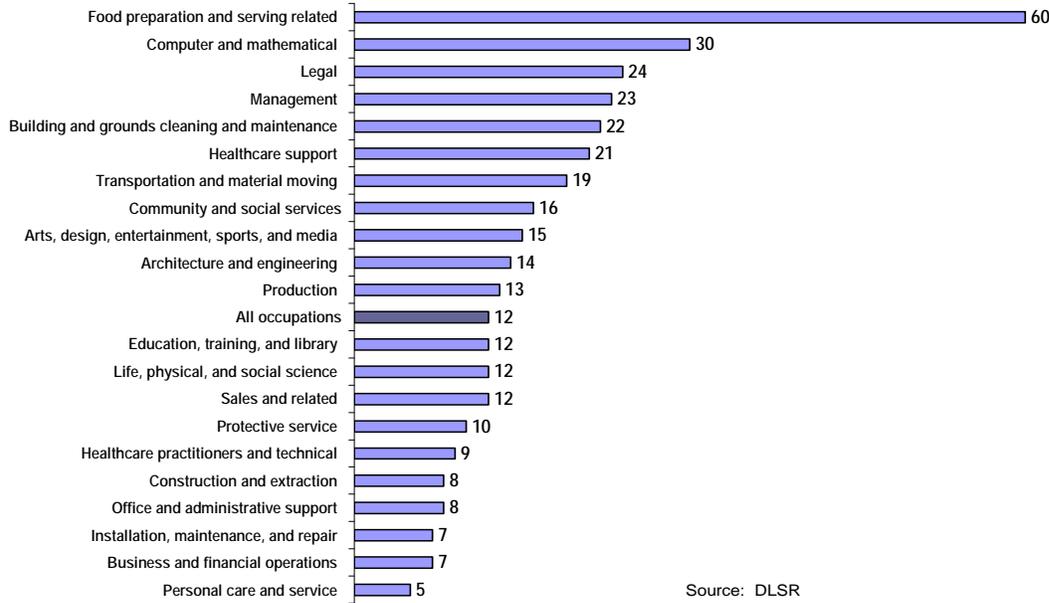


State Industry Occupational Groups
Non-Fatal Occupational Injuries and Illnesses Median Days Away from Work - 2005



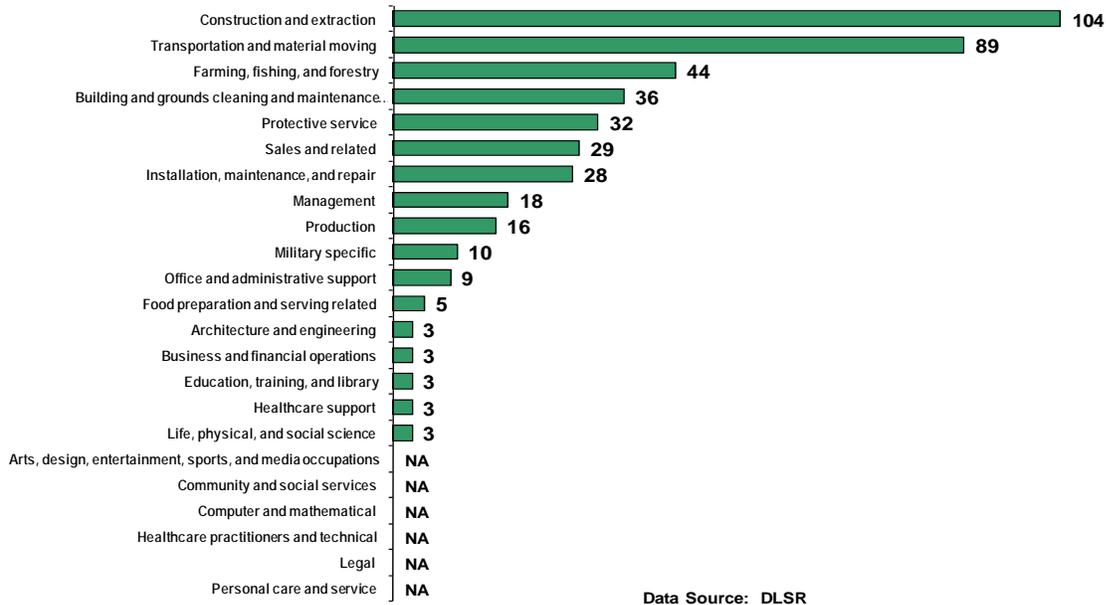
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Local Industry Occupational Groups
Non-Fatal Occupational Injuries and Illnesses Median Days Away from Work - 2005



The following chart compares the number of fatalities for various occupations. The transportation and material moving occupation had the greatest number of fatalities in 2005, followed by the construction and extraction occupation.

Fatal Occupational Injuries by Selected Occupations
All Ownerships, 2006

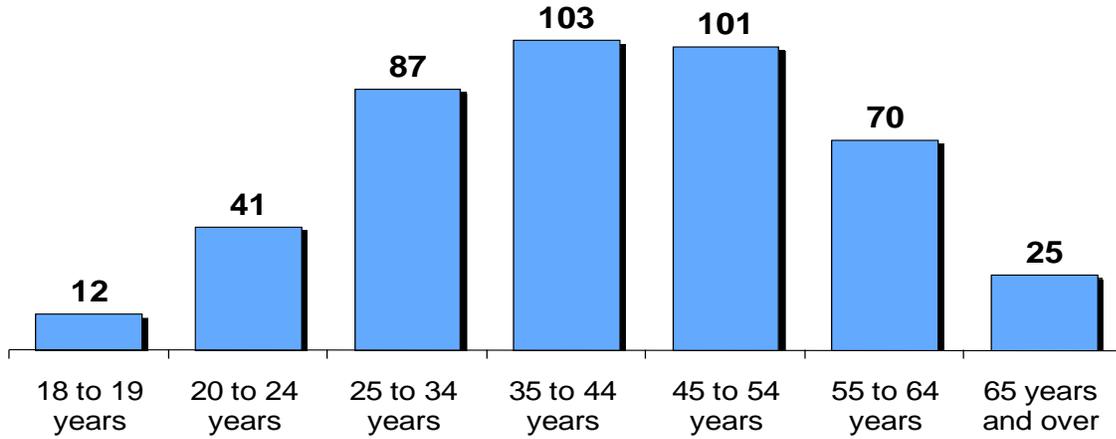


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Characteristics of California Fatal Occupational Injuries and Illnesses

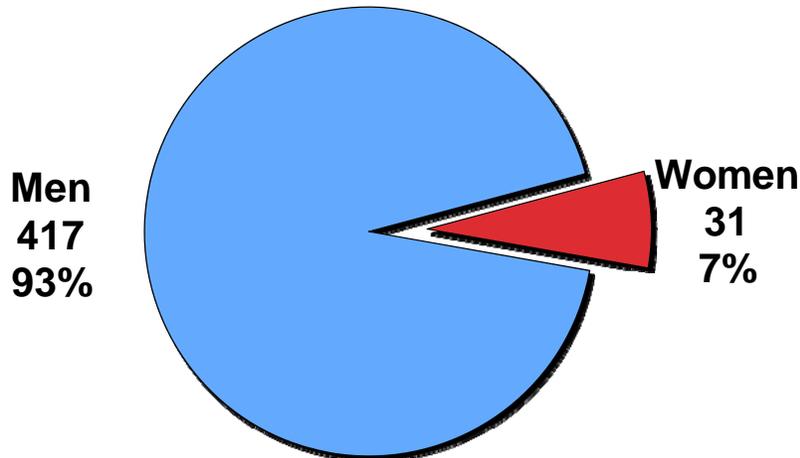
The following charts illustrate various characteristics of fatal occupational injuries and illnesses in 2006 in California's private industry and federal, state and local governments.

California Fatal Occupational Injuries and Illnesses by Age of Worker - 2006



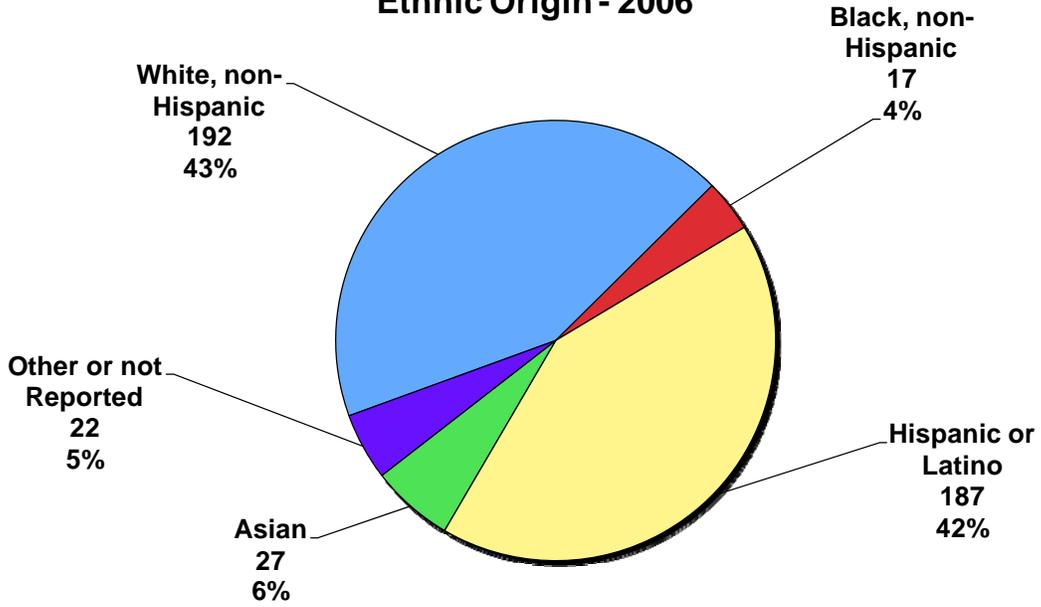
Source: BLS

California Fatal Occupational Injuries and Illnesses by Gender - 2006



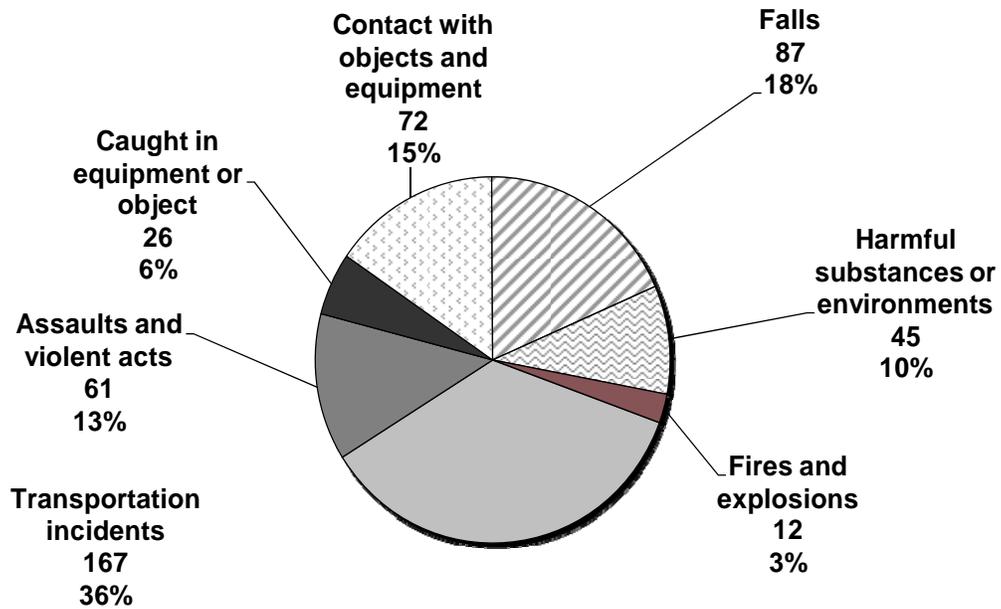
Source: BLS

California Fatal Occupational Injuries and Illnesses by Race or Ethnic Origin - 2006



Source: BLS

California Fatal Occupational Injuries and Illnesses by Event or Exposure - 2006



Source: BLS

Profile of Occupational Injury and Illness Statistics: California and the Nation

Data for the following analyses, except where noted, were derived from the Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR), from the United States Department of Labor (DOL) Bureau of Labor Statistics (BLS), and from the California Workers' Compensation Institute (CWCI).³⁵

Incidence Rates

- California's most recent work injury and illness statistics for 2006 indicate an injury and illness rate of 4.3 cases per 100 full-time employees in the private sector in 2006. This is a 54 percent decline from the 1990 peak level of 9.4 and an estimated 8.5 percent decrease from the previous year's figures.
- The trend in California mirrors a national trend. DOL figures for private employers show that from 1990 to 2006, the work injury and illness rate across the United States fell from 8.8 to 4.4 cases per 100 employees in the private sector. The reduction in the number of incidences of job injuries is likely due to various factors including a greater emphasis on job safety, the improving economy since the early 1990s, and the shift from manufacturing toward service jobs.
- From the Western region states, Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington, California's 2006 private-industry rate of 4.3 for non-fatal occupational injuries and illnesses is the lowest.³⁶ The state that had the second-lowest incidence rate was Arizona.

Duration

- Days-away-from-work cases, including those that result in days away from work with or without a job transfer or restriction, dropped from 2.1 to 1.2 cases per 100 full-time employees from 1996 to 2006 in the private sector. This also mirrors the national trend with the number of days-away-from-work cases falling from 2.1 to 1.3 cases in the national private sector.
- In the "State Report Cards for Workers' Compensation," published by the Work Loss Data Institute, the Institute reported that the median days away from work in California is 11 days, compared with the national average of 7 days.³⁷

Industry Data

- In 2006, injury and illness incidence rates varied greatly between private industries ranging from 2.1 injuries/illnesses per 100 full-time workers in the financial activities sector to 6.0 in construction. California's private industry rates for total cases were higher than the national rates in every major industry division, except for manufacturing (6.0 and 4.7), education and health services (5.4 and 5.3), and leisure and hospitality (4.6 and 4.2).
- The private industry total case rate for non-fatal injuries decreased between 2005 and 2006 from 4.7 to 4.3, and the rate for the public sector (state and local government) decreased from 7.4 in 2005 to 7.3 in 2006.
- Of all the industries identified, the largest decline in injury and illness occurred in utility system construction, from 7.3 per 100 full-time worker injuries in 2005 to 5.1 per 100 full-time worker injuries in 2006. Injuries and illnesses in the general construction industry declined from 7.1 in 2005 to 6.0 per 100 full-time workers in 2006; in various construction specialties such as highway, street and bridge construction, they dropped from 7.8 in 2005 to 5.9 in 2006.

³⁵ Please note that specific case and demographic data for non-fatal occupational injuries and illnesses were only available for 2005.

³⁶ The comparisons of industry rates have not been adjusted for industry mix within each state.

³⁷ http://www.odg-disability.com/pr_repsrc.htm

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- According to DLSR the largest decrease in injury and illness by major industry category was in utilities, from 7.3 to 5.4 per 100 full-time worker injuries in 2005 and 2006 correspondingly, followed by transportation and warehousing, from 8.5 to 7.2 per 100 full-time worker injuries in 2005 and 2006, and construction, from 7.1 to 6.0 per 100 full-time worker injuries in 2005 and 2006; in various construction specialties, such as highway, street and bridge construction, they dropped from 7.8 to 5.9 in 2006. Framing contractors also achieved a major reduction, from 14.8 worker injuries and illnesses per 100 in 2005 to 10.7 in 2006.³⁸
- According to DLSR, the largest increase in injury and illness by industry sectors was in mining, from 2.7 to 3.6 per 100 full-time worker injuries in 2005 and 2006 correspondingly, followed by educational services with an increase from 2.4 to 2.8 per 100 full-time worker injuries in 2005 and 2006.³⁹
- Over the past decade (1996-2006), the number of fatal injuries declined by about 25 percent, from 565 to 423.⁴⁰ From 2005 to 2006, the number of fatal injuries decreased by 6.4 percent. The highest number of fatal injuries was in construction (107) followed by trade, transportation and utilities (98).
- In private industry, the top ten occupations with the most non-fatal injuries and illnesses in 2005 are: laborers and freight, stock, and material movers; truck drivers, light or delivery services; carpenters; truck drivers, heavy and tractor-trailer; retail sales persons; construction laborers; farm workers and laborers, crop, nursery, and greenhouse; stock clerks and order fillers, security guards; nursing aides, orderlies, and attendants.
- In California state government, the top ten occupations with the most non-fatal injuries and illnesses in 2005 are: correctional officers and jailers; psychiatric technicians; police and sheriff's patrol officers; office clerks, general; registered nurses; janitors and cleaners, except maids and housekeeping cleaners; psychiatric aides; food servers, non-restaurant; operating engineers and other construction equipment operators; first-line supervisors/managers of correctional officers.
- In the local government, the top ten occupations with the most non-fatal injuries and illnesses in 2005 are: police and sheriff's patrol officers; janitors and cleaners except maids and house-keeping cleaners; teacher assistants; elementary school teachers, except special education; maintenance and repair workers, general; fire fighters; probation officers and correctional treatment specialists; landscaping and grounds-keeping workers; bus drivers, transit and inter-city; office clerks, general.
- Farming, fishing, and forestry (44), building and grounds cleaning and maintenance (36), protective service (32), sales and related (29) and installation, maintenance, and repair (28) were the occupations with the most number of fatal injuries in 2006. Construction and extraction (104) and transportation and material-moving occupations (89) accounted for nearly half (43 percent) of the fatal injuries in 2006. Transportation incidents were the number one cause of fatal injuries accounting for about 37 percent of fatal injuries in 2006.
- Assaults and violent acts accounted for about 13.6 percent of fatal injuries in 2006 and are a major cause of fatalities among: sales and related occupations (21); protective-service occupations (11); transportation and material-moving occupations (6); and office and administrative support occupations (6).

Establishment Size and Type

- The lowest rate for the total recordable non-fatal cases in 2006 was experienced by the smallest employers. Employers with 1 to 10 employees and 11 to 49 employees had incidence rates of 1.6 and 3.8 cases, respectively, per 100 full-time employees. There was an 11 percent decrease in incidence rates for employers with 1 to 10 employees from 2005 to 2006. Employers with 11 to 49 employees experienced 5 percent decrease in incidence rates compared to 2005.

³⁸ DLSR, Table 3: Incidence rates of nonfatal occupational injuries and illnesses by industry sector, 2005, 2006.

³⁹ DLSR, Table 3: Incidence rates of nonfatal occupational injuries and illnesses by industry sector, 2005, 2006.

⁴⁰ Totals for fatal injuries exclude federal government data.

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- Both establishments with 250 to 999 and 1000 or more employees reported the highest rate, 5.8 cases per 100 full-time employees in 2006.

Types of Injuries

- Some types of work injuries have declined since 1996 in the private sector, while others have increased. The number of sprains and strains continued to decline from 1996; however, these injuries remain by far the most common type of work injury accounting for about 35.6 percent of days-away-from-work cases in the private sector. Cuts, lacerations, bruises, contusions, heat burns, carpal tunnel syndrome, tendonitis, chemical burns, and amputations have decreased from 1996-2005, with the biggest decrease, 54 percent, seen both in carpal tunnel syndrome and tendonitis. From 1996 to 2005, the only injury categories that experienced an increase are multiple injuries.
- In the private sector, contact with objects and equipment was the leading cause of days-away-from-work injuries, cited in about 25.6 percent of days-away-from-work cases. Over exertion was the second common cause of injury, accounting for about 16.8 percent of injuries.
- In California state government, the two main causes of injury were contact with objects and equipment and overexertion, accounting for about 14.5 and 11.7 percent of days-away-from-work cases, respectively, in 2005.
- In local government, the number one cause of injury was contact with objects and equipment, accounting for 14.4 percent of days-away-from-work cases in 2005.
- The most frequently injured body part is the back, accounting for about 14 percent of the cases in state government and about 18.9 percent cases in local government. In the private sector, back injuries account for 20.7 percent of non-fatal cases.

Demographics

- Over the period from 1996 to 2005 in California, the number of days-away-from-work cases for women decreased by about 32 percent. Days-away-from-work cases for men decreased by about 30 percent.
- Between 1996 and 2005, the age groups in private industry (16 to 19, 20 to 24, 25 to 34, 35 to 44, and 45 to 54) experienced a decline. The biggest decline (57 percent) occurred among 16 to 19 year-old workers. The age group 55 to 64 experienced a 12.5 percent increase, and the age group of 65 and over experienced a 93 percent increase in the numbers of days away from work.
- In 2006, out of 448 fatalities, approximately 93 percent were male and 7 percent were female. Age group categories 35 to 44 years, 45 to 54 years, 55 to 64, and 65 and over experienced a decrease in fatal injuries between 2005 and 2006, and age group categories 18 to 19 years, 20 to 24 years, and 25 to 34 years experienced a increase in fatal injuries. The biggest increase (50 percent) was seen in the 18 to 19 years age group from 8 to 12, while the decrease in the 65 and older age group was 22 percent from 32 to 25 from 2005 to 2006.
- The highest number of fatalities in 2006 by race or ethnic origin categories was experienced by "White, non-Hispanic" followed by "Hispanic or Latino," accounting for 43 percent and 42 percent of the fatalities, respectively. From 2005 to 2006, fatal injuries decreased in most groups. The decreases were 37 percent (from 27 to 17 cases) for the "Black, non-Hispanic" group, 1.6 percent for the "Hispanic or Latino group" (from 190 to 187), 9 percent for the "White, non-Hispanic" group (from 212 to 192), and 15.6 percent for the "Asian" category (from 32 to 27 cases). There was a 340 percent increase for "Other or not reported" group (from 5 to 22 cases).

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Occupational Injury and Illness Reporting

Occupational injury and illness information is the responsibility of BLS within the United States and DOL and DLSR within the California DIR. Occupational injuries and illnesses are recorded and reported by California employers through several national surveys administered by DOL with the assistance of DIR.

OSHA Reporting and Recording Requirements

The United States Occupational Safety and Health Act (OSH Act) of 1970 requires covered employers to prepare and maintain records of occupational injuries and illnesses. It provides specific recording and reporting requirements that comprise the framework for the nationwide occupational safety and health recording system. The Occupational Safety and Health Administration (OSHA) in DOL administers the OSH Act recordkeeping system.

Although there are exemptions for some employers from recording of injuries, all California employers must report injuries to DLSR. Every employer must also report any serious occupational injuries, illnesses or deaths to California OSHA within DIR.

The data assist employers, employees and compliance officers in analyzing the safety and health environment at the employer's establishment and are the source of information for the BLS "Annual Survey of Occupational Injuries and Illnesses" and the OSHA "Occupational Injury and Illness Survey."

BLS Annual Survey of Occupational Injuries and Illnesses

To estimate the number of occupational injuries and illnesses in the United States, BLS established a nationwide annual survey of employers' occupational injuries and illnesses. The state-level statistics on non-fatal and fatal occupational injuries and illnesses are derived from this survey.

Non-fatal injuries and illnesses

The BLS Annual Survey develops frequency counts and incidence rates by industry and also profiles worker and case characteristics of non-fatal workplace injuries and illnesses that result in lost work time. Each year, BLS collects employer reports from about 173,800 randomly selected private-industry establishments.

Fatal injuries and illnesses

The estimates of fatal injuries are compiled through the Census of Fatal Occupational Injuries (CFOI), which is part of the BLS occupational safety and health statistics program. CFOI uses diverse state and federal data sources to identify, verify and profile fatal work injuries.

OSHA Occupational Injury and Illness Survey

Federal OSHA administers the annual "Occupational Injury and Illness Survey." OSHA utilizes this collection of employer-specific injury and illness data to improve its ability to identify and target agency interventions to those employers who have serious workplace problems.

For this survey, OSHA collects data from 80,000 non-construction establishments and from up to 15,000 construction establishments.

Occupational Injury and Illness Prevention Efforts

Efforts to prevent occupational injury and illness in California take many forms, but all are derived from cooperative efforts between the public and private sectors. This section describes consultation and compliance programs, health and safety standards, and education and outreach designed to prevent injuries and illnesses to improve worker health and safety.

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Cal/OSHA Program

The Cal/OSHA Program is responsible for enforcing California laws and regulations pertaining to workplace safety and health and for providing assistance to employers and workers about workplace safety and health issues.

The Cal/OSHA Enforcement Unit conducts inspections of California workplaces based on worker complaints, accident reports and high hazard industries. There are 22 Cal/OSHA Enforcement Unit district offices located throughout the State of California. Specialized enforcement units, such as the Mining and Tunneling Unit and the High Hazard Enforcement Unit, augment the efforts of district offices in protecting California workers from workplace hazards in high hazard industries.

Other specialized units, such as the Crane Certifier Accreditation Unit, the Asbestos Contractors' Registration Unit, the Asbestos Consultant and Site Surveillance Technician Unit and the Asbestos Trainers Approval Unit, are responsible for enforcing regulations pertaining to crane safety and prevention of asbestos exposure.

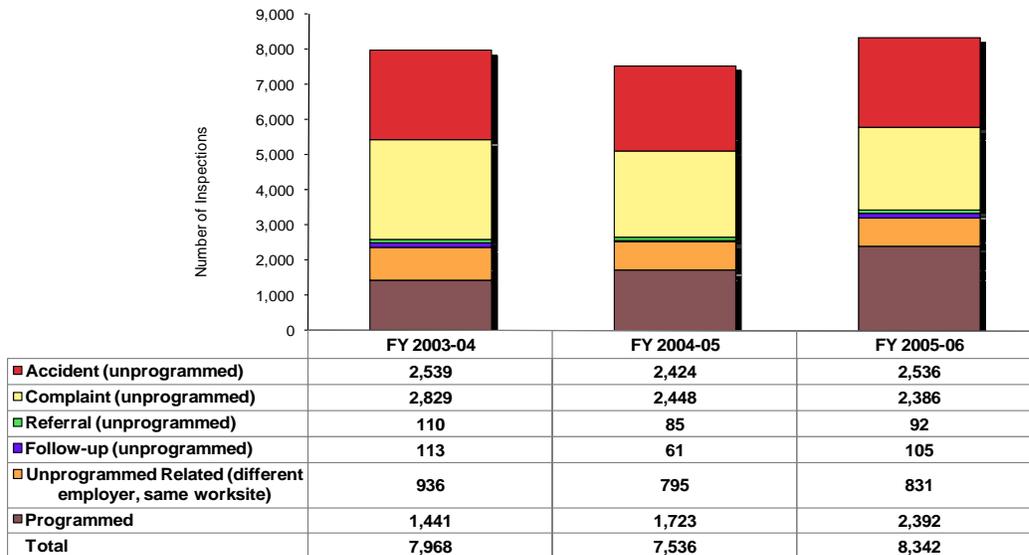
The Cal/OSHA Consultation Service provides assistance to employers and workers about workplace safety and health issues through on-site assistance, high hazard consultation and other special emphasis programs. The Consultation Service also develops educational materials on workplace safety and health topics.

Profile of DOSH On-Site Inspections and Violations Cited

The trends in types of inspections have varied in the past few years, with Accidents and Complaints being consistently predominant. However, starting in fiscal year (FY) 2006, Programmed inspections started to reach similar levels as accidents and complaints.

The chart below shows that the total Inspections have fluctuated in the past three years from 7,968 in FY 2004 to 8,342 in FY 2006.

DOSH Inspections by Type FY 2003-04 to FY 2005-06

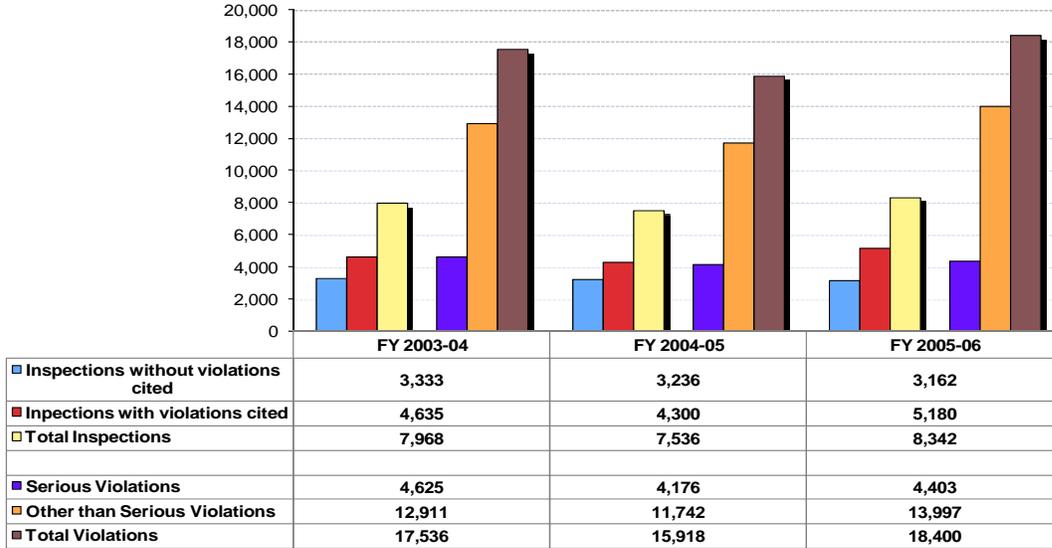


Source: DIR Division of Occupational Safety and Health

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The number of violations is greater than inspections due to the fact that most inspections where violations occur yield more than one violation. Violations are further broken down into serious and other-than-serious. In FY 2006, 62.10 percent of inspections resulted in violations cited. The breakdown by type is shown in the chart below.

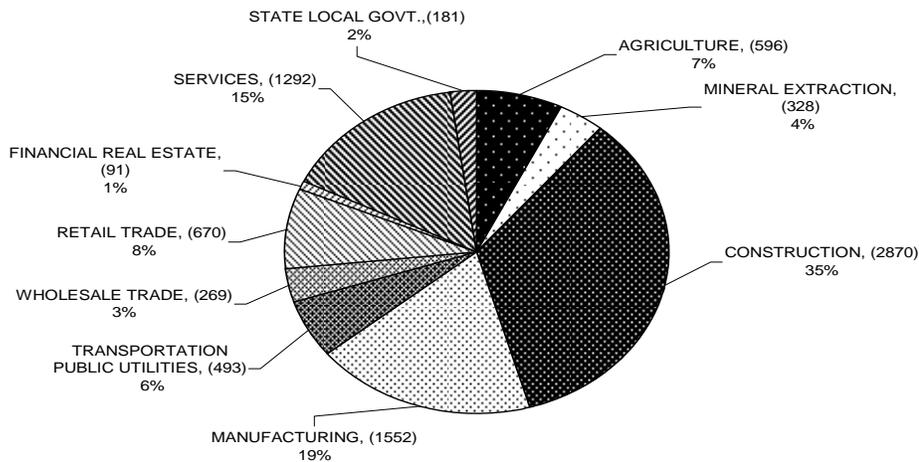
DOSH Inspections and Violations Cited FY 2003-04 to FY 2005-06



Source: DIR Division of Occupational Safety and Health

Of the 8,342 workplace safety and health inspections conducted in FY 2006, 2,870 (35 percent) were in construction and 5,472 (65 percent) were in non-construction. Below is a chart illustrating the proportion of inspections and violations in major industrial groups.

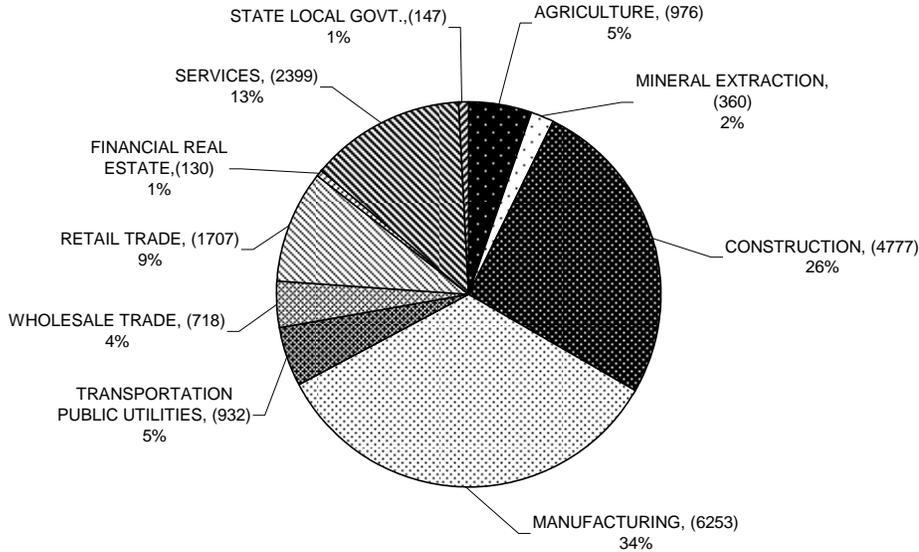
Distribution of Inspections by Major Industry, State FY 2006
Total Inspections = 8,342
Source: DOSH



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Despite the fact that the greatest percentage of inspections were in construction, the greatest percentage of violations were found to be in manufacturing, as is shown in the chart below. Further, of those violations that were considered serious, both construction and manufacturing industries experienced a similar rate of 30 percent serious violations (not shown in chart).

Distribution of Violations by Major Industry, State FY 2006
Total Violations = 18,400
Source: DOSH



Economic and Employment Enforcement Coalition (EEEC)⁴¹

According to the DIR website, "For decades California has had some of the strongest labor and workforce safety laws in the country." To help enforce these labor laws and regulations, the Triple "E" Coalition (Economic and Employment Enforcement Coalition-EEEC) was created in 2005 as a multi-agency enforcement program consisting of investigators from the Division of Labor Standards Enforcement (DLSE), Division of Occupational Safety and Health (DOSH), Employment Development Department (EDD), Contractors State License Board and U.S. DOL. The primary emphasis of EEEEC is to combine enforcement efforts. EEEEC is a partnership of state and federal agencies, each expert in their own field, collaborating to:

- Educate business owners and employees on federal and state labor, employment, and licensing laws.
- Conduct vigorous and targeted enforcement against labor law violators.
- Help level the playing field and restore the competitive advantage to law-abiding businesses and their employees."⁴²

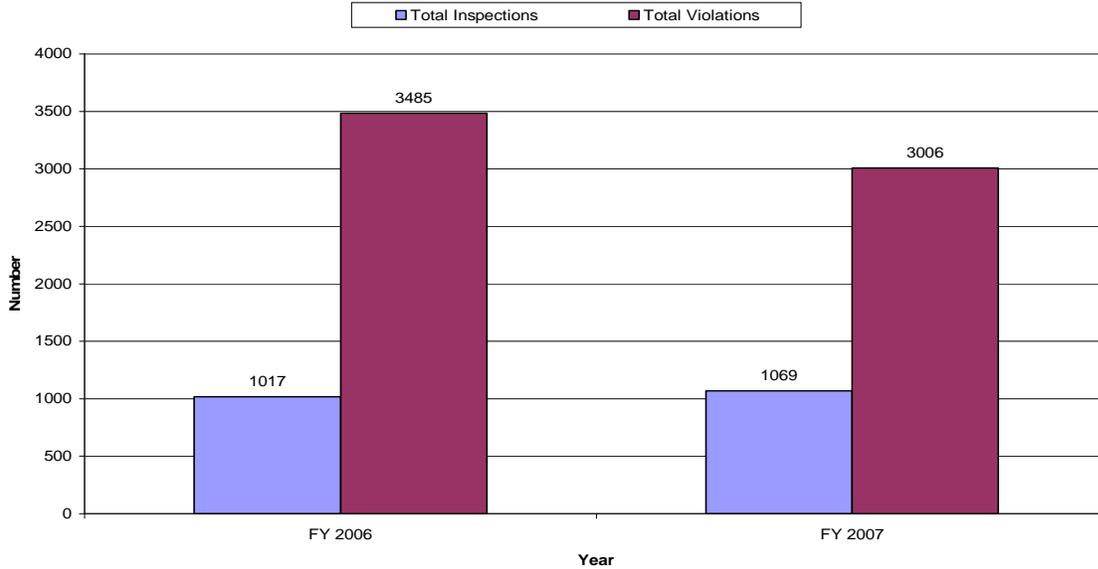
⁴¹ For more information about the EEEEC, visit any of these agency links: <http://www.dir.ca.gov/EEEC/EEEC.html>, or <http://www.edd.ca.gov/eddeec.htm>, or <http://www.labor.ca.gov/eeec.htm>

⁴² <http://www.dir.ca.gov/EEEC/EEEC.html>

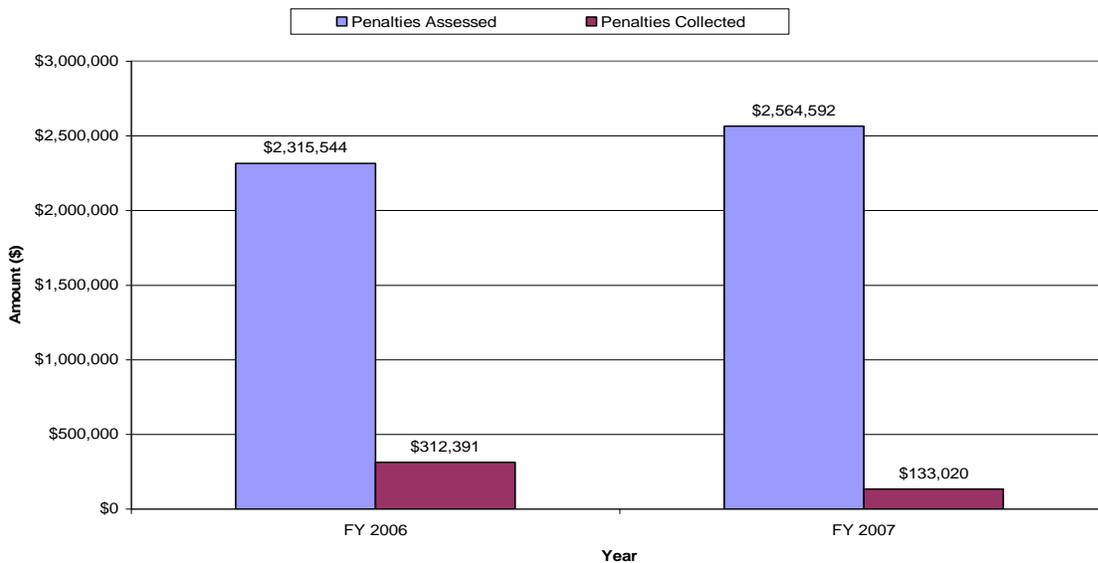
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Given the newness of EEEEC, there are only two years of data. Total EEEEC inspections rose from FY 2006 to FY 2007, from 1017 to 1069, respectively. However, the number of violations was lower in FY 2007, 3006 versus 3485. The penalties given were \$2.31 million in FY 2006 and \$2.56 million in FY 2007; however, only \$312,391 (13.5 percent) was collected in FY 2006 and \$133,020 (5.1 percent) in FY 2007. The following two charts illustrate the comparisons.⁴³

Total EEEEC Inspections and Violations, State FY 2006 and 2007
Source: DOSH



Total EEEEC Penalties Assessed and Collected, State FY 2006 and 2007
Source: DOSH

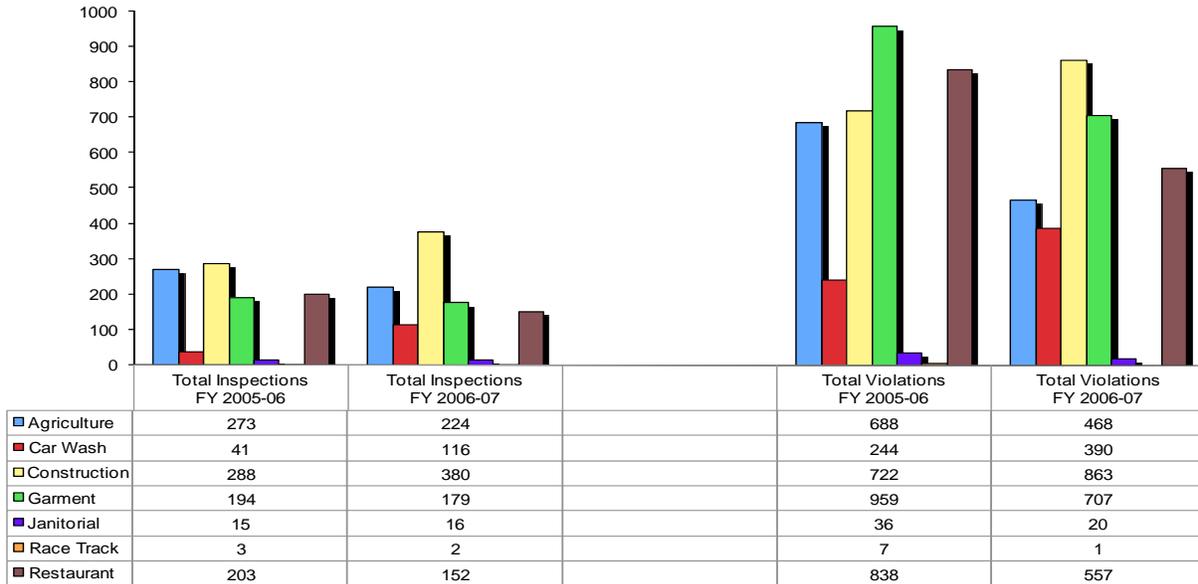


⁴³ Data provided by DOSH. These totals reflect only DOSH citations and penalties; other types of Labor Code citations and penalties resulting from the enforcement action are independently accounted for by the respected agency or unit.

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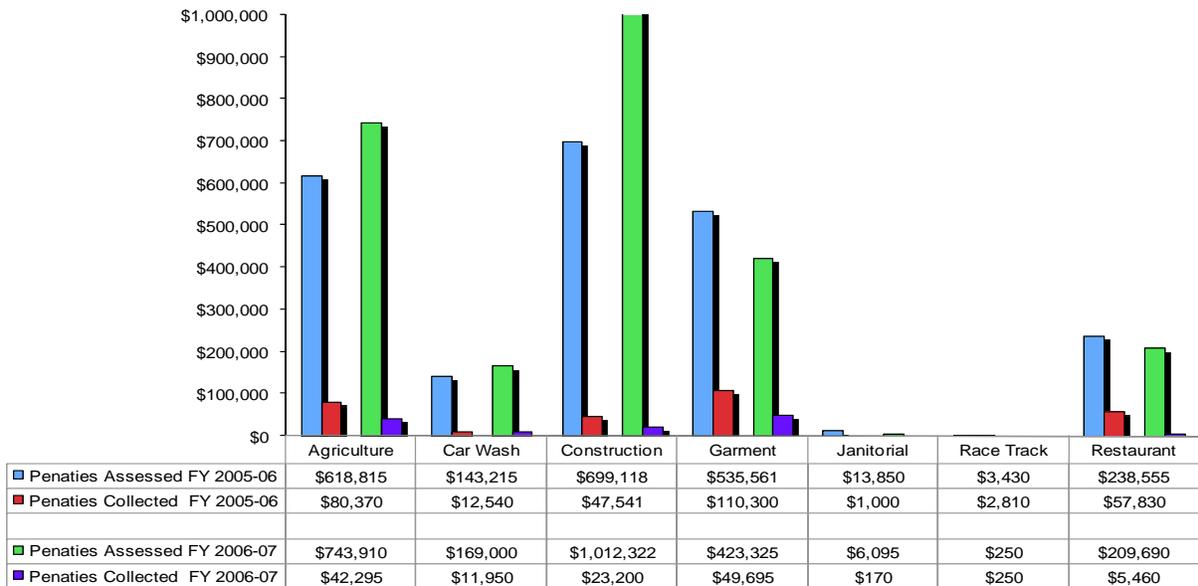
The two charts below describe EEEEC inspections and violations by industry, along with the penalties assessed and collected. Construction, garment and restaurant industries have led in violations in the past two years. Construction and agriculture industries have led in inspections. Agriculture and construction industries have led in penalties assessed.

EEEC Report: Inpections and Violations FY 2005-06 and FY 2006-07



Source: DIR Division of Occupational Safety and Health

EEEC Report: Penalties Assessed and Collected FY 2005-06 and FY 2006-07



Source: DIR Division of Occupational Safety and Health

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Identification, Consultation and Compliance Programs

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

High Hazard Employer Program

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to these employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

In 1999, the passage of Assembly Bill (AB) 1655 gave DIR the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis.

High Hazard Consultation Program

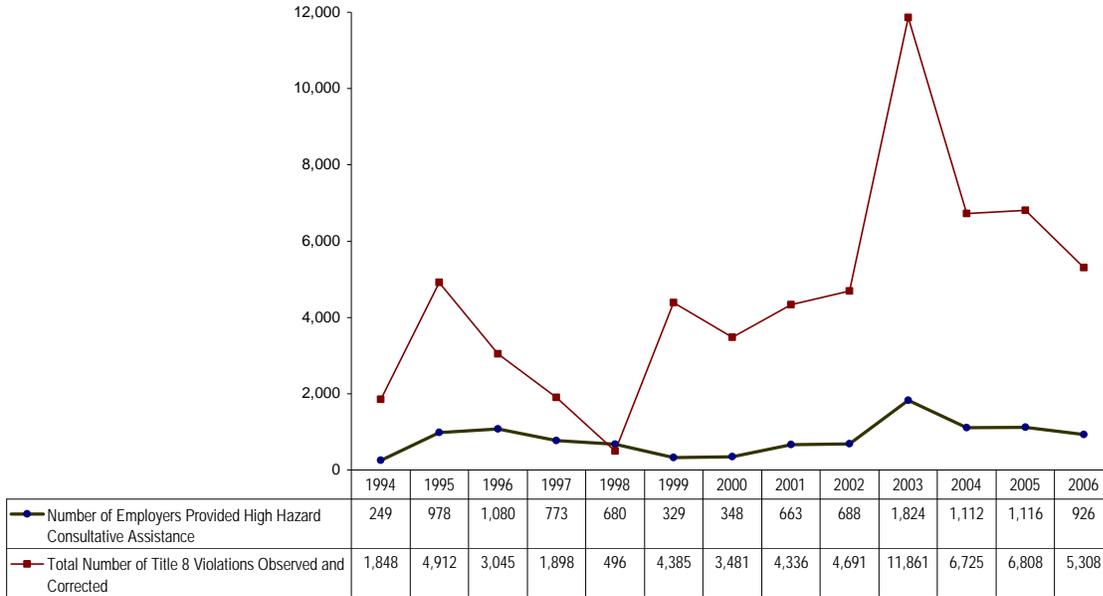
DOSH reports that in 2006, it provided on-site high hazard consultative assistance to 926 employers, as compared to 1,116 employers in 2005. During consultation with these employers, 5,308 Title 8 violations were observed and corrected as a result of the provision of consultative assistance.

Since 1994, 10,766 employers have been provided direct on-site consultative assistance, and 59,794 Title 8 violations have been observed and corrected. Of these violations, 40.0 percent were classified as "serious."

The following chart indicates the yearly number of consultations and violations observed and corrected during the years 1994-2006. It should be noted that for years 2002 and 2003, all Consultative Safety and Health Inspection Projects (SHIPs) were included in the High Hazard Consultation Program figures. Effective 2004, only SHIPs with experience modification (Ex-mod) rates of 125 percent and above are included in the High Hazard Consultation Program figures.

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High Hazard Consultation Program Production by Year



Data Source: Division of Occupational Safety and Health

The efficacy of High Hazard Consultation is measured by comparisons of employer lost and restricted workday data. Beginning in 2001, Log 200 was replaced with Log 300 as the source for lost and restricted workday data. The use of the Lost Work Day Case Incidence (LWDI) rate was transitioned and replaced with the Days Away, Restricted, or Transferred (DART) rate. Additionally, High Hazard Consultation uses Ex-mod rates to measure efficacy.

High Hazard Enforcement Program

DOSH reports that in 2006, 448 employers underwent a targeted high hazard enforcement inspection, down from 505 employers in 2005. During these inspections in 2006, 2,633 violations were observed and cited, whereas in 2005, 2,223 violations were observed and cited.

In addition, in 2006, 593 employers underwent an inspection as part of the Agricultural Safety and Health Inspection Project (ASHIP). Of these, four inspections were also targeted. During these inspections, 1223 violations were observed and cited.

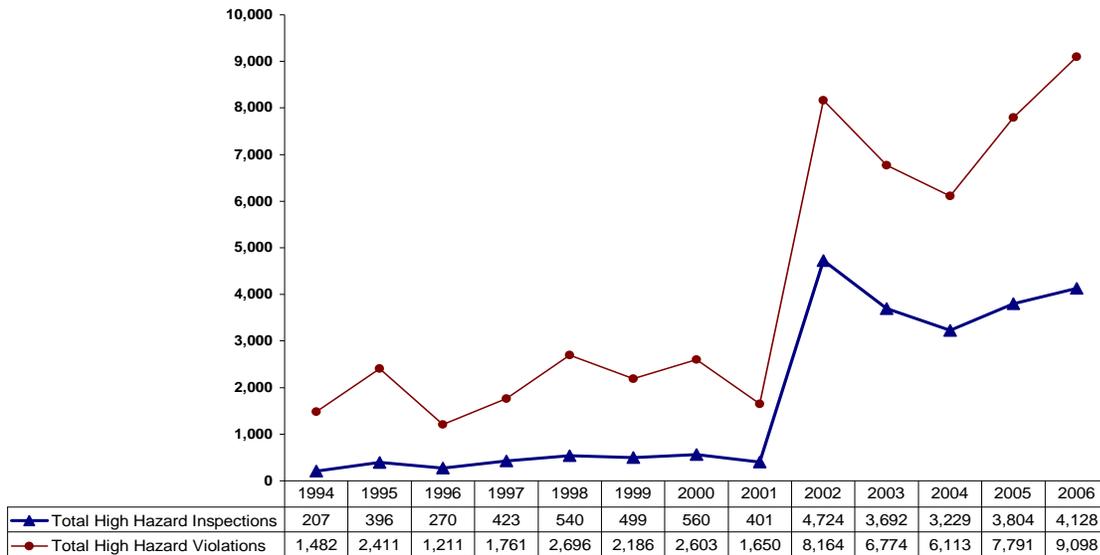
In addition, in 2006, 3134 employers underwent an inspection as part of the Construction Safety and Health Inspection Project (CSHIP). Of these, 43 inspections were also targeted. During these inspections, 5,242 violations were observed and cited.

Since 1994, 23,383 employers have undergone a high hazard enforcement inspection, and 54,584 Title 8 violations have been observed and cited. Of these violations, 35.5 percent were classified as "serious."

The chart below indicates the yearly number of targeted inspections and violations observed and cited during the years 1994-2006. It should be noted that effective 2002, the Safety and Health Inspection Projects (SHIPs) are included in the High Hazard Enforcement Program figures.

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High Hazard Enforcement Program Inspections and Violations



Data Source: Division of Occupational Safety and Health

The same lost and restricted workday methodology is used for both High Hazard Consultation and Enforcement. Efficacy is measured by comparisons of employer lost and restricted workday data. Beginning in 2001, Log 200 was replaced with Log 300 as the source for lost and restricted workday data. The use of the LWDI rate was transitioned and replaced with the DART rate.

For further information...

- Additional information can be obtained by visiting the Cal/OSHA website at www.dir.ca.gov/DOSH or by e-mailing your questions or requests to InfoCons@dir.ca.gov.

Safety Inspections

DOSH has two major units devoted to conducting inspections to protect the public from safety hazards:

- The Elevator, Ride and Tramway Unit conducts public safety inspections of elevators, amusement rides, both portable and permanent, and aerial passenger tramways or ski lifts.
- The Pressure Vessel Unit conducts public safety inspections of boilers (pressure vessels used to generate steam pressure by the application of heat), air and liquid storage tanks, and other types of pressure vessels.

Health and Safety Standards

The Occupational Safety and Health Standards Board (OSHSB), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The mission of OSHSB is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthy workplace for California workers.

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To meet the DIR Goal 1 on ensuring that California workplaces are lawful and safe, the Board shall pursue the following goals:

- Adopt and maintain effective occupational safety and health standards.
- Evaluate petitions to determine the need for new or revised occupational safety and health standards.
- Evaluate permanent variance applications from occupational safety and health standards to determine if equivalent safety will be provided.

OSHSB also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The OSHSB safety and health standards provide the basis for Cal/OSHA enforcement.

For further information...

 www.dir.ca.gov/OSHSB/oshsb.html

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Ergonomics Standards

Efforts to adopt an ergonomics standard in California and the United States are outlined in the following "brief histories."

Ergonomics Standard in California: A Brief History

July 16, 1993

Governor Pete Wilson signs a package of bills that enacts major reform of California's workers' compensation system. A provision in AB 110 (Peace) added Section 6357 to the Labor Code requiring the Occupational Safety and Health Standards Board (OSHSB) to adopt workplace ergonomics standards by January 1, 1995, in order to minimize repetitive motion injuries.

January 18 and 23, 1996

OSHSB holds public hearings on the proposed ergonomics standard and receives over 900 comments from 203 commentators. The proposed standards are revised.

July 15, 1996

OSHSB provides a 15-day public comment period on revisions to proposed standards.

September 19, 1996

OSHSB discusses the proposal at its business meeting and makes further revisions.

October 2, 1996

OSHSB provides a 15-day public comment period on the further revisions.

November 14, 1996

OSHSB adopts the proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

January 2, 1997

OAL disapproves the proposed regulations based on clarity issues.

February 25, 1997

OSHSB provides a 15-day public comment period on new revisions addressing OAL concerns.

April 17, 1997

OSHSB adopts the new revisions and resubmits the proposal to OAL.

June 3, 1997

Proposed ergonomics standard is approved by OAL and becomes Title 8, California Code Regulations (8 CCR), Section (§) 5110, Repetitive Motion Injuries.

July 3, 1997

The ergonomics standard – 8 CCR §5110 - becomes effective.

September 5, 1997

Sacramento Superior Court holds a hearing to resolve the legal disputes filed by labor and business industries.

October 15, 1997

Judge James T. Ford of the Sacramento Superior Court issued a Peremptory Writ of Mandate, Judgment, and Minute Order relative to challenges brought before the Court. The Order invalidated the four parts of the standard.

December 12, 1997

OSHSB appealed Judge Ford's Order with its legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

(Continued on following page)

Source: OSHSB

Ergonomics Standard in California: A Brief History (continued)

March 21, 2001

The US Congress, for the first time, passed a Joint Resolution of Disapproval under the Congressional Review Act and repealed the Federal Standard on March 21, 2001. The Joint Resolution was signed and Federal OSHA notified the States of the cancellation of OSHA's requirement to adopt an Ergonomics Program Standard comparable to the Federal Standard.

April 23, 2001

Federal OSHA published a notice in the Federal Register stating that the former 29 CFR 1910.900 was repealed effective immediately.

July 2001

After considering the California Labor Federation petition and the recommendations of DOSH and OSHSB staff, OSHSB concluded that the Federal model did not offer a sound approach for revising California's ergonomic standard and denied the petition.

February 2002

Assembly Bill 2845 (Goldberg) was introduced to amend Section 6357 of the Labor Code to require OSHSB to adopt revised standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion by July 1, 2004.

August 2002

In August 2002, the California Labor Federation submitted another request (Petition 448) to OSHSB to revise 8 CCR Section 5110.

September 2002

Governor Gray Davis vetoed AB 2845 to allow OSHSB time to consider Petition 448, to evaluate the existing regulation and the merits of amending it.

February 2003

OSHSB directed its staff to convene an advisory committee to consider proposed revisions to Section 5110.

April 2003

In April 2003, OSHSB and Division of Occupational Health staff convened an advisory committee to consider proposed revisions to 8 CCR Section 5110 on repetitive motion injuries (RMI's). The committee reviewed and considered each of the items that the committee was directed to address in the Board's Petition Decision regarding Petition 448. There was no consensus on proposed revisions to Section 5110. Furthermore, there was general agreement that another meeting of the same group may not be useful.

May 2003

OSHSB was briefed on the results of the advisory committee on Petition 448. The Board members discussed the possibility of having another advisory committee meeting and asked staff to proceed.

March 2004

OSHSB, with three new members and a new Chair, was briefed on the history of the ergonomics issue. In addition to the interest in getting background on the issue, the item was placed on the March agenda based upon a question on convening another advisory committee. After the presentation, the OSHSB members discussed the issue. No action was taken.

Source: OSHSB

Federal Ergonomics Standard: A Brief History

1990

Former United States Secretary of Labor Elizabeth Dole pledges to “take the most effective steps necessary to address the problem of ergonomic hazards on an industry-wide basis.”

July 1991

OSHA publishes “Ergonomics: The Study of Work.” More than 30 organizations petition Secretary of Labor to issue an Emergency Temporary Standard.

April 1992

Secretary of Labor denies petition for Emergency Temporary Standard.

August 1992

OSHA publishes an Advance Notice of Proposed Rulemaking on ergonomics.

1993

OSHA conducts survey to obtain information on the extent of ergonomics programs.

March 1995

OSHA begins meeting with stakeholders to discuss approaches to drafting an ergonomics standard.

January 1997

OSHA/NIOSH conference on successful ergonomics programs.

February 1998

OSHA begins meetings with national stakeholders about the draft ergonomics standard under development.

February 1999

OSHA begins small business review (SBREFA) of its draft and makes draft regulatory text available to the public.

April 1999

OSHA receives SBREFA report on draft and begins to address the concerns raised in the report.

November 23, 1999

OSHA publishes proposed ergonomics program standard by filing in the Federal Register (64 FR 65768). OSHA asks for written comments from the public, including materials such as studies and journal articles and notices of intention to appear at informal public hearings.

March-May 2000

Informal public hearings held in Washington D.C. (March 13 - April 7, May 8-12), Chicago (April 11-21) and Portland (April 24 - May 5).

May 24, 2000

The House Appropriations Committee votes to amend \$342 billion spending bill by barring the Occupational Safety and Health Administration from using their budget to promulgate, issue, implement, administer or enforce any ergonomics standard. President Clinton responds by threatening to veto the bill.

Source: www.ergoweb.com

(Continued on following page)

Federal Ergonomics Standard: A Brief History (continued)

November 14, 2000

OSHA issues Ergonomics Program Standard.

January 16, 2001

Final Ergonomics Program Standard - 29 CFR 1910.900 - becomes effective. The standard was challenged in court with over 30 lawsuits.

March 20, 2001

President George W. Bush signs into law S.J. Res. 6, a measure that repeals the ergonomic regulation. This is the first time the Congressional Review Act has been put to use. The Congressional Review Act allows Congress to review every new federal regulation issued by the government agencies and, by passage of a joint resolution, overrule a regulation.

April 23, 2001

Federal OSHA publishes a notice in the Federal Register stating that the former 29 CFR 1910.900 was repealed as of that date.

April 26, 2001

Secretary of Labor Elaine L. Chao testifies before the Subcommittee on Labor, Health and Human Services, and Education of the Senate Appropriations Committee, about reducing musculoskeletal disorders in the workplace.

April 5, 2002

The Occupational Safety and Health Administration unveils a comprehensive plan designed to reduce ergonomic injuries through "a combination of industry-targeted guidelines, tough enforcement measures, workplace outreach, advanced research, and dedicated efforts to protect Hispanic and other immigrant workers."

Source: www.ergoweb.com

Educational and Outreach Programs

In conjunction and cooperation with the entire health and safety and workers' compensation community, DIR administers and participates in several major efforts to improve occupational health and safety through education and outreach programs.

Worker Occupational Safety and Health Training and Education Program

The Commission on Health and Safety and Workers' Compensation (CHSWC) is mandated by Labor Code Section 6354.7 to maintain the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The purpose of WOSHTEP is to promote injury and illness prevention programs. A full description of WOSHTEP and its activities is in the section of this report entitled "Update: Worker Occupational Safety and Health Training and Education Program."

The California Partnership for Young Worker Health and Safety

CHSWC has convened The California Partnership for Young Worker Health and Safety. The Partnership is a statewide task force that brings together government agencies and statewide organizations representing educators, employers, parents, job trainers and others. The Partnership develops and promotes strategies to protect youth at work and provides training, educational materials, technical assistance, and information and referrals to help educate young workers.

WORKPLACE SAFETY AND HEALTH

Forum on Catastrophe Preparedness: Partnering to Protect Workplaces

The "Forum on Catastrophe Preparedness: Partnering to Protect Workplaces" was held on Friday, April 7, 2006, at the South San Francisco Conference Center. Recognizing that employers and workers should be prepared if a catastrophe strikes at the workplace, CHSWC voted to host a public education program devoted to workplace safety in the event of terrorist attacks and natural disasters. CHSWC developed this forum to provide an opportunity for the health, safety and workers' compensation communities and the public to discuss ideas for safety in responding to terrorist attacks and natural disasters, learn lessons from other experiences, and consider areas where improvements need to be made.

This forum brought together leaders in homeland security, emergency response, and occupational safety and health to discuss individual, worker and employer preparedness for catastrophic risks.

For further information...



Information about the Forum can be obtained at <http://www.dir.ca.gov/chswc/forum2006.html>

Cal/OSHA Consultation

Consultative assistance is provided to employers through on-site visits, telephone support, publications and educational outreach. All services provided by Cal/OSHA Consultation are provided free of charge to California employers.

Partnership Programs

California has developed several programs that rely on industry, labor, and government to work as partners in encouraging and recognizing workplace safety and health programs that effectively prevent and control injuries and illnesses to workers. These partnership programs include the Voluntary Protection Program (VPP), Golden State, SHARP, Golden Gate, and special alliances formed between industry, labor, and OSHA.

UPDATE: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Background

California serves as a national leader in worker protection and injury and illness prevention through the implementation of Labor Code Section 6354.7, effective January 1, 2003. This provision includes the creation of a Worker Occupational Safety and Health Training and Education Program (WOSHTEP) and also provides for the Workers' Occupational Safety and Health Education Fund (WOSHEF), administered by CHSWC. This fund is used to establish and maintain WOSHTEP.

From its inception in 2003 through 2007, WOSHTEP has served over 2,500 workers and over 750 employers. To date, WOSHTEP has provided health and safety information and/or training to numerous industries including: maintenance; janitorial; construction; small manufacturers; corrections and rehabilitation; food service or restaurants; health care; telecommunications; agriculture; transportation; and schools.

Purpose and Objectives

The purpose of WOSHTEP is to promote workplace safety and health programs. WOSHTEP focuses on developing injury and illness prevention skills of employees and their representatives who take a leadership role in promoting safety and health in the workplace. This program is being delivered through a statewide network of training providers.

The mandate of the Commission on Health and Safety and Workers' Compensation (CHSWC) for WOSHTEP is to:

- Develop and provide a core curriculum addressing competencies for effective participation in workplace injury and illness prevention programs and on workplace health and safety committees.
- Develop and provide additional training for any and all of the following categories:
 - High hazard industries.
 - Hazards that result in significant worker injuries, illnesses or compensation costs.
 - Industries or trades where workers are experiencing numerous or significant injuries or illnesses.
- Provide health and safety training to occupational groups with special needs, such as those who do not speak English as their first language, workers with limited literacy, young workers, and other traditionally underserved industries or groups of workers.
- Give priority to training workers who are able to train other workers and workers who have significant health and safety responsibilities, such as serving on health and safety committees or serving as designated safety representatives.
- Operate one or more libraries and distribution systems of occupational health and safety training material.
- Establish a labor-management Advisory Board.
- Prepare an Annual Report, developed by the labor-management Advisory Board, evaluating the use and impact of the programs.
- Establish and maintain WOSHTEP and an insurance loss control services coordinator to respond to inquiries and complaints by employers.

UPDATE: WOSHTEP

The loss control services coordinator in CHSWC informs employers of the availability of loss control consultation services, responds to their questions, and investigates complaints about the services provided by their insurer. If an employer and an insurer are unable to agree on a solution to a complaint, the loss control services coordinator will investigate and recommend action necessary to bring the loss control program into compliance. Ongoing outreach efforts are being made to inform California employers about what services are available to them from their workers' compensation insurance carrier.

Funding

Pursuant to Labor Code Section 6354.7(a), insurance carriers who are authorized to write workers' compensation insurance in California are assessed \$100 or .0286 percent, whichever is greater, of paid workers' compensation indemnity amounts for claims reported for the previous calendar year to the Workers' Compensation Insurance Rating Bureau (WCIRB). This assessment is then deposited into WOSHEF. CHSWC uses these funds for the development and implementation of WOSHTEP.

Project Team

CHSWC contracts with the Labor Occupational Health Program (LOHP) at the University of California, Berkeley, and the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, to design and carry out needs assessments with key constituencies, develop curricula, conduct training, operate a resource library of health and safety resource materials, and build a statewide network of trainers.

Labor-Management Advisory Board

A labor-management Advisory Board for WOSHTEP is mandated by legislation and meets bi-annually to assist the Project Team on all aspects of the program. The role of the Advisory Board is to:

- Guide development of curricula, teaching methods and specific course material about occupational health and safety.
- Assist in providing links to the target audience.
- Broaden partnerships with worker and employer organizations and labor studies programs, as well as others who are able to reach the target audience.
- Prepare an Annual Report evaluating the use and impact of WOSHTEP.

Members of the Advisory Board are as follows:

WOSHTEP Advisory Board Members

Bob Balgenorth State Building & Construction Trades Council
Laura Boatman State Building & Construction Trades Council
Andrea Dehlendorf Service Employees International Union
Judith Freyman ORC, Inc.
Simmi Gandhi Garment Workers Center
Deborah Gold State of California Division of Occupational Safety and Health Cal/OSHA
Scott Hauge Small Business California
Jonathan Hughes United Food and Commercial Workers Union (UFCW) Local 428
Bonnie Kolesar, ARM, CCSA California Department of Corrections and Rehabilitation (CDCR)
Laura Kurre Service Employees International Union (SEIU) Local 250
Tom Rankin AFL-CIO and WORKSAFE!
Christina Vasquez Union of Needletrades, Industrial and Textile Employees (UNITE HERE!)
Len Welsh State of California Division of Occupational Safety and Health
Chad Wright Laborers Tri-Funds

WOSHTEP Advisory Board Ex-officio Members

Charles Boettger Municipal Pooling Authority
Mary Deems Department of Health Services State of California
Cindy Delgado San Jose State University
Susan Harada Toyota Motor Sales, U.S.A., Inc.
Ken Helfrich Employers Direct Insurance
Scott Henderson Henderson Insurance Agency
Dori Rose Inda Watsonville Law Center
Mark Jansen Zenith Insurance
Keith Lessner Property and Casualty Insurance Association of America
Dave Mack Chubb Group of Insurance Companies
Michael Marsh California Rural Legal Assistance
Lauren Mayfield State Compensation Insurance Fund
John McDowell LA Trade Technical College, Labor Studies
Thomas Neale Chubb & Son
Fran Schreiber Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farris
Bob Snyder Liberty Mutual Insurance Group
Dave Strickland Zurich Insurance
Ed Walters Praetorian Financial Group
Jim Zanotti AIG

WOSHTEP Accomplishments

Needs Assessment

CHSWC, from the inception of WOSHTEP, has recognized the important role that key stakeholders, including employers, labor, educators, insurers, governmental agencies and community-based organizations, play in determining the success of WOSHTEP.

Therefore, CHSWC, LOHP and LOSH have conducted, and continue to conduct, needs assessment activities with representatives from key constituency groups. These needs assessments are designed to provide direction for development and refinement of core and supplemental curriculum, implementation of training programs statewide, and effective outreach to the target audience.

Based on extensive needs assessment, WOSHTEP developed four major components: (1) a Worker Occupational Safety and Health (WOSH) Specialist curriculum; (2) Small Business Health and Safety Resources, both materials adapted for the restaurant industry and generic materials; (3) Young Worker Programs of health and safety education, training, and leadership opportunities; and (4) two Resource Centers, one each in Northern and Southern California, providing technical assistance and online educational materials on health and safety, including an online Multilingual Health and Safety Resource Guide.

WOSH Specialist Curriculum

A WOSH Specialist curriculum has been designed to build knowledge and skills in many areas of injury and illness prevention. Participants are required to successfully complete six modules of core training plus a minimum of three supplemental modules relevant to their workplace in order to be recognized as WOSH Specialists. The curriculum was piloted and reviewed by occupational health experts and members of the WOSHTEP Advisory Board and has been printed in three languages, English, Spanish and Chinese.

Roles of WOSH Specialists

The WOSH Specialist curriculum is intended to help participants develop the skills needed to participate actively in injury and illness prevention efforts, provide resources and join in health and safety problem-solving in the workplace. Actions that WOSH Specialists have taken upon completion of the training include:

- Participated on an employer-employee health and safety committee.
- Helped identify a range of potential hazards on the job and uncover the root causes of injuries and illnesses by conducting surveys of workers or by walk-through inspections to determine health and safety problems.
- Assisted in analyzing data collected from surveys, inspections, and other sources in order to identify, prioritize, and address health and safety problems.
- Participated in efforts to reduce or eliminate common hazards.
- Contributed to efforts to explain the legal requirements for maintaining a healthy and safe workplace and support an employer's compliance efforts.
- Helped provide health and safety training to co-workers.
- Helped develop an Injury and Illness Prevention Plan (IIPP).
- Served as a health and safety resource for co-workers, employers, the union, labor-management committees, etc.

Core Curriculum

The core curriculum, which addresses competencies for effective participation in workplace injury and illness prevention programs and on workplace health and safety committees, consists of the following modules:

- Promoting Effective Safety Programs
- Identifying Hazards in the Workplace
- Controlling Hazards in the Workplace
- Health and Safety Rights and Responsibilities
- Workers' Compensation and Return-to-Work Programs
- Taking Action

Supplemental Modules

Supplemental modules were developed to address the needs of the participants. These modules cover the following topics:

- Bloodborne Pathogens
- Chemical Hazards and Hazard Communication
- Communicating Effectively About Workplace Health and Safety
- How Adults Learn Best: Sharing Health and Safety Information in the Workplace
- Preventing Musculoskeletal Disorders: Introduction to Ergonomics
- Workplace Health and Safety Committees
- Workplace Violence Prevention

Additional topics will be considered as needs are identified in the future.

Pilot Training Programs

Needs assessments identified the importance of piloting the training program with diverse populations and in different settings due to the differences in size of employers, languages and types of industry in California.

Four different settings were selected to pilot the curriculum in 2004. LOHP conducted pilot trainings with homecare workers in San Francisco and a multi-industry group in the Bay Area. LOSH conducted pilot trainings with a light manufacturing company and worker-advocacy groups in Los Angeles. The following is a description of the four pilots:

- **Felbro, Inc.**, a light manufacturing company located in East Los Angeles, is representative of a typical small manufacturing plant comprised of a Spanish-speaking immigrant workforce. Training was conducted for 6 Spanish-speaking participants in Spanish.
- **Home Care Workers.** The participants of this training were homecare workers who are members of the Service Employees International Union (SEIU) Local 250 and provide homecare services through two organizations, the San Francisco In-Home Supportive Services (IHSS) and the IHSS Consortium. Training was conducted for 16 participants in English with simultaneous translation into Spanish and Chinese by native-speaking interpreters for six English-speakers, four Chinese-speakers, and six Spanish-speakers.

- **Joint Labor-Management Open Enrollment.** This open enrollment pilot was conducted at the Alameda County Central Labor Council. Twenty-two participants, representing the following organizations, completed the course: Communications Workers of America; SEIU; United Taxicab Workers; California Correctional Officers Association; Community Occupational Health Project; United Food and Commercial Workers; California State Employees Association; Amalgamated Transit Union; American Federation of State, County, and Municipal Employees; San Mateo Labor Council; and International Brotherhood of Electrical Workers.

In addition, employers/industries represented at this pilot included: large and small telecommunication employers; Bay Area county medical center; San Francisco taxi companies; California Department of Corrections and Rehabilitation (CDCR); small employers in construction and janitorial services; meatpacking employers; tree-trimming employers; California State University; Bay Area Rapid Transit (BART); East and South Bay Municipal Utility District; and the University of California.

- **Community-Based Immigrant Worker Organization.** The training participants were leaders and outreach workers representing the Coalition of Immigrant Worker Advocates (CIWA), a collaboration of community worker-advocacy centers serving immigrant and limited English-speaking workers in Los Angeles.

Worker centers/populations represented included: Garment Worker Center (garment workers); Koreatown Immigrant Workers Alliance (restaurant workers); Institute of Popular Education of Southern California (day laborers); Legal Aid Foundation of Los Angeles (low-income/vulnerable workers); and Maintenance Cooperation Trust Fund (janitorial workers).

WOSH Specialist Trainings

Pilot training concluded in August of 2004. During the remainder of 2004 and continuing through 2006, additional WOSH Specialist training courses were conducted in Northern, Central and Southern California as described in the CHSWC Annual Reports for 2004, 2005, and 2006. To date, over 1,150 workers representing over 250 employers have attended WOSH Specialist trainings.

Over 30 WOSH Specialist training courses were conducted in 2007 in Northern, Central and Southern California, which included:

- A WOSH Specialist course for CDCR for joint labor-management health and safety committee members of Sierra State Prison in Jamestown, CA. The course was taught by three CDCR WOSH network trainers from Northern and Southern California on January 16, 17 and 18, 2007. In English for 11 graduates.
- A WOSH Specialist course held primarily for representatives of the joint labor-management committee at the local packing and shipping center of McKesson pharmaceutical distributors on January 17, 18 and 19, 2007. The course was taught by LOSH WOSHTEP trainers. Specific goals included strengthening the health and safety committee and laying a foundation for some changes in the ergonomic design of the warehouse where there is a lot of lifting, stooping, and overhead movement. A follow-up site meeting was held on February 16, 2007. In English for 23 graduates.
- A WOSH Specialist course held on January 22, 24, 26 and 29, 2007, as part of the Esperanza Community Housing Corporation's intensive six-month Health Promoters program. The course was taught by LOSH trainers and four community health workers. One graduate subsequently interned at LOSH, conducting community outreach and Awareness sessions, as well as later completing the WOSH Specialist Training-of-Trainers course. In Spanish for 16 graduates.

UPDATE: WOSHTEP

- A semester-long WOSH Specialist course for construction trade apprentices at Cypress Mandela Center in Oakland, CA. The course was taught by an LOHP consultant and a WOSHTEP team member from January 17 through April 18, 2007. In English for 18 graduates.
- An open enrollment WOSH Specialist course taught by an LOHP trainer and a network trainer. The course was held on January 30, 31 and February 1, 2007, in Sacramento, CA, at the State Compensation Insurance Fund (SCIF) headquarters. Two Specialists from the class later attended a WOSH Specialist Training-of-Trainers course to become network trainers. In English for 30 graduates.
- An open enrollment WOSH Specialist course held in Fresno, CA, at Fresno State University, in partnership with the industrial hygiene program at Fresno State, on February 21, 22 and 23, 2007. The course was taught by two LOHP trainers. In English for 23 graduates.
- A WOSH Specialist course held for members of the Laborers Union in Hayward, CA, on February 26, 27 and 28, 2007. Locals 304, 1130, 166, 270, 185, 389, and 261 were represented. The class was conducted by two LOHP trainers. Two Specialists from the class later attended the WOSH Specialist Training-of-Trainers course to become network trainers; one of the new trainers will be training in Spanish. In English for 16 graduates.
- A WOSH Specialist course co-taught through San Diego City College by a LOSH trainer and a network trainer in San Diego. The course was held on March 3, 10 and 17, 2007. In English for 6 graduates.
- A WOSH Specialist course held for employees of the City of Sacramento and the City of Fairfield at the City of Sacramento training site on March 5, 6 and 7, 2007. The course was taught by two LOHP trainers and a network trainer. Three Specialists from the class later attended the WOSH Specialist Training-of-Trainers course to become network trainers. In English for 30 graduates.
- A WOSH Specialist Course for CDCR conducted in Chowchilla, CA, on April 3, 4 and 5, 2007. The course was taught by four network trainers from CDCR and an LOHP trainer. Two Specialists later attended the WOSH Specialist Training-of-Trainers course to become network trainers for CDCR. In English for 30 graduates.
- A WOSH Specialist open enrollment course taught by three LOSH trainers and a WOSH trainer at UNITE HERE! Local 11 in Los Angeles on April 17, 18 and 19, 2007. Participants included union representatives from SEIU 721 (County); UPTE; AFSCME; utility workers; State Building Trades; and others. In English for 13 graduates.
- A WOSH Specialist open enrollment course taught by three LOSH trainers and a WOSH trainer at UNITE HERE! Local 11, in Los Angeles, on April 17, 18 and 19, 2007. Participants included workers from Phoenix House, McKesson, Tarzana Treatment Center, Disneyland, and unions representing Los Angeles and Orange County workers. In English for 19 graduates.
- A WOSH Specialist course for CDCR taught by two CDCR network trainers and two LOSH trainers at the California Rehabilitation Center (CRC) in Norco, CA, for four facilities: the California Rehabilitation Center (CRC); California Institution for Women; California Institution for Men (CIM) in Chino; and Herman G. Stark Youth Correctional Facility (HGS) in Chino. The course was taught on May 21, 22 and 23, 2007. In English for 30 graduates.

UPDATE: WOSHTEP

- A WOSH Specialist open enrollment course co-sponsored by LOSH and the San Diego Labor Council taught by two LOSH trainers and one network trainer on June 16, 23 and 30, 2007. In English for 15 graduates.
- A WOSH Specialist course for CDCR taught by four CDCR network trainers at the CRC in Lone, CA, for Mule Creek State Prison health and safety committee members. The course was taught on June 26, 27 and 28, 2007. In English for 21 graduates.
- A WOSH Specialist open enrollment course coordinated by a network trainer at the Center for Employment Training in San Diego for workers from diverse industries, including landscaping, maintenance, production, hotels, restaurants, and aerospace. Two LOSH trainers and three network trainers taught the course on July 10, 11, 17, 18 and 24, 2007. In Spanish for 31 graduates.
- A WOSH Specialist course for CDCR taught by four CDCR network trainers at the CRC in, Wasco, CA, for Wasco State Prison. The course was held on August 28, 29 and 30, 2007. In English for 18 graduates.
- A WOSH Specialist Training-of-Trainers course held at the UCLA Downtown Labor Center in Los Angeles, CA, on September 17, 18, 19 and 20, 2007. Participants included WOSH Specialists from Phoenix House, UCLA Institute for the Environment, Southern California Gas Company, and the State Building and Construction Trades Council. In English for 8 graduates.
- A WOSH Specialist course for CDCR held at the CRC in Soledad, CA, for Salinas Valley State Prison on September 25, 26 and 27, 2007. The course was taught by four CDCR network trainers. In English for 24 graduates.
- A WOSH Specialist course taught for City of Sacramento employees by three new City of Sacramento network trainers and one LOHP trainer. The course was held on September 25, 26 and 27, 2007. In English for 19 graduates.
- A WOSH Specialist open enrollment course conducted at the San Mateo Central Labor Council headquarters in Foster City, CA, on September 29, October 6 and October 13, 2007. The course was taught by two network trainers and an LOHP trainer. In English for 20 graduates.
- A WOSH Specialist open enrollment course conducted at Laney Community College in Oakland, CA, on October 6, 13 and 20, 2007. The course was taught by three network trainers and an LOHP trainer. In English for 16 graduates.
- A WOSH Specialist course conducted for the CDCR at the CRC in Calipatria for staff from Calipatria and Centinela prisons on October 16, 17 and 18, 2007. The course was taught by two CDCR network trainers and one LOSH trainer. In English for 22 graduates.
- A WOSH Specialist open enrollment course held at the UCLA Downtown Labor Center in Los Angeles, CA, on October 23, 24 and 25, 2007. Participants included workers from Phoenix House, IDEPSCA, Mr. Clean Maintenance, Los Angeles City College, Soll-Bond, Chem-Mex, some personal staffing agencies, the courts, and unions representing postal workers, communication workers, and transit workers. The course was taught by two LOSH trainers and three network trainers. In English for 19 graduates.
- A semester-long WOSH Specialist open enrollment course conducted at San Francisco State College in San Francisco, CA, during the fall 2007 semester. The course was taught by an LOHP consultant/trainer and a WOSHTEP team member. In English for 9 graduates.

UPDATE: WOSHTEP

- A semester-long WOSH Specialist course conducted for construction trade apprentices during the fall of 2007 at Cypress Mandela Center in Oakland, CA. The course was taught by an LOHP consultant/trainer and a WOSHTEP team member. In English.
- A WOSH Specialist open enrollment course held in Sacramento, CA, on October 25, 26 and 27, 2007. The course was taught by two LOHP trainers. In English for 19 graduates.
- A WOSH Specialist open enrollment course was held at the International Union of Operating Engineers facility in Los Angeles, CA, on November 1, 17 and December 8, 2007. Participants represented day laborers working in various high-risk construction jobs, household workers and janitors from various organizations throughout Southern California, such as SEIU 1877, SAGE, Esperanza Housing, Inc., and United Day Laborers of Baldwin Park. The course was taught by two LOSH trainers and three network trainers. In Spanish for 13 graduates.
- A WOSH Specialist course for CDCR taught by two CDCR network trainers and an LOHP trainer at the CRC headquarters in Sacramento, CA. The course was held on November 13, 14 and 15, 2007. In English for 18 graduates.
- A WOSH Specialist open enrollment course coordinated by a WOSH trainer from Phoenix House Descanso facility in San Diego. The course was started on December 14, 2007, and the other two days will be in January and February 2008.
- A WOSH Specialist course taught for the State of California Prison Industries Authority for their health and safety committee members from around the state on December 4, 5 and 6, 2007. The training was conducted at their Folsom, CA, facility by two LOHP trainers. In English for 14 graduates.

WOSH Specialist Statewide Network of Trainers

To begin development of a statewide network of trainers in 2005, as mandated by the Labor Code, LOHP and LOSH developed Training-of-Trainers curricula and offered the first two WOSH Specialist Training-of-Trainers courses in April and July 2005. LOHP's 24-hour course in April trained 13 Specialists, including those from the CDCR, SBC/Communication Workers of America (CWA), and community college instructors. LOSH's 30-hour Training-of-Trainers course in July trained 16 Specialists and other participants, including bilingual trainers from SCIF, representatives from non-profit organizations working with day laborers and with teenagers, workers from small manufacturing and racetrack industries, and union representatives who will train their members in the homecare and nursing home industries and through the Los Angeles and San Diego Community College Labor Studies Programs.

LOHP also offered a WOSH Specialist Training-of-Trainers course in Oakland, CA, in September 2006 in English for 13 Specialists, and LOSH offered two WOSH Specialist Training-of-Trainers courses in Los Angeles, CA, in November 2006, one in Spanish for 14 Specialists and another in September 2007, in English for 8 participants. In addition, in 2007, LOHP conducted a Training-of-Trainers course in Sacramento, CA, in June 2007 in English for 12 Specialists. Training teams were formed from the City of Sacramento, the California Conservation Corps, AT&T/CWA, CDCR, and the Laborers Union.

In these courses, the WOSH Specialists/new trainers were able to learn effective training skills and become familiar with teaching the WOSH Specialist course core curriculum modules. In addition, they were required to complete an apprenticeship that includes teaching a minimum of two classes with an LOHP or LOSH mentor trainer and completing an evaluation process.

To date, 76 WOSH Specialists from Northern, Central and Southern California have been trained as network trainers, and network trainers from Northern, Central and Southern California have been recruiting participants for and delivering modules of the WOSH Specialist course in English or Spanish.

UPDATE: WOSHTEP

For example, one WOSH trainer recruited then taught more than 30 participants for a WOSH Specialist course held in Spanish in San Diego in July 2007.

Outreach to identify trainers interested in participating in the trainers' network continues. Training-of-Trainers classes will be offered each year in order to expand the trainers' network by developing trainers prepared to teach the WOSH Specialist course.

Awareness Sessions and Presentations

LOHP and LOSH have also conducted shorter Awareness sessions, drawing on the WOSH Specialist curriculum, to help promote awareness of and interest in the WOSH Specialist courses. Awareness sessions in 2004, 2005 and 2006 are described in the CHSWC Annual Reports for 2004, 2005 and 2006. To date, over 2,100 participants, including approximately 365 employers, have attended Awareness sessions and presentations.

In 2007, LOSH developed an Awareness module as an introduction to workplace safety and health for workers with limited experience in the U.S. workplace. The module focuses on the relationship between work and health. It also discusses examples of workplace hazards and how injuries and illnesses can be prevented. The module prepares participants to help advance health and safety in the workplace.

In 2007, Awareness sessions and presentations conducted in Northern, Central and Southern California included:

- A four-hour Awareness session conducted in San Francisco, CA, for members of the Theater and Wardrobe Union on January 5, 2007. Materials from the WOSH Specialist curriculum that were used came from such modules as: Controlling Hazards; Health and Safety Rights and Responsibilities; Ergonomics; and Health and Safety Committees.
- A one and one-half hour presentation conducted by a LOSH staff member and a network trainer at Pitzer College in Claremont, CA, on January 27, 2007, for college students, young parents, community workers, a private industry human resources manager, and a retiree. The presentation focused on health and safety, including a summary of WOSHTEP. Each of the modules was a break-out workshop at the day-long Latina/Latino Roundtable Issues Conference, "Empowering Voices: Mobilizing Our Community for Action." In English for 10 participants.
- An Awareness session conducted by a LOSH trainer and two network trainers from IDEPSCA for Latino day laborers and female household workers on January 27, 2007. The session focused on hazard awareness, including hazard mapping, a discussion of legal issues surrounding workplace injuries and illness, and a discussion of possible solutions. In Spanish for 27 participants.
- A one and one-half hour Awareness session conducted by an LOHP staff member using the WOSH Specialist Ergonomics Module for the Women's Domestic Cleaning Services Collective as part of their "Natural Home Cleaning" Workers workshop. The session was conducted in Oakland, CA, on February 1, 2007. In English for 18 participants.
- A presentation made by a LOSH staff member and a network trainer to the 5th Annual CAFÉ Conference which brought together scholars, students, teachers, activists, and community members to debate key issues in engaging youth and adults from different cultural backgrounds in worker safety and health education and workers' rights activism. The presentation focused on the WOSHTEP body-mapping activity.
- A 30-minute presentation made on February 12, 2007, by LOHP staff for the San Mateo Central Labor Council in San Mateo, CA. The presentation was on WOSHTEP with the aim of encouraging members to attend WOSH Specialist training. This presentation led to a WOSH Specialist course in October 2007. In English for 40 participants.

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- A three-hour Awareness session conducted by LOSH to union representatives enrolled in a Los Angeles Trade Tech Labor Studies class in San Pedro, CA, on February 14, 2007. WOSH Specialist worksheets, including the hazard mapping activity, were used. In English for 12 participants.
- Two Awareness sessions of two and one-half hours each conducted for the IHSS of Alameda County on February 17, 2007, in Oakland, CA. Both classes focused on biological hazards and ergonomics. In Spanish for 18 participants and in Chinese by LOHP's WOSH Specialist course translator for 21 participants, for a total of 39 participants.
- An eight-hour Awareness session conducted by an LOHP trainer on March 2, 9, 16 and 23, 2007, in collaboration with Chinese Charity Services. The following modules from the WOSH Specialist curriculum were taught: Controlling Hazards; OSHA; and Health and Safety Rights and Responsibilities. In English with Chinese translation for 19 participants.
- An eight-hour Awareness session provided on March 2, 9, 16 and 23, 2007, in San Francisco, CA, at the San Francisco Build Pre-Apprentice Program by an LOHP trainer. A diverse group of participants learned about controlling hazards, OSHA, and health and safety rights and responsibilities. In English for 32 participants.
- A one and one-half hour Awareness session conducted by LOHP WOSHTEP staff in San Francisco, CA, on March 6, 2007, for Mujeres Unidas y Activas - Latina Women's Collective. The session was on Ergonomics, using the WOSH Specialist materials. In Spanish for 22 participants.
- Monthly brief presentations in Spanish, which began in August 2006 and held through March 2007 at the Mexican Consulate for immigrants through the Ventanilla de Salud community health education project, which is coordinated by Neighborhood Legal Services. Topics focused on heat stress and The Right to Know. Evaluations were completed by 523 participants. A WOSH trainer also participated in a series of Health Fairs with the Consulate for Bi-national Health Week on October 6, 15, 16 and 27, 2007. In Spanish for at least 523 participants.
- A two-hour Awareness session conducted in Graton, CA, at the Graton Day Labor Center on April 12, 2007. The session was taught by an LOHP trainer. The topics included hazard identification, controlling hazards, and roles of health and safety committees. In English for 14 participants.
- In honor of Workers' Memorial Day, celebrated on April 28th each year, eight WOSH network trainers and a WOSH Specialist participated in an educational event commemorating workers who were injured or who died on the job. In addition, several youth who participated in a WOSHTEP Young Worker Leadership Academy helped to create banners for the event.
- A one and one-half hour Awareness session was held by LOSH staff for participants in Women in Non-traditional Employment Roles (WINTER) and others attending the women's building trades conference at the LA Convention Center on May 20, 2007. Body mapping for hazard identification, discussion about controlling hazards with possible solutions using the pyramid model, and a discussion on Cal/OSHA were the WOSHTEP activities presented. In English for 6 participants.
- A four-hour Awareness session conducted on June 5, 2007, for SEIU Local 87 janitors union. The topics included identifying hazards and workers' compensation rights. In English for 16 participants.
- A presentation at a six-hour seminar "Safety Communication," organized by a SCIF WOSH network trainer on June 5, 2007, made by a LOSH staff member. The seminar focused on a motivational safety team approach. LOSH also had an information table to promote WOSHTEP to more than 100 participants.

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- A second two-hour Awareness session held at the Graton Day Labor Center on June 14, 2007, by an LOHP trainer. The session utilized the WOSH Specialist Ergonomics module. In English for 16 participants.
- An Awareness session piloting the body mapping activity from the new Awareness Module and including a brief overview of the new Heat Stress Standard held for day laborers and household workers attending the 2007 Day Laborers Latina/o Health Fair in Cypress Park, CA, on June 16, 2007. Co-sponsored by LOSH and IDEPSCA, the event also had a resource table with WOSHTEP information available for seven hours. In Spanish for 8 participants.
- A two-hour Awareness session held on July 2, 2007, as part of the Union Summer Internship Program, in Berkeley, CA. The session was conducted by an LOHP trainer. The topics included hazard identification and hazard mapping. In English for 21 participants.
- A six-hour Awareness session conducted for pre-apprentice carpenters as part of the San Francisco Build Pre-Apprentice Carpenter Program at San Francisco City College by an LOHP trainer. The WOSH Specialist modules taught included Hazard Identification, Controlling Hazards, and OSHA Rights and Responsibilities. The training took place on July 6, 13 and 27, 2007. In English for 49 participants.
- A three-hour Awareness session for immigrant youth and young adults who work as day laborers held in collaboration with Jovenes, Inc., on July 27, 2007. Sections of the new Awareness Module were piloted including an initial brainstorming discussion correlating general health and work, a body mapping activity, and a hazard mapping activity. In Spanish for 10 participants.
- A three-hour Awareness session focusing on the WOSH Specialist Supplemental Module on adult learning taught by an LOHP trainer in July 2007 as part of the Summer Institute for Union Women in Berkeley, CA. The WOSHTEP brochure was also distributed and the WOSH Specialist course was promoted. In English for 27 participants.
- Eight 60-90 minute Awareness sessions co-facilitated in partnership with IDEPSCA during August 2007 by one WOSH Specialist, four WOSH network trainers, and two LOSH staff members. The sessions focused on heat stress prevention for day laborers in Los Angeles County. Participants became aware of heat stress risks and symptoms and learned about individual actions and state regulations regarding heat stress prevention. Sessions were conducted at six community job centers and two street corners. In Spanish for 228 participants.
- A one-hour Awareness session focusing on WOSHTEP and promoting the WOSH Specialist course held on September 12, 2007, at a meeting of the Loss Control Committee of the Municipal Powers Authority of Northern California. The presentation was made by an LOHP WOSHTEP staff member to loss control staff from cities in Contra Costa County. In English for 20 participants.
- A three and one-half hour Awareness session facilitated by one LOSH staff member and a network trainer held for participants in the current Esperanza Health Promoter course on September 24, 2007. Activities included an initial brainstorming discussion correlating general health and work, a body mapping activity, a hazard mapping activity, a case study, and an introduction to Cal/OSHA. In Spanish for 21 participants.
- A three-hour Awareness session, facilitated by LOSH staff, held for staff of the Esperanza Community Housing Corporation on September 24, 2007. This session was requested by the organization's director to address recent staff injuries. WOSHTEP activities used in the session included elements of an IIPP and workers' compensation program, underlying causes of injuries and illnesses, and hazard control. In English and Spanish for 20 participants.

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- A one-hour Awareness session for a Union Community Activist Network (UCAN), a partnership of LA Trade Tech and the Los Angeles County Federation of Labor in Los Angeles, CA, held on October 11, 2007. The session focused on the Underlying Causes section of WOSH Specialist course Module 1. Three of the participants later completed the WOSH Specialist open enrolment 24-hour course in October. In English for 26 participants.
- A 15-minute presentation on WOSHTEP and the LOHP WOSHTEP Resource Center conducted for the Alameda Central Labor Council in Oakland, CA, on October 16, 2007. The presentation was made by an LOHP staff member. In English for 30 participants.
- A 40-minute presentation on WOSHTEP conducted by LOSH staff on the last training day of the UCLA Labor Center Colegio (Leadership School) held on October 26, 27 and 28, 2007. Participants included teamsters, day laborers hotel housekeepers (UINITE HERE!), janitors (SEIU 1877), and representatives from community-based organizations. The presentation covered back injury and heat stress prevention and offered information on workers' rights and responsibilities, as well as health and safety community resources. Four participants later attended the November Spanish open enrollment WOSH Specialist course. In Spanish for 33 participants.
- A one and one-half hour Awareness session held on November 13, 2007, by two LOSH staff members in Lake View Terrace, CA, for participants representing Southern California Phoenix House facilities from Corcoran to Orange County to San Diego. The session allowed managers to become familiar with WOSHTEP activities and the different components of the program, emphasizing the 24-hour WOSH Specialist course and the Young Worker Leadership Academy. During the session, WOSHTEP teaching principles were demonstrated, and examples of body mapping as a method for hazard identification, the pyramid of controls, and case studies to recognize effective solutions were presented. In English for 20 managers.
- A one-hour presentation, "Extending WOSHTEP to the Central Valley," conducted on December 3, 2007, for the Western Center on Agricultural Health and Safety at UC Davis as part of their monthly seminar series.

Refresher Trainings

Refresher trainings were provided in 2004, 2005 and 2006 (see the 2004, 2005 and 2006 CHSWC Annual Reports) to a number of trained WOSH Specialists and WOSH network trainers in a variety of settings to assist them in carrying out activities they chose to pursue in their workplaces after completion of the WOSH Specialist training. To date, over 265 participants have attended Refresher trainings held in Northern and Southern California.

In 2007, Refresher trainings that were conducted included:

- A six-hour Refresher training co-taught by LOSH trainers and a new WOSH Specialist from the Employee Rights Center in San Diego along with representatives from Cal/OSHA, on April 14, 2007. The Refresher focused on action planning. Outreach for the Refresher was conducted to all Spanish-speaking WOSH Specialists through flyers, emails and phone calls. Specialists were encouraged to bring an interested co-worker who might want to participate in a future WOSH Specialist training. Also, the event included community organizations such as Neighborhood Legal Services which provided information on services and resources available to WOSH Specialists. In Spanish for 30 participants.
- A WOSH Specialist Refresher training held by LOHP on May 23, 2007. A total of 15 Specialists, including three network trainers, attended. An update on changes to the California workers' compensation system was provided. In addition, there was discussion about workplace violence, and a new WOSH Specialist course Supplemental Module, Workplace Violence Prevention, was piloted.

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- Participants also had the opportunity to discuss progress made on their Action Plans and to share strategies for success.
- A four-hour and one-half hour bilingual Refresher training, including a resource fair with representatives from Cal/OSHA, GEK Law, and the Southern California Coalition on Occupational Safety and Health (SoCalCOSH) held for WOSH Specialists in Los Angeles at the UNITE HERE! Local 22 Building on June 9, 2007. Participants discussed actions taken in their workplaces, which included exercises and silent role plays. Two workshops provided updated information on workers' compensation and the Cal/OSHA Heat Stress Standard. In English and Spanish for 19 English-speaking and 14 Spanish-speaking participants, for a total of 33 participants.
- A four and one-half hour bilingual Refresher training including a resource table with literature on community resources related to workplace health and safety held for WOSH Specialists in San Diego at the Center for Employment Training on August 25, 2007. Participants discussed actions taken in their workshops, using exercises and silent role plays. Two simultaneous workshops in English and Spanish provided updated information on workers' compensation and the Cal/OSHA Heat Stress Standard. At the heat stress workshop led by a Cal/OSHA Inspector who is a WOSH Trainer, recommendations on the importance of identifying symptoms and taking appropriate emergency measures was stressed. In English and Spanish for 7 English-speaking participants and 18 Spanish-speaking participants, for a total of 25 participants.
- A three-hour bilingual Refresher training for WOSH network trainers held on December 6, 2007, at the UCLA Downtown Labor Center in Los Angeles. The Refresher training included dinner, networking, and a workshop on "How to Expect/Respond to the Unexpected When Training."

Outreach to WOSH Specialists and Trainers

LOHP and LOSH have each developed a listserv, an electronic group email list, for Northern, Central and Southern California WOSH Specialists and trainers. Through these listservs, WOSH Specialists and trainers are regularly invited to meetings and events that will supplement their knowledge of workplace health and safety/injury-prevention practices. In addition, each organization has published and mailed newsletters to update WOSH Specialists on actions taken and upcoming courses or skill-building conferences and workshops. Articles were written by program staff, WOSH Specialists, and WOSH network trainers. Two newsletters produced by LOHP in 2007 were translated into Spanish and Chinese, covering such topics as new information about health and safety issues, as well as stories from WOSH Specialists about the activities they have been able to accomplish in their workplace.

In response to the fall 2007 wildfires in Southern California, WOSH Specialists and trainers accessed LOSH technical support to help them with their efforts to take a leading role in their workplaces. Working with federal and state agencies, LOSH quickly developed fact sheets about safe wildfire clean-up which were sent to LOSH Specialists, trainers, and community partners for their own use and for distribution to others.

WOSH Specialist Accomplishments

WOSH Specialists have reported accomplishments to date, which include:

- Participating on an employer-employee health and safety committee.
- Requesting or offering health and safety information to co-workers covering risk mapping for identifying hazards in the workplace, root causes of hazards, ergonomics, Cal/OSHA rules and regulations, and IPPs.
- Assisting in analyzing data collected from surveys, inspections, and other sources in order to identify and prioritize health and safety problems.
- Participating in efforts to reduce or eliminate common hazards by conducting surveys of workers or by conducting walk-through inspections to determine health and safety problems.

- Contributing to efforts to explain the legal requirements for maintaining a healthy and safe workplace and supporting an employer's compliance efforts.
- Conducting or helping to conduct health and safety trainings.
- Developing or helping to develop health and safety programs or policies or an IIPP or Emergency Evacuation Plan.
- Serving as a health and safety resource for co-workers, employers, the union, labor-management committees, etc.
- Writing health and safety articles for company newsletters.
- Creating a website for co-workers to access.
- Recruiting new members to a workplace health and safety committee.
- Participating in national forums on workplace health and safety, such as providing testimony at the NIOSH National Occupational Research Agenda Town Hall meeting held in February 2006 in Los Angeles. This was one of 13 meetings scheduled around the country focusing on concerns, insights, and recommendations for research to improve workplace health and safety.

Small Business Resources

Because many small business owners may find it difficult to send their employees to the 24-hour classes to become WOSH Specialists, easy-to-use training materials have been developed to help small business owners train their employees to identify hazards and participate in finding ways to control those hazards in their workplaces.

Restaurant Industry Small Business Model

In partnership with SCIF, Cal/OSHA Consultation, and the California Restaurant Association (CRA), LOHP completed a set of health and safety resources in June 2005 for owners and managers of small restaurants, the Restaurant Supervisor Safety Training Program. Through a focus group and pilot tests with owners and managers of several small restaurants, LOHP identified the type of training and information that managers said they needed and would be able to use. The materials include a training guide for two short training sessions and tip sheets on the most common restaurant hazards that managers can use to tailor training to the specific hazards in their own restaurants.

The Restaurant Supervisor Safety Training Program helps restaurant owners and managers to:

- Provide a one-hour safety training tailored to their restaurant.
- Encourage workers to become involved in workplace safety programs.
- Identify concrete ways to prevent injuries at work.
- Meet Cal/OSHA IIPP and training requirements.

There is also specific information regarding training and supervising young workers. The materials are available in English and Spanish, both in print and online (at <http://www.dir.ca.gov/CHSWC/SBMRMaterials.htm>).

Through a continued partnership with SCIF and CRA, workshops have been hosted at SCIF district offices throughout the state. Since the first workshop in November 2005, 20 workshops have been held,

reaching 280 owners or managers from 179 restaurants or food service programs. In addition, both LOHP and LOSH have done outreach to franchise organizations, culinary programs, local minority Chambers of Commerce, and other local business organizations. In 2007, Restaurant Supervisor Safety Training workshops were presented and health and the safety training materials were promoted and distributed throughout the state.

New Programs for Small Businesses

After reviewing data on industries in California with significant numbers of small businesses and low-wage workers, partnerships were explored to develop a version of the Small Business Restaurant Supervisor Safety Training Program materials for small businesses in the janitor and business services industry to be implemented in 2008.

In addition, a Small Business Safety Training program for small businesses in any industry has been developed. This program includes health and safety resource materials, as well as materials for owners and managers of small businesses to use to conduct health and safety training for their employees. Program materials and resources also help them understand how this training contributes to keeping their business successful.

Young Worker Programs

CHSWC believes strongly in the importance of educating young workers and keeping them safe as they enter the workforce. Statistics show that an estimated 160,000 teens are injured on the job annually in the United States; at least 84,000 of these injuries are serious enough to require hospital treatment. Many of the injuries teens experience occur from work in the retail and services sector. A goal of the WOSHTEP program is to identify unique ways to effectively engage young workers as health and safety promoters at work or in their communities.

Young Worker Leadership Academy

In February 2005, WOSHTEP funding helped support the first Young Worker Leadership Academy (YWLA) in Anaheim, California. Twenty-five youth in teams from six different communities in California learned about workplace health and safety and then took this information back to their own communities and shared it in creative ways. High school students from an LOHP young worker research team and the LOSH peer educator program acted as youth mentors and helped conduct this Academy.

Following the Academy's success, WOSHTEP funding in 2006 supported two Academies, one held in Sacramento in January and the other held in Los Angeles in February. Thirteen teams (48 youth) attended the two Academies, with four youth from the 2005 Academy returning to act as youth mentors to the new teams. CHSWC co-sponsored these Academies with LOHP, LOSH, the Center for Civic Participation, and the California Partnership for Young Worker Health and Safety. In 2007, Academies were held at UC Berkley in January and UCLA in February. Eleven teams (39 youth) attended the two Academies, with 11 youth from the 2006 Academies returning as youth mentors.

The goals of the Academies are to: teach youth about workplace health and safety and their rights on the job; help youth identify educational, policy and media strategies to help ensure that young people do not get hurt on the job; and provide a forum for these youth to plan specific actions they will take in their own communities to promote young worker safety during Safe Jobs for Youth Month in May each year in California.

During May 2006, 12 of the Academy teams each successfully conducted a variety of creative activities, including: conducting workshops at schools and in the community on health and safety hazards, including developing and staffing a booth on teen worker safety at a local farmers' market; being interviewed on a local Spanish-language radio station; and working with school personnel to develop and institute a quiz

on young worker rights and responsibilities in the workplace to be taken by all youth seeking work permits. Teams reached a wide audience, mainly youth, through these activities. They also reached many low-wage, Spanish-speaking and/or immigrant families or community members with little awareness of U.S. workplace laws.

During May and June 2007, ten of the teams that attended the Academies successfully conducted a variety of creative activities such as: conducting workshops at schools and in the community on health and safety hazards, being interviewed on a local radio station, and developing video public service announcements (PSAs); and developing and distributing brochures and wallet cards on job safety and resources. Teams reached at least 1,000 people, mainly youth, through these activities. They also reached low-wage, Spanish-speaking immigrant families or community members with little knowledge of U.S. workplaces laws and protections.

In August 2006, five of the six Southern California teams returned to UCLA to share their team projects which included estimated outreach to over 2,000 youth and 200 adults through various creative methods and events, and they participated in an improvisation workshop designed to strengthen their presentation and leadership skills. In addition, 14 Academy graduates helped plan and conduct workshops at a day-long teen-led conference in April 2007 for 300 teens in Southern California, and several graduates made a presentation at the national annual conference of the Interstate Labor Standards Association in August 2007.

A second Southern California reunion was held on December 1, 2007. The youth shared information about the projects and events they implemented in May and June 2007, as well as participated in an interactive workshop on media outreach.

As a result of the Academies in 2005, 2006 and 2007, a network of youth who can help promote workplace health and safety in their communities has been developed. Academy graduates have made presentations statewide, including to: the California Partnership for Young Worker Health and Safety; teachers at the statewide meeting of the California Association of Work Experience Educators (CAWEE); participants at a Workers' Memorial Day event sponsored by SoCalCOSH; and participants at a Latino student conference at UCLA.

In 2008, two new Academies will be held in January at UC Berkeley and in February at UCLA.

Carve-out Programs

Carve-out Conference

CHSWC, with the assistance of LOHP and LOSH WOSHTEP staff, planned and conducted a statewide conference on workers' compensation carve-outs and promotion of health and safety prevention activities, held in August 2007 by CHSWC, which was attended by close to 200 people. The conference included three workshops, as well as a presentation on ways employers and unions who are either currently participating in a carve-out or considering establishing a carve-out can build prevention activities into a carve-out. Such prevention activities, which could include health and safety committees, health and safety training and hazard investigations, could help reduce workplace injuries and illnesses, as well as reduce costs to workers and employers.

Carve-out Materials for WOSH Specialist Course

Materials necessary for teaching the WOSH Specialist course to unions and employers participating in a carve-out were finalized this year. The materials were also finalized for use in the construction industry. In 2007, one WOSH Specialist class which included the new materials was taught by LOHP to members of the Laborers' Union who are participants in a carve-out.

Resource Centers

Resource Centers at LOHP and LOSH have been established to house and act as libraries and distribution systems of occupational health and safety training material, including, but not limited to, all materials developed by WOSHTEP. These centers provide information and technical assistance.

LOHP has developed Resource Center tours and classes for WOSHTEP students, orienting them to the Center and giving them take-home research tools to use when at work. The training covers various sources of occupational health and safety information such as journal articles, flyers and brochures, books, online resources, and multilingual materials. In addition, the Resource Center develops resource lists for the LOHP WOSHTEP e-newsletter to help WOSH Specialists and trainers find answers to their occupational safety and health questions. The LOHP Resource Center assisted in the development of background resources of a more general nature at the inception of the WOSHTEP program, emphasizing online resources, where available, to ensure that all WOSHTEP participants have access to these materials.

LOSH has developed a satellite for its Resource Center at the UCLA Downtown Labor Center, which is accessible to workers and members of their community. The Center has held training sessions to orient WOSH Specialists to the library and piloted a new Internet research activity using the computer lab to find health and safety resources. LOSH also developed a list of primarily electronic, recommended background resources for new WOSH network trainers and/or other workplace health and safety professionals to review as they prepare to teach one or more topics in the WOSH Specialist curriculum.

New health and safety materials are added to the two Resource Centers monthly. These materials are identified by staff as they attend meetings and conferences, as they do Internet and literature searches, and as they review the weekly *Cal/OSHA Reporter*. In addition, in 2007, LOSH was hired by the California Fatality Assessment and Control Evaluation Program (FACE) from the Occupational Health Branch of the California Department of Health Services to translate 12 fact sheets about fatal accidents into Spanish. Each of these fact sheets describes how an accident happened, identifies the roots causes, and recommends actions to prevent similar accidents. These fact sheets have been added to the Southern California Resource Center to be used by WOSH Specialists and trainers as case studies for understanding key WOSHTEP concepts.

Currently, training handouts are being translated into Spanish and Chinese. In future years, the materials may be translated into other languages as needed and as funding allows.

Central Valley Resource Center Development

The University of California Davis Western Center on Agricultural Health and Safety has been identified as an appropriate partner for establishing a WOSHTEP presence in the Central Valley. Work is underway to hire a Central Valley coordinator who would be mentored by LOHP WOSHTEP staff.

In 2007, a number of WOSHTEP activities were launched in the Central Valley. These included conducting three WOSH Specialist courses, two in Sacramento and one in Fresno. LOHP also prepared a tailgate training guide on teaching farm workers about prevention of heat-related illness and then pilot-tested it at a large agricultural conference in Monterey, CA. Participants in the workshop on the guide were later contacted by WOSHTEP staff to assess use of the guide with their workers. In addition, organizations and agencies that are involved in heat stress prevention received the guide, and two meetings were convened by WOSHTEP staff to discuss feedback on the guide and to exchange resources.

Multilingual Health and Safety Resource Guide

An electronic Multilingual Health and Safety Resource Guide has been developed for CHSWC by LOHP. The guide is a free resource for finding health and safety information, such as fact sheets, checklists, and other resources that are available online. These resources can be printed to distribute to employees participating in injury and illness prevention programs in the workplace.

The Multilingual Health and Safety Resource Guide covers a broad range of topics including identifying and controlling hazards, legal rights and responsibilities in the workplace, ergonomics, chemical hazards, and violence prevention. It also provides information on hazards in a number of specific industries and occupations, including agriculture, construction, health care and office work.

Resources in the Guide are available in over 20 different languages including Spanish, Chinese, Arabic, Croatian, Haitian/Creole, Hmong, Japanese, Khmer/Cambodian, Korean, Polish, Portuguese, Russian, Serbian, Swahili, Tagalog, Thai, and Vietnamese. The Guide is available on the web at <http://www.dir.ca.gov/chswc/MultilingualGuide/MultilingualGuideMain.html>.

The Multilingual Health and Safety Resource Guide is maintained and updated regularly. Training handouts are currently being translated into Spanish and Chinese, and as needed and as funding allows, will be translated into other languages in future years.

Website

Information about WOSHTEP can be found in the WOSHTEP section, <http://www.dir.ca.gov/chswc/woshtep.html>, of the CHSWC website at <http://www.dir.ca.gov/chswc>. The website promotes public access and awareness of WOSHTEP and the products developed for the program. Materials include: a WOSHTEP fact sheet; a WOSHTEP brochure; the Multilingual Health and Safety Resource Guide; a survey of state, national and international training programs; and other resources developed for WOSHTEP training. In addition, LOHP and LOSH maintain linked websites, www.lohp.edu and www.lososh.ucla.edu, with information on WOSHTEP and health and safety resources.

Database and Evaluation

CHSWC maintains a database of all trainers, WOSH Specialists, and course information. The database assists in tracking all participants and in evaluation of the program.

In 2006, an independent evaluation consultant designed and tested a comprehensive evaluation plan for two areas of WOSHTEP: the WOSH Specialist course; and the Small Business Restaurant Supervisor Safety Training class. The WOSH Specialist training evaluation uses a mixed-method (qualitative and quantitative) non-experimental design (i.e., there is no control group) that gathers information on knowledge, attitudes, skills, and WOSH Specialist effectiveness in the workplace. The sources of data used to evaluate the WOSH Specialist course include: the Registration Form, completed by participants prior to the class; a post-training form (post test), completed by participants at the end of the course, which assesses their knowledge of several key learning objectives, as well as perceived changes in that knowledge and willingness to conduct WOSH Specialist tasks in their workplace; and follow-up interviews conducted by the independent evaluation consultant with a representative sample of WOSH Specialists three to six months after completing the course to assess whether they were able to conduct WOSH Specialist tasks and have an impact in their workplace.

Similarly, the evaluation of the Small Business Restaurant Supervisor Training for restaurant owners and managers was based on registration forms, post tests, and structured follow-up interviews conducted by the independent evaluation consultant with a randomly selected sample of participants.

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Evaluation reports are expected in 2008. Preliminary results indicate that the programs have had a positive impact on workers and employers.

Industries and Occupations Served by WOSHTEP to Date

To date, WOSHTEP has provided health and safety information and/or training to the following industries: janitorial/maintenance; construction; small manufacturers; corrections and rehabilitation; restaurants; health care; corrections and rehabilitation; telecommunications; food service/restaurant; laundry; agriculture; transportation; schools; refineries; warehousing; garment; meat packing; and recycling.

National Outreach

WOSHTEP is gaining national recognition through CHSWC, LOHP and LOSH presentations at state and national conferences, such as the International Association of Industrial Accident Boards and Commissions (IAIABC) and the American Society of Safety Professionals and the American Public Health Association (APHA), as well through articles written for publications such as the IAIABC Journal, the Bureau of National Affairs SafetyNet monthly newsletter, and the quarterly magazine for the Foodservice Consultants Society International (FCSI).

This year, LOHP conducted two presentations and a poster session at the APHA meeting in Washington, D.C., on November 5, 2007. One presentation provided some preliminary results of the WOSH Specialist course evaluation data. The other presentation described the WOSHTEP Young Worker Leadership Academies. A poster session presented the evaluation results of the WOSHTEP Small Business Restaurant Supervisor Safety Training Program. LOHP, LOSH, CHSWC, and WOSHTEP staff members, along with the independent evaluator, developed materials for the presentations and the poster session.

FUTURE PLANS IN 2008 AND BEYOND

WOSH Specialist Trainings

WOSH Specialist trainings will continue to be offered statewide with expansion into the Central Valley, San Diego, and other areas of Northern and Southern California. An effort to bring awareness of the availability of the courses to the general public through media outreach has been initiated and will be expanded in 2008.

WOSH Specialist Statewide Network of Trainers

Ongoing expansion of the statewide network of WOSH Specialist trainers will continue. A Training-of-Trainers Implementation Plan will be developed to reach new training partners for the trainers' network with an emphasis on recruiting participants who can reach workers in high hazard industries.

Listserves and newsletters will continue to be developed to provide ongoing information to WOSH Specialists on occupational health and safety issues and to provide them with a way of sharing information about health and safety practices on the job.

Awareness Sessions and Presentations

As part of ongoing outreach to employers, Awareness sessions and presentations will continue to be held each year to promote employer interest and participation in WOSHTEP and to meet the special needs of underserved worker populations. Workers attending these trainings will be encouraged to share what they have learned with their employers in order to promote offering the full 24-hour WOSH Specialist course to a group of workers on-site. CHSWC, LOHP and LOSH will work with the WOSHTEP Advisory

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Board, WOSH Specialist network trainers, needs assessment stakeholders and others to prioritize employer groups who would most benefit from awareness trainings.

Refresher Trainings

Refresher trainings will continue to be offered to WOSH Specialists and network trainers in a variety of settings to assist them in carrying out activities they choose to pursue in their workplaces after completion of the WOSH Specialist training.

Expansion to the Central Valley and Other Geographic Areas of Northern and Southern California

To continue to implement expansion of WOSHTEP into the Central Valley, LOHP will work with the WOSHTEP Central Valley coordinator, once hired, to help serve rural parts of California through such efforts as: holding the WOSH Specialist course and Training-of-Trainers course in Fresno (Fresno State University); reaching and serving the agricultural industry and farm workers in California, including conducting a heat stress education campaign with broad partnership support and conducting school-based outreach to teens working in agriculture; and developing resource materials and a training program for targeted small businesses within the agricultural industry in the Central Valley.

Expansion of WOSHTEP by LOHP will also continue to include other geographic areas in Northern California such as Sacramento, San Jose and Redding.

Expansion in Southern California by LOSH will continue to include San Diego and eastern counties. In San Diego, LOSH has worked with governmental and community-based organizations to identify ways to reach target populations, support efforts by WOSH Specialists to promote health and safety in their workplaces, and identify potential trainers.

Small Business Health and Safety Training

The Restaurant Supervisor Safety Training materials will continue to be promoted and distributed throughout the State. These materials will be adapted for small business the janitorial and business services industry in 2008. LOHP will be working on this new program in partnership with Preferred Employers, a workers' compensation insurer that specializes in serving small businesses and with other employer associations in this industry.

In addition, generic small business health and safety resources developed in 2007 will be printed and distributed through partner associations identified by CHSWC and the WOSHTEP Advisory Board. To expand the reach of the Small Business Resources Program and to expand available health and safety resources, insurance company loss control specialists will be taught to deliver short training sessions on these materials for their policyholders.

Young Worker Leadership Academies

Two Academies will be held in 2008 in Northern and Southern California for a total of 50-60 youth with the goal of continuing to create a network of youth who can share health and safety information with their peers. Several students from the previous Academies will participate in the 2008 Academies, serving as youth mentors and leading activities.

Carve-out Health and Safety Training

Outreach and trainings based on carve-out materials will continue to be conducted by LOHP and LOSH.

Resource Centers

Resource Centers in Northern and Southern California will continue to house and act as distribution systems of occupational health and safety training material, including, but not limited to, materials developed by WOSHTEP. These Centers will also continue to provide information and technical assistance to support the workers' compensation community, including trained WOSH Specialists and WOSHTEP trainers.

Training Materials in Other Languages and Multilingual Guide

WOSHTEP training handouts have been translated into Spanish and Chinese. Other languages will be added as needed and as funding allows. The Multilingual Health and Safety Resource Guide developed by LOHP, will continue to be updated and maintained regularly. Through this guide, health and safety resource information will continue to be available online in 23 languages.

Website

The WOSHTEP section on the CHSWC website will continue to promote public access to and awareness of WOSHTEP and products developed for the program and will continue to be maintained and updated regularly. LOHP and LOSH will continue to maintain linked websites.

Database and Evaluation

CHSWC will continue to maintain a database of all trainers, WOSH Specialists, course information, and certificates awarded. This database will continue to be maintained to track all participants in the program and provide information to support the evaluation process.

National Outreach

CHSWC, LOHP and LOSH will continue to deliver presentations at meetings of professional state and national organizations and will continue to provide articles on WOSHTEP to professional journals and newsletters to inform the national health and safety community about WOSHTEP.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

INTRODUCTION

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the overall performance of the health and safety and workers' compensation system to determine whether it meets the State's Constitutional objective to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character."

In this section, CHSWC has attempted to provide performance measures to assist in evaluating the system impact on everyone, particularly workers and employers.

Through studies and comments from the community, as well as administrative data, CHSWC has compiled the following information pertaining to the performance of California's systems for health, safety and workers' compensation. Explanations of the data are included with the graphs.

Administrative Operations

- DWC Opening Documents

- DWC Hearings

- DWC Decisions

- DWC Lien Decisions

- Vocational Rehabilitation / Supplemental Job Displacement Benefit (SJDB)

- DWC Audit and Enforcement Program

- Disability Evaluation Unit

- Medical Provider Networks and Healthcare Organizations

- Information and Assistance Unit

- Uninsured Employer Fund

Adjudication Simplification Efforts

- DWC Information System

- Carve-outs – Alternative Workers' Compensation Systems

Anti-Fraud Efforts

ADMINISTRATIVE OPERATIONS

Division of Workers' Compensation Opening Documents

Three types of documents open a Workers' Compensation Appeals Board (WCAB) case. The following chart shows the numbers of Applications for Adjudication of Claim (Applications), Original Compromise and Releases (C&Rs), and Original Stipulations (Stips) received by the Division of Workers' Compensation (DWC).

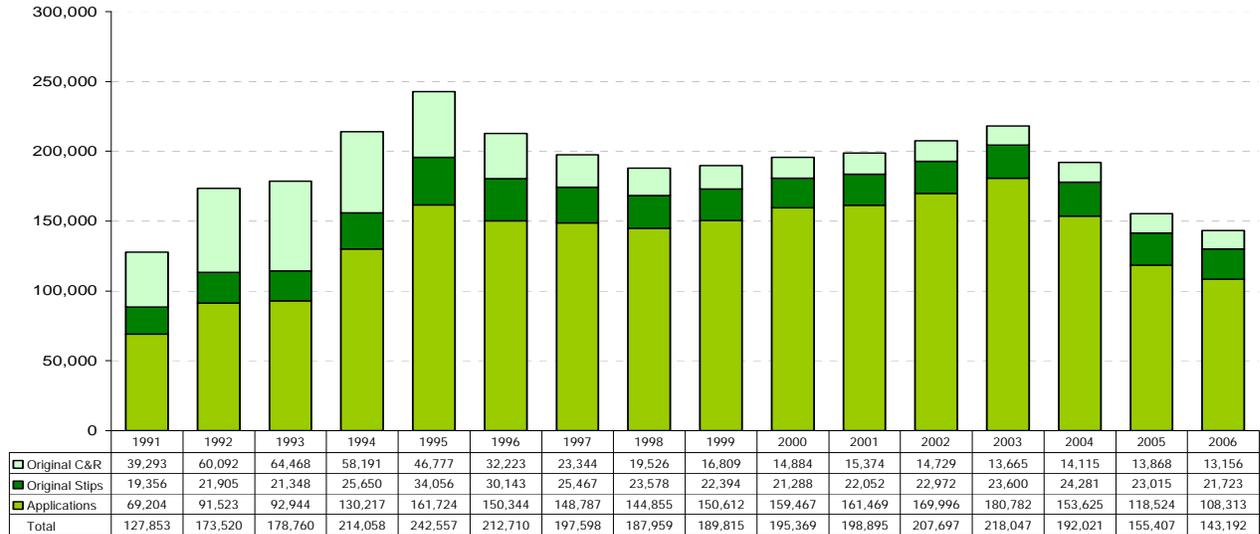
The number of documents filed with DWC to open a WCAB case on a workers' compensation claim fluctuated during the early and mid 1990s, leveled off during the late 1990s, increased slightly between 2000 and 2003, and decreased between 2003 and 2006.

The period from 1991 to 1992 shows growth in all categories of case-opening documents, followed by a year of leveling off between 1992 and 1993. The period from 1993 to 1995 is one of substantial increases

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in Applications, slight increases in Stips, and significant decreases in C&Rs. Through 2003, C&Rs continued to decline, while Applications increased. Between 2003 and 2006, Applications declined substantially, and C&Rs decreased slightly. 2006 was the lowest year since 1992 for all three documents combined, with C&Rs nearing a historic low for the period defined.

DWC Opening Documents

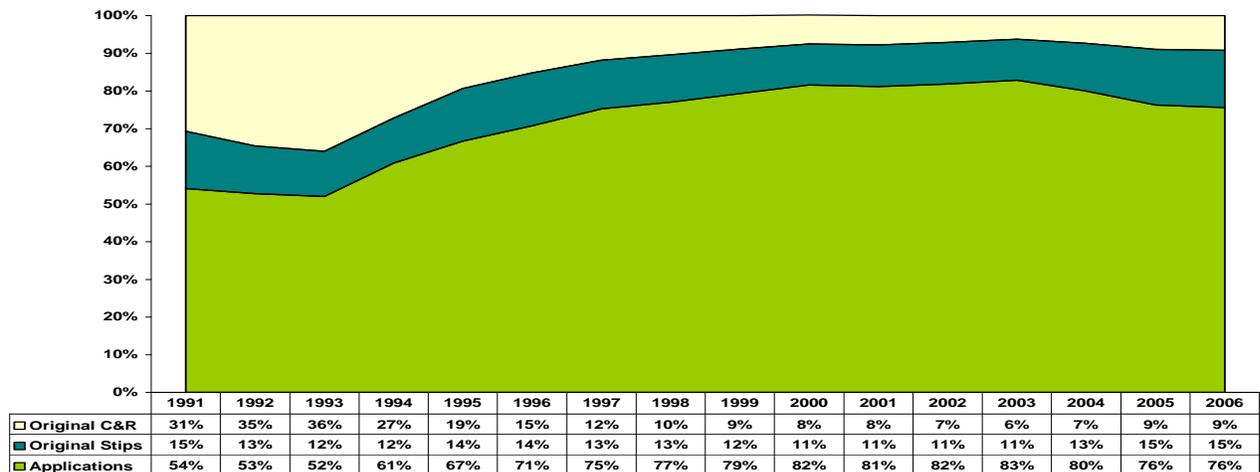


Data Source: DWC

Mix of DWC Opening Documents

As shown in the following graph, the proportion or mix of the types of case-opening documents received by DWC varied during the 1990s. Applications initially dropped from about 80 percent of the total in 1990 to less than 60 percent in 1991, reflecting increases in both original Stips and C&Rs. The proportion of Applications was steady from 1991 to 1993, rising again through 2003, and declining slightly from 2003 to 2006. The proportion of original (case-opening) Stips and original C&Rs declined slightly from 1999 to 2003 and then increased from 2003 to 2006.

Percentage by Type of Opening Documents



Data Source: DWC

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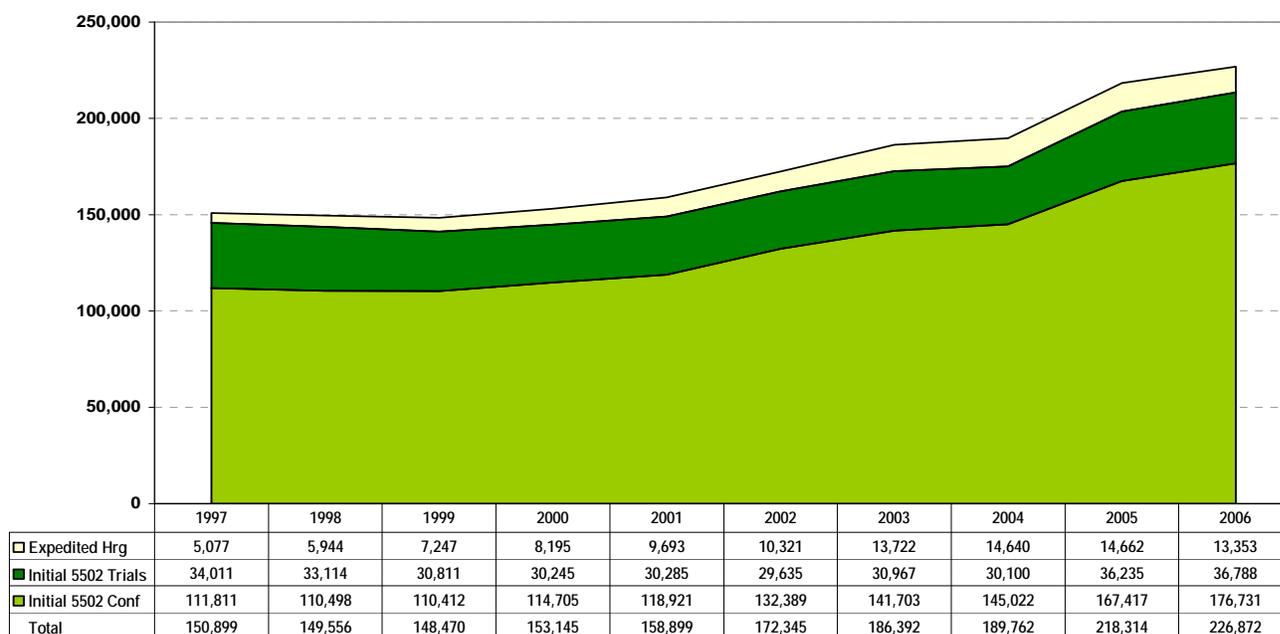
Division of Workers' Compensation Hearings

Numbers of Hearings

The graph below indicates the numbers of different types of hearings held in DWC from 1997 through 2006. While the total number of hearings held increased by 50 percent from 1997 to 2006, the number of expedited hearings grew by about 163 percent during the same period.

Expedited hearings for certain cases, such as determination of medical necessity, may be requested pursuant to Labor Code Section 5502(b). Per Labor Code Section 5502(d), Initial 5502, conferences are to be conducted in all other cases within 30 days of the receipt of a Declaration of Readiness (DR), and Initial 5502 Trials are to be held within 75 days of the receipt of a DR if the issues were not settled at the Initial 5502 Conference.

DWC Hearings Held



Data Source: DWC

Timeliness of Hearings

California Labor Code Section 5502 specifies the time limits for various types of hearings conducted by DWC on WCAB cases. In general:

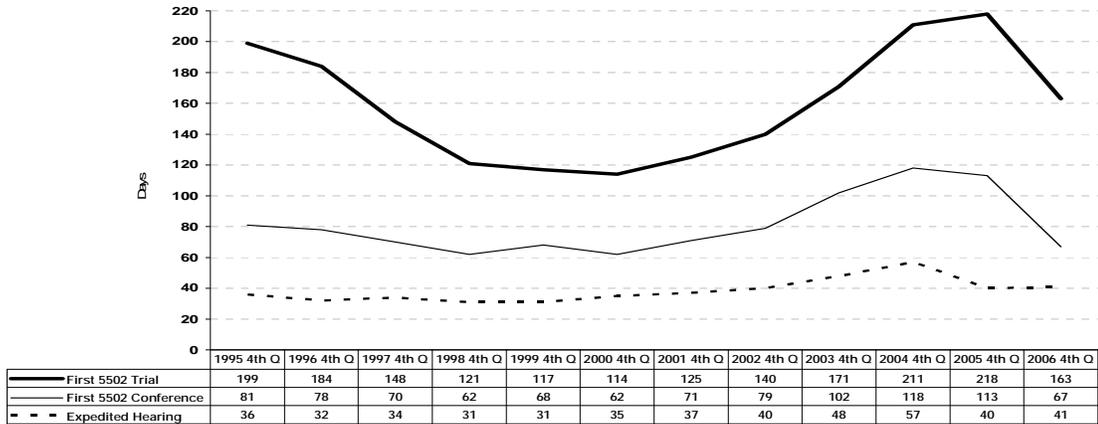
- A conference is required to be held within 30 days of the receipt of a request in the form of a DR.
- A trial must be held either within 60 days of the request or within 75 days if a settlement conference has not resolved the dispute.
- An expedited hearing must be held within 30 days of the receipt of the DR.

As the following chart shows, the average elapsed time from a request to a DWC hearing decreased in the mid-1990s to late-1990s and then remained fairly constant. From 2000 to 2004, all of the average elapsed times have increased from the previous year's quarter and none were within the statutory requirements. However, between 2005 and 2006, the average elapsed time from the request to a trial

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decreased by 25 percent. The average elapsed time for conferences decreased by 41 percent, while the average time for expedited hearings increased slightly by 2.5 percent.

Elapsed Time in Days from Request to DWC Hearing



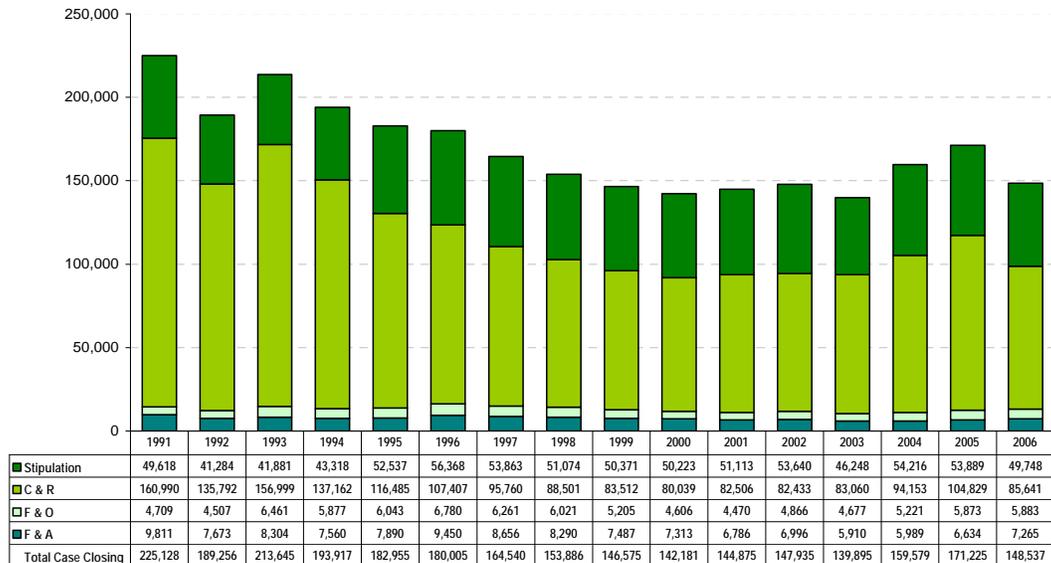
Source: DWC

Division of Workers' Compensation Decisions

DWC Case-Closing Decisions

The number of decisions made by DWC that are considered to be case-closing have declined overall during the 1990s, with a slight increase from 2000 to 2002, followed by a decrease in 2003, and then an increase between 2003 and 2005. In 2006, the total for case-closing decisions decreased by 13 percent compared to 2005.

DWC Case-Closing Decisions



Data Source: DWC

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The preceding chart shows that:

- The numbers of Findings and Awards (F&As) have shown an overall decline of 26.0 percent from 1991 to 2006.
- Findings and Orders (F&Os) increased during the first part of the decade, declined to the original level in 2002, decreased slightly from 2002 to 2003, and increased again between 2003 and 2006.
- Stips were issued consistently throughout the decade. The numbers of Stips issued rose from 1990 to 1991, declined from 1991 to 1992, leveled off from 1992 to 1994, rose again in 1995 and 1996, remained stable through 2000, increased slightly in 2001 and 2002, decreased in 2003, increased between 2003 and 2004, and decreased between 2004 and 2006.
- The use of C&Rs decreased by half during the 1990s and into the millennium. C&Rs declined steadily from 1993 through 2000, increased in 2001, remained stable in 2002 and 2003, increased by 26.2 percent between 2003 and 2005, and decreased by 18.3 percent between 2005 and 2006.

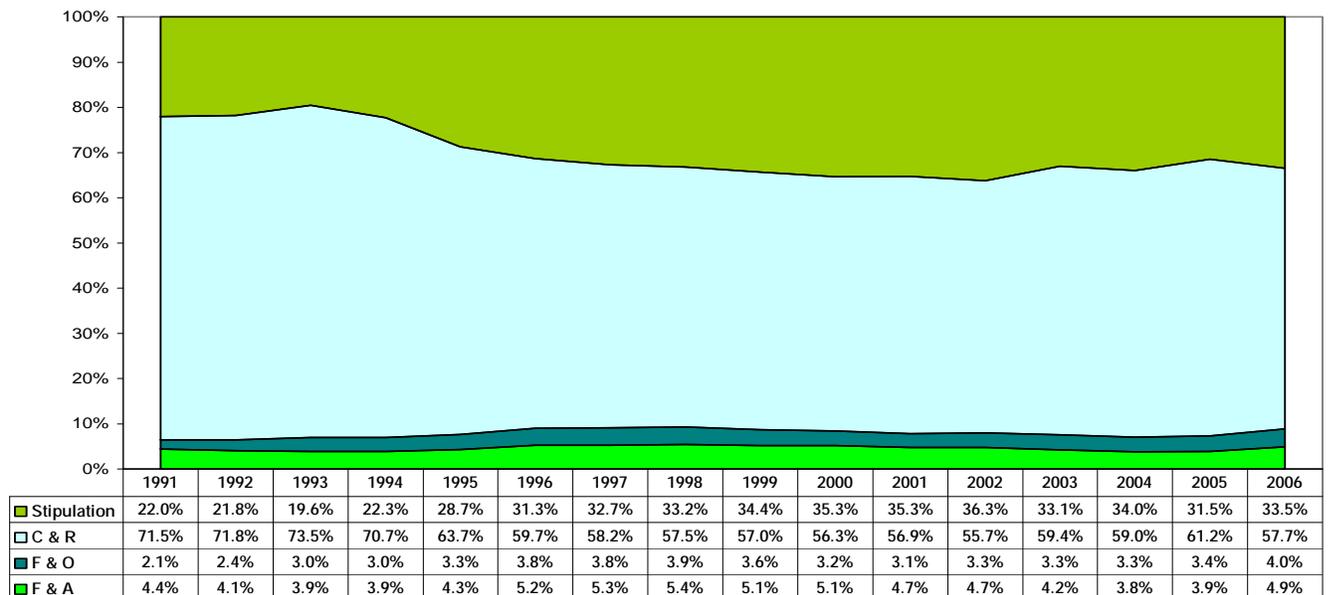
Mix of DWC Decisions

As shown on the charts on the previous page and this page, again, the vast majority of the case-closing decisions rendered during the 1990s were in the form of a WCAB judge's approval of Stips and C&Rs which were originally formulated by the case parties.

During the period from 1993 through the beginning of 2000 and beyond, the proportion of Stips rose, while the proportion of C&Rs declined. This reflects the large decrease in the issuance of C&Rs through the 1990s.

Only a small percentage of case-closing decisions evolved from an F&A or F&O issued by a WCAB judge after a hearing.

DWC Decisions: Percentage Distribution by Type of Decisions



Data Source: DWC

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Division of Workers' Compensation Lien Decisions

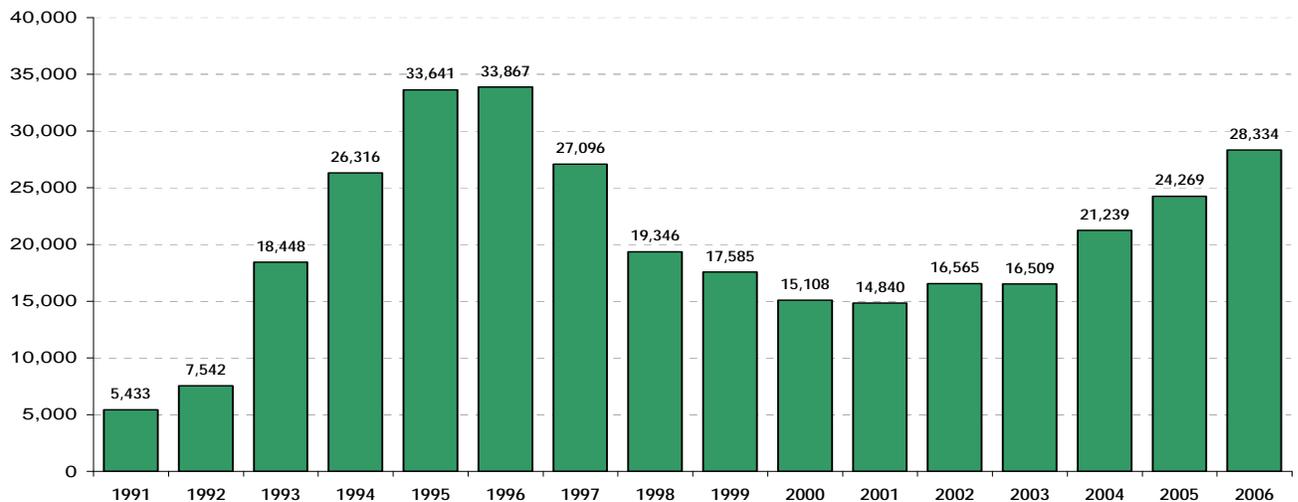
DWC has been dealing with a large backlog of liens filed on WCAB cases. Many of the liens have been for medical treatment and medical-legal reports. However, liens are also filed to obtain reimbursement for other expenses:

- The Employment Development Department (EDD) files liens to recover disability insurance indemnity and unemployment benefits paid to industrially injured workers.
- Attorneys have an implied lien during representation of an injured worker. If an attorney is substituted out of a case and seeks a fee, the attorney has to file a lien.
- District Attorneys file liens to recover spousal and/or child support ordered in marital dissolution proceedings of the injured worker.
- A landlord or grocer will occasionally claim a lien for living expenses of the injured worker or his/her dependents.
- Although relatively rare now, a private disability-insurance policy will occasionally file a lien on workers' compensation benefits on the theory that the proceeds from the benefits were used for living expenses of the injured worker.
- Some defendants will file liens in lieu of petitions for contribution where they have paid or are paying medical treatment costs to which another carrier's injury allegedly contributed.
- Liens are sometimes used to document recoverable (non-medical) costs, e.g., photocopying of medical records, interpreters' services and travel expenses.

Effective July 1, 2006, budget trailer bill language in Assembly Bill (AB) 1806 repealed the lien filing fee in Labor Code Section 4903.05 and added Section 4903.6 to preclude the filing of frivolous liens at DWC district offices. Labor Code Section 4903.05, originally added by Senate Bill (SB) 228, had required that a filing fee of \$100 be charged for each initial lien filed by a medical provider, excluding the Veterans Administration, the Medi-Cal program, or public hospitals.

The following chart shows a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

DWC Lien Decisions



Data Source: DWC

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VOCATIONAL REHABILITATION / RETURN TO WORK / SUPPLEMENTAL JOB DISPLACEMENT BENEFIT (SJDB) CALENDAR YEAR (CY) 2006 DATA

The number of:

- Opening documents by type and total – 20,985 new and 1,272 reopened
- Plans (new) 1,465
- Disputes (new) 9,497
- Settlements (new) 10,023

These numbers account for the 20,985 new cases only.

- Plans submitted for unrepresented employees and approved = 1,290
- Plans submitted for represented employees are approved = 5,110

Closures by types and totals:

- Employee completed plan and return to work = 5,226
- Employee completed plan and did not return to work = 3,282
- Employee settled prospective vocational rehabilitation = 16,375

Dispute Resolution & Conferences = 11,524.

The Rehabilitation Unit issued 17,005 Determinations for CY 2006.

Appeals = 869 or 5 percent of the Unit's Determinations were appealed, and less than 1 percent was overturned by the district offices of the WCAB.

Open cases as of January 1, 2006 = 68,354, and on December 31, 2006 there were 56,999 open cases.

Return to work / modified / alternative work (Pre 2004 DOI) CY 2006 totals = 2,470.

Return to work (Post 2004 DOI) regular / modified / alternative work CY 2006 totals = 6,760.

SJDB disputes for CY 2006 = 243.

DIVISION OF WORKERS' COMPENSATION AUDIT AND ENFORCEMENT PROGRAM

Background

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

The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of workers' compensation benefits to industrially injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.

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Assembly Bill 749 Changes to the Audit Program

Assembly Bill (AB) 749, effective January 1, 2003, resulted in major changes to California workers' compensation law and mandated significant changes to the methodologies for file selection and assessment of penalties in the audit program.

Labor Code Sections 129 and 129.5 were amended to assure that each audit unit will be audited at least once every five years and that good performers will be rewarded. A profile audit review (PAR) of every audit subject will be done at least every five years. Any audit subject that fails to meet a profile audit standard established by the Administrative Director (AD) of the DWC will be given a full compliance audit (FCA). Any audit subject that fails to meet or exceed the FCA performance standard will be audited again within two years. Targeted PARs or FCAs may also be conducted at any time based on information indicating that an insurer, self-insured employer, or third-party administrator is failing to meet its obligations.

To reward good performers, profile audit subjects that meet or exceed the PAR performance standard will not be liable for any penalties but will be required to pay any unpaid compensation. FCA subjects that meet or exceed standards will only be required to pay penalties for unpaid or late paid compensation and any unpaid compensation.

Labor Code Section 129.5(e) was amended to provide for civil penalties up to \$100,000 if an employer, insurer, or third-party administrator has knowingly committed or (rather than "and") has performed with sufficient frequency to indicate a general business-practice act discharging or administering its obligations in specified improper manners. Failure to meet the FCA performance standards in two consecutive FCAs will be rebuttably presumed to be engaging in a general business practice of discharging and administering compensation obligations in an improper manner.

Review of the civil penalties assessed is obtained by written request for a hearing before WCAB rather than by application for a writ of mandate in the Superior Court. Judicial review of the Board's F&O is as provided in Sections 5950 et seq.

Penalties collected under Section 129.5 and unclaimed assessments for unpaid compensation under Section 129 are credited to the Workers' Compensation Administration Revolving Fund (WCARF).

Audit and Enforcement Unit Data

Following are various charts and graphs depicting workload data from 2000 through 2006. As noted on the charts, data before 2003 cannot be directly compared with similar data in 2003 and after because of the significant changes in the program effective January 1, 2003.

Overview of Audit Methodology

Selection of Audit Subjects

Audit subjects, including insurers, self-insured employers, and third-party administrators, are selected randomly for routine audits.

The bases for selecting audit subjects for targeted audits are specified in 8 California Code of Regulations (CCR) Section 10106.1(c), effective January 1, 2003:

- Complaints regarding claims handling received by DWC.
- Failure to meet or exceed FCA Performance Standards.
- High numbers of penalties awarded pursuant to Labor Code Section 5814.
- Information received from the Workers' Compensation Information System (WCIS).
- Failure to provide a claim file for a PAR.
- Failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit.

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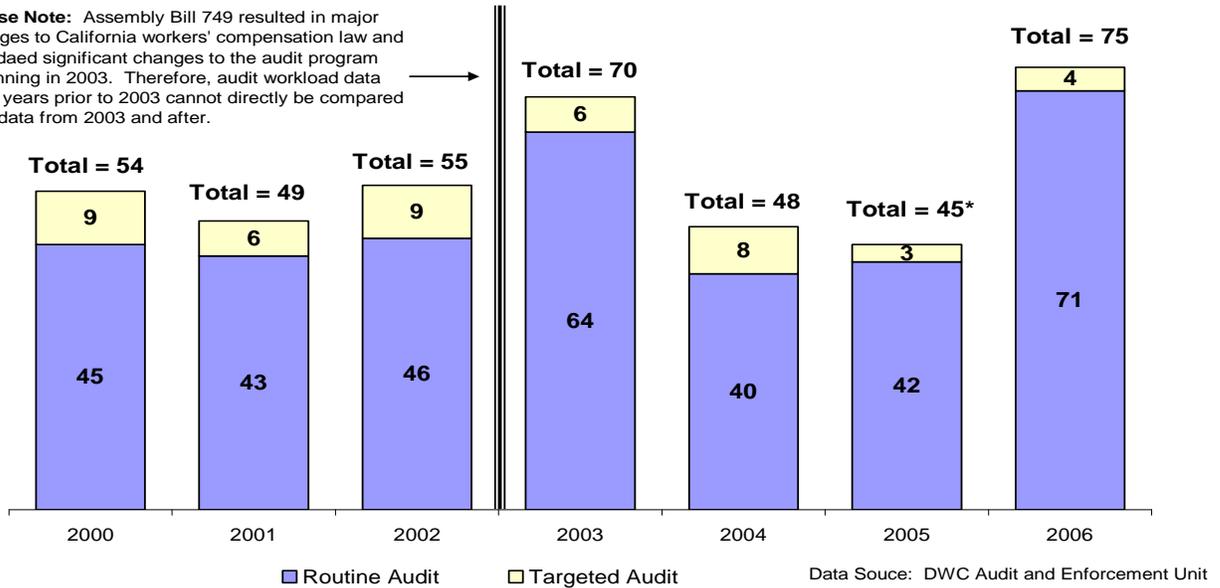
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Routine and Targeted Audits

The following chart shows the number of routine audits and target audits and the total number of audits conducted each year.

Routine and Targeted Audits

Please Note: Assembly Bill 749 resulted in major changes to California workers' compensation law and mandated significant changes to the audit program beginning in 2003. Therefore, audit workload data from years prior to 2003 cannot directly be compared with data from 2003 and after.



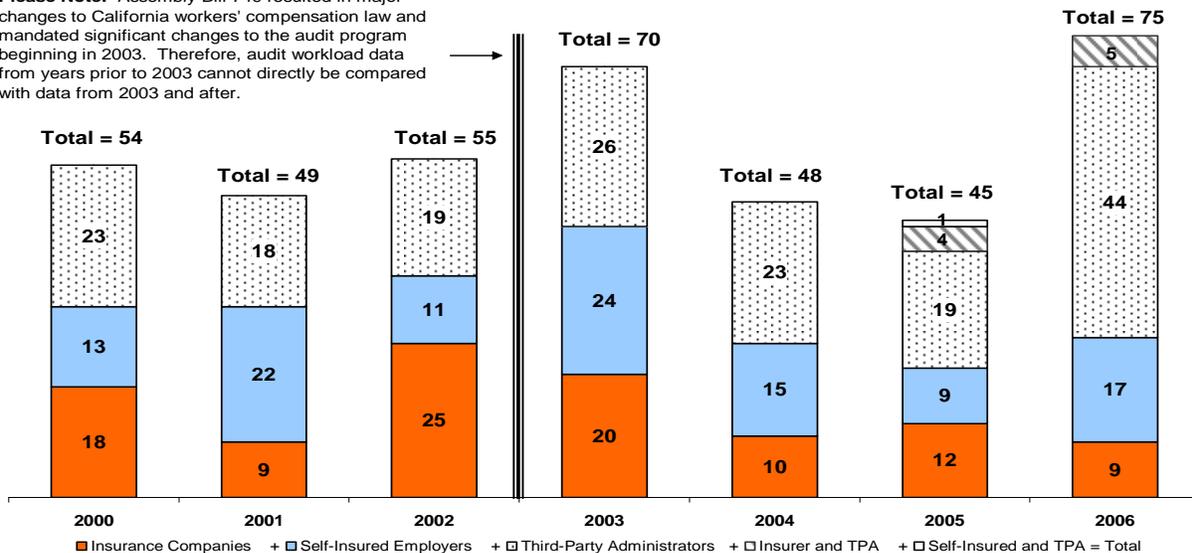
* Note: An additional target audit was conducted based on a return agreement in a previous stipulation of civil penalty in year 2000

Audits by Type of Audit Subject

The following chart depicts the total number of audit subjects each year with a breakdown by whether the subject is an insurer, a self-insured employer, or a third-party administrator.

DWC Audits by Type of Audit Subject

Please Note: Assembly Bill 749 resulted in major changes to California workers' compensation law and mandated significant changes to the audit program beginning in 2003. Therefore, audit workload data from years prior to 2003 cannot directly be compared with data from 2003 and after.



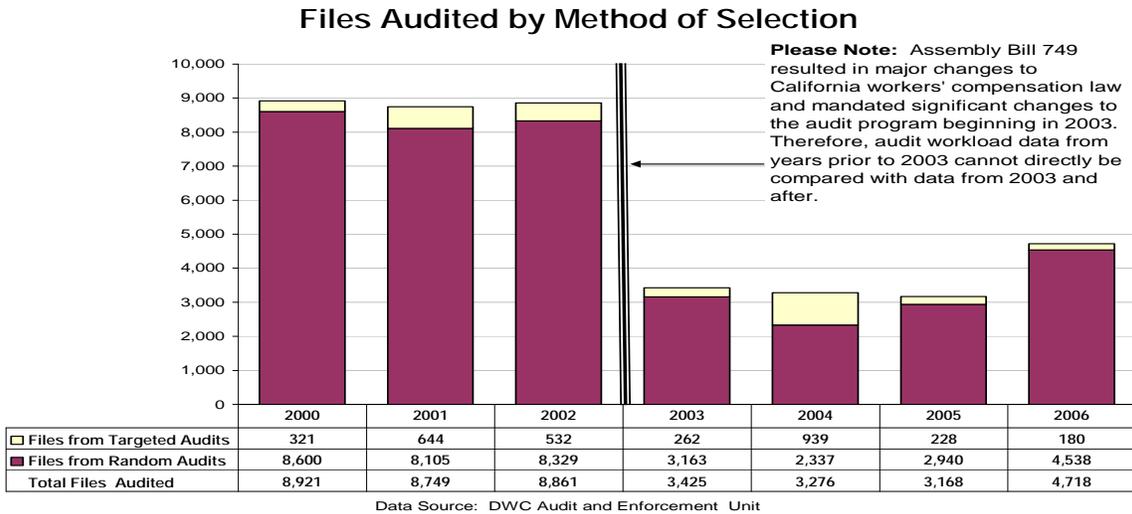
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Selection of Files to be Audited

The majority of claim files are selected for audit on a random basis, with the number of indemnity and denied cases being selected based on the numbers of claims in each of those populations of the audit subject:

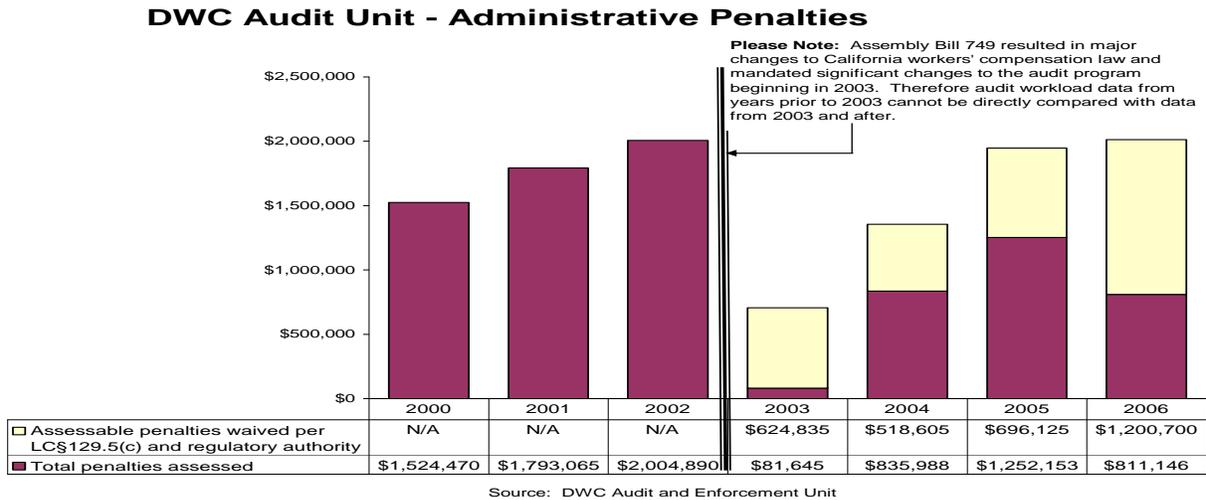
- Targeted files are selected because they have attributes that the audits focus on.
- Additional files include claims chosen based on criteria relevant to a target audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total number of claims at the adjusting location and the number of complaints received by DWC related to claims-handling practices. Types of claims include indemnity, medical-only, denied, complaint and additional.

The following chart shows the total number of files audited each year, broken down by the method used to select them.



Administrative Penalties

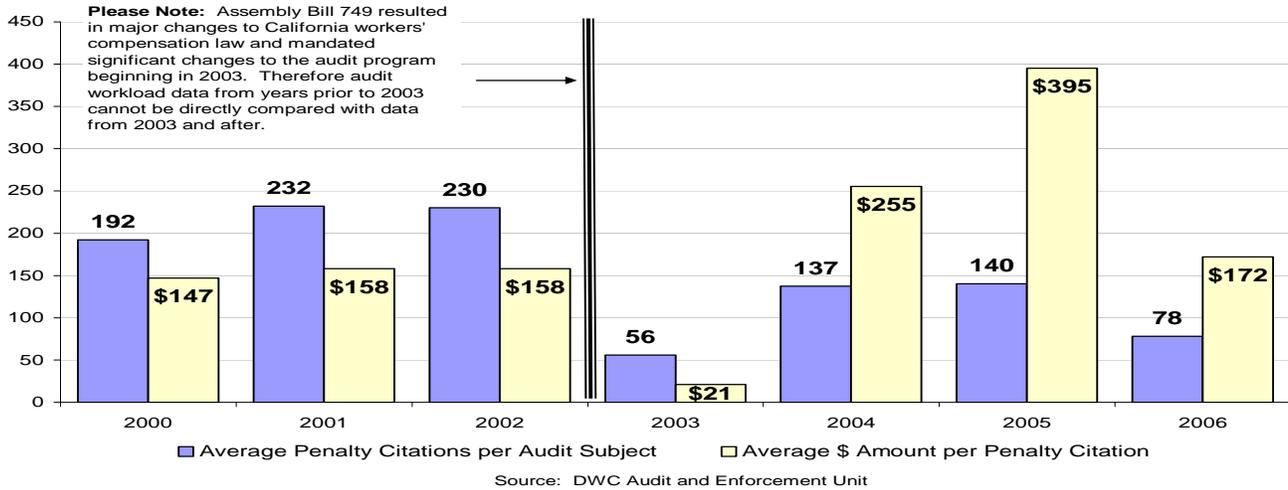
As shown in the following chart, the administrative penalties assessed have changed significantly since the reform legislation changes to the Audit and Enforcement Program beginning in 2003.



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The following chart shows the average number of penalty citations per audit subject each year and the average dollar amount per penalty citation.

Average Number of Penalty Citations per Audit Subject and Average Amount per Penalty Citation

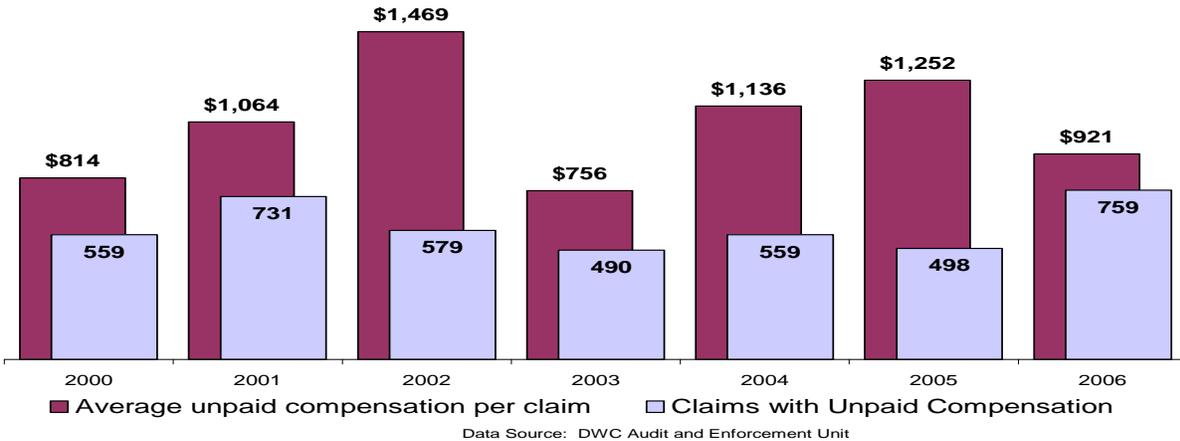


Unpaid Compensation Due To Employees

Audits identify claim files where injured workers were owed unpaid compensation. The administrator is required to pay these employees within 15 days after receipt of a notice advising the administrator of the amount due, unless a written request for a conference is filed within 7 days of receipt of the audit report. When employees due unpaid compensation cannot be located, the unpaid compensation is payable by the administrator to the WCARF. In these instances, application by an employee can be made to DWC for payment of monies deposited by administrators into this fund.

The following chart depicts the average number of claims per audit where unpaid compensation was found and the average dollar amount of compensation due per claim.

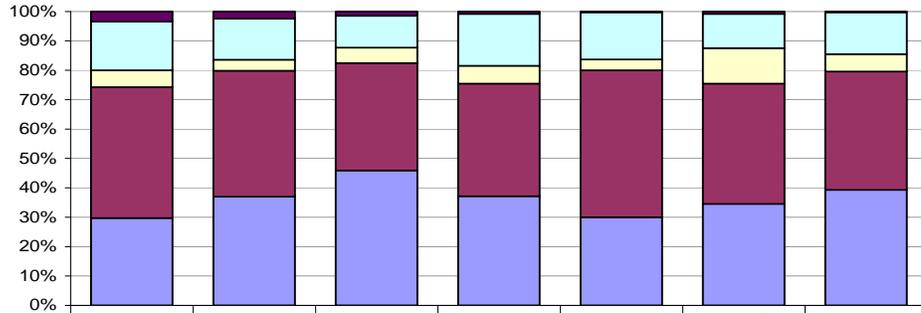
**DWC Audit Unit Findings of Unpaid Compensation
Number of Claims / Average \$ Unpaid per Claim**



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This chart shows unpaid compensation each year, broken down by percentage of the specific type of compensation that was unpaid.

Unpaid Compensation in Audited Files Type by Percentage of Total



	2000	2001	2002	2003	2004	2005	2006
Interest and penalty and/or unreimbursed medical expenses	3.5%	2.5%	1.6%	0.8%	0.2%	0.8%	0.3%
Self-imposed increases for late indemnity payments	16.5%	13.9%	10.7%	17.6%	16.0%	11.6%	14.2%
Voc. Rehab Maintenance Allowance	5.9%	3.7%	5.2%	6.0%	3.8%	12.1%	5.9%
Permanent Disability	44.5%	42.9%	36.6%	38.4%	50.0%	40.9%	40.3%
TD & salary continuation in lieu of TD	29.7%	36.9%	45.8%	37.1%	30.0%	34.5%	39.3%

Data Source: DWC Audit and Enforcement Unit

For further information...

 DWC Annual Audit Reports may be accessed at <http://www.dir.ca.gov/dwc/audit.html>

 CHSWC Report on the Division of Workers' Compensation Audit Function (1998) - available at www.dir.ca.gov/chswc

DISABILITY EVALUATION UNIT

The DWC Disability Evaluation Unit (DEU) determines permanent disability (PD) ratings by assessing physical and mental impairments in accordance with the Permanent Disability Rating Manual (PDRS). The ratings are used by workers' compensation judges, injured workers, and insurance claims administrators to determine PD benefits.

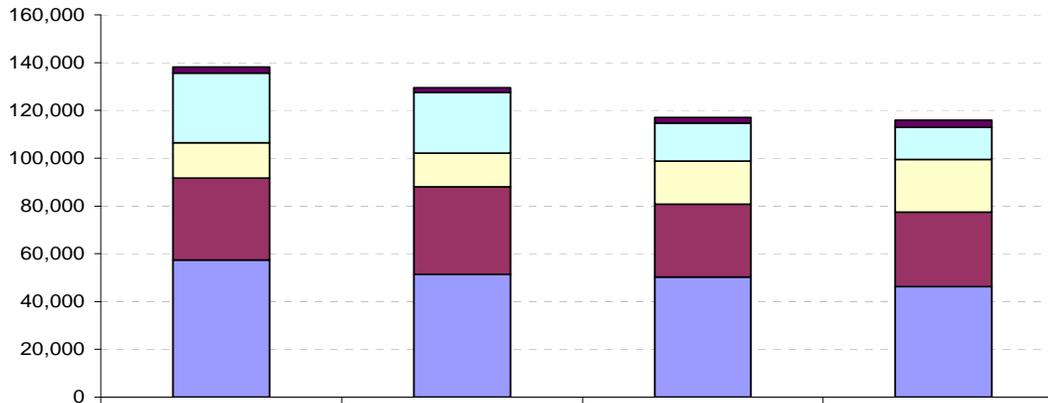
DEU prepares three types of ratings: formal, done at the request of a workers' compensation judge; consultative, done at the request of an attorney or DWC information and assistance officer (I&A); and summary, done at the request of a claims administrator or injured worker. Summary ratings are done only on non-litigated cases, and formal consultative ratings are done only on litigated cases.

The rating is a percentage that estimates how much a job injury permanently limits the kinds of work the injured employee can do. It is based on the employee's medical condition, date of injury, age when injured, occupation when injured, how much of the disability is caused by the employee's job, and his or her diminished future earning capacity. It determines the number of weeks that the injured employee is entitled to PD benefits.

The following charts depict DEU's workload during 2003 and 2006. The first chart shows the written ratings produced each year by type. The second chart illustrates the total number of written and oral ratings each year.

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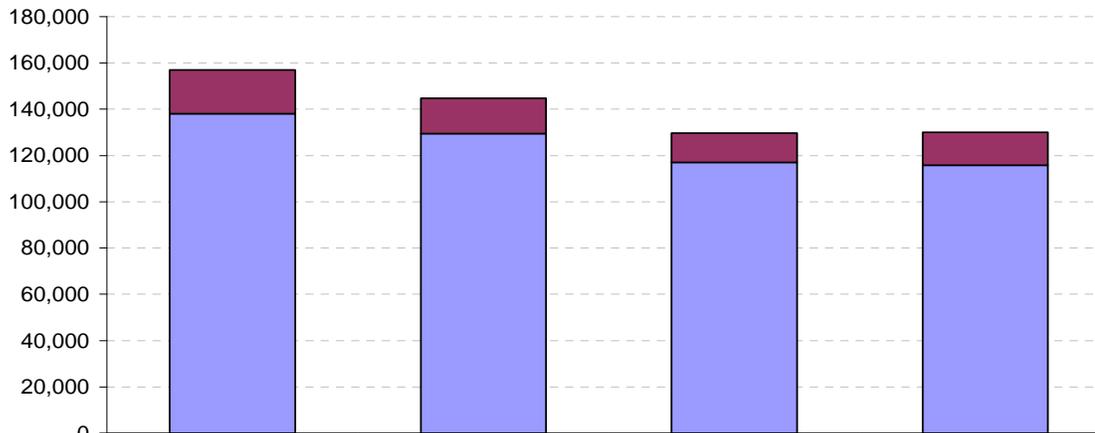
DEU Written Ratings 2003-2006



	2003	2004	2005	2006
Formal Ratings	2,386	1,995	2,299	2,874
Summary - Treating Doctor	29,198	25,385	15,922	13,422
Summary - Panel QME	14,753	14,147	18,001	22,139
Consultative - Walk-In	34,369	36,563	30,553	31,181
Consultative - Other	57,367	51,442	50,275	46,210
Total Written Ratings	138,073	129,532	117,050	115,826

Data Source: DWC Disability Evaluation Unit

DEU Oral and Written Ratings by Type 2003 - 2006



	2003	2004	2005	2006
Oral Ratings	18,856	15,283	12,591	14,273
Written Ratings	138,073	129,532	117,050	115,826
Total Ratings	156,929	144,815	129,641	130,099

Source: DWC Disability Evaluation Unit

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QUALIFIED MEDICAL EVALUATOR PANELS

The table below indicates the number of qualified medical evaluator (QME) Panel Lists issued in each year.

Table: QME Panels

	Panels 2002	Panels 2003	Panels 2004	Panels 2005	Panels 2006
Number of QME Panel Lists	31,619	31,386	51,903	65,936	64,256

The following table indicates the number of problems with the original QME panel issued necessitating a replacement list.

Table: QME Panel Problems

	Problems 2003	Problems 2004	Problems 2005	Problems 2006
Number of QME Panel Problems	5,402	16,232	24,252	25,515

MEDICAL PROVIDER NETWORKS AND HEALTH CARE ORGANIZATIONS

Medical Provider Networks

Background

In recent years, the California workers' compensation system has seen significant increases in medical costs. Between 1997 and 2003, workers' compensation medical treatment expenses in California increased by an estimated 138 percent,⁴⁴ outpacing the costs for equivalent medical treatment provided in non-industrial settings. To abate this rise in costs, major reforms were made in 2003 and 2004. One such effort was the signing into law of Senate Bill (SB) 899 in April of 2004. One major component of SB 899 was the option for self-insured employers or insurers to establish a Medical Provider Network (MPN), as promulgated in Labor Code Section 4616 et. seq. MPNs were implemented beginning January 1, 2005.

An MPN is a network of providers established by an insurer, self-insured employer, Joint Powers Authority, State, group of self-insured employers, Self-Insurer Security Fund, or the California Insurance Guarantee Association (CIGA) to treat work-related injuries.

The establishment of an MPN gives close to complete medical control to employers. With the exception of employees who have pre-designated a physician, according to California Labor Code §4600, employers that have established an MPN control the medical treatment of employees injured at work for the life of the claim as opposed to 30 days of medical control employers had prior to SB 899. Having an MPN means the employer has more control with regard to who is in the network and who the injured worker sees for care for the life of the claim. The employer gets to choose who injured worker goes to on the first visit; however, after the first visit, the injured worker can go to a doctor in the MPN of his/her choosing.

⁴⁴ Based on WCIRB annual report, *California Workers' Compensation Losses and Expenses* prepared pursuant to §11759.1 of the California Insurance Code.

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Before the implementation of an MPN, insurers and employers are required to file an MPN application with DWC for review and approval, pursuant to Title 8 CCR 9767.1 et. seq.

Application Review Process

California Labor Code Section 4616(b) mandates that DWC review and approve MPN plans submitted by employers or insurers within 60 days of plan submission. If DWC does not act on the plan within 60 days, the plan is deemed approved by default.

Upon receipt of an MPN application, DWC does an initial cursory review of all applications received. The result of the review is communicated to each applicant in a "complete" or "incomplete" letter, as applicable. Applicants with sections missing in their application will be informed to complete the missing part(s). Applicants with a complete application will receive a "complete" letter indicating the target date of when the full review of their application will be completed. The clock for the 60-day time frame within which DWC should act starts from the day a complete application is received at DWC.

The full review of an application involves a thorough scrutiny, using a standard check list, to see if the application followed the statutory and regulatory requirements set forth in the California Labor Code Section 4616 et. seq. and the California Code of Regulations sections 9767.1 et. seq. The full review culminates with an approval letter if no deficiency is discovered in the submitted application. Applicants with deficient applications are sent a disapproval letter listing deficiencies that need to be corrected.

Material modification filings go through a similar review process as an initial application. Except in cases where an applicant was approved under the emergency regulations and is now updating the application to the permanent regulations, reviews of material modifications are done only for those sections of the applications affected by the material change.

Applications Received and Approved

Table 1 provides a summary of MPN program activities since the inception of the MPN program in November 1, 2004, to April 15, 2007. During this time frame, the MPN program has received 1,288 MPN applications. Of these, 18 were ineligible as they were erroneously submitted by insured employers who under the MPN regulations are not eligible to set up an MPN. As of April 15, 2007, 1,166 applications were approved. Of these, 987 were approved under the emergency regulations and the remaining 179 under the permanent regulations. Thirteen (13) approved applications were revoked by DWC. The reason for revocation was the applicants' erroneous reporting of their status as self-insured when in fact they were insured entities. Sixty-six (66) applications were withdrawn by applicants for different reasons. Twenty-nine (29) were withdrawn after approval and 37 were withdrawn before approval. The reasons for the withdrawals were either that the applicant decided not to pursue their MPN or there was a duplicate submission of the same application.

Table 1: MPN Program Activities from November 1, 2004 to April 15, 2007

MPN Applications	Number
Received	1,288
Approved	1,166
Material Modifications	272
Revoked	13
Withdrawn	66
Ineligible	18

SYSTEM PERFORMANCE

Since November 2004, 20 percent (252) of applications were found incomplete at initial submissions. For the same time period, 45 percent of applications had deficiencies and had to be resubmitted at least once before the application was approved.

Table 2 shows the time of receipt of MPN applications by month and year. The bulk of applications, 58 percent (749), were received in 2005. Only 10 percent (131) were received in 2006. Similarly 85.2 percent (994) were approved in 2005; while only 11.7 percent (137) were approved in 2006 (see Table 3 and Figure 2).

SYSTEM PERFORMANCE

List of Self-Insured MPN Applicants with Covered Employees of 5,000 or more

MPN Log Number	Name of Applicant	Name of MPN	Number of Covered employees
0544	Thomson, Inc.	First Health CompAmerica Select HCO Network (or "First Health Select")	5,056
0903	San Jose Unified School District	First Health CompAmerica Primary HCO	5,141
0784	San Mateo County	San Mateo County MPN	5,200
0949	Oakland Unified School District	Oakland Unified School District MPN	5,217
0890	Orange Unified School District	Well Comp Medical Provider Network	5,449
0548	Dole Food Company, Inc.	First Health CompAmerica Select HCO Network (or "First Health Select")	5,477
0793	New United Motor Manufacturers, Inc.	NUMMI MPN	5,536
1069	Los Angeles County Office of Education	Los Angeles County Office of Education - Comp Care MPN	5,857
0513	The Salvation Army	Red Shield	6,000
0605	Raley's	CorVel HCO/CorVel HCO Select	6,000
1123	The 99 Cents Only Stores	The 99 Cents Only Stores MPN	6,102
1170	Providence Health System	Intracorp/Providence Medical Provider Network	6,500
1132	Santa Ana Unified School District	WellComp Medical Provider Network	6,677
0059	Frito-Lay, Inc.	Sedgwick CMS Medical Provider Network	6,710
0141	BCI Coca-Cola Bottling Company of Los Angeles (Coca-Cola Enterprises, Inc.)	Sedgwick CMS Medical Provider Network	6,800
0891	Whittier Area Schools Insurance Authority	WellComp Medical Provider Network	6,850
0959	BLP Schools' Self-Insurance Authority	WellComp Medical Provider Network	7,132
1211	The County of Fresno	The County of Fresno MPN	7,500
0052	Save Mart Supermarkets, Inc.	The Status MPN-Save Mart	8,000
0058	Los Angeles Dept. of Water & Power	CorVel HCO / CorVel HCO Select	8,400
1087	Kaiser Foundation Health Plan, Inc. A California Corporation	Kaiser Permanente MPN	8,448

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MPN Log Number	Name of Applicant	Name of MPN	Number of Covered employees
1032	Alameda County	First Health CompAmerica Primary Network	8,494
0108	Memorial Health Services	TRISTAR CompAmerica Primary HCO	8,947
0875	San Francisco Unified School District	First Health CompAmerica Primary HCO	9,500
0050	United Airlines	CorVel HCO/CorVel HCO Select	9,944
1114	Warner Bros. Entertainment, Inc.	Warner Bros. MPN	10,500
0822	County of Kern	County of Kern Medical Provider Network	10,800
0898	Santa Barbara County Schools - SIPE	PacMed, Inc. HCO	11,000
1100	Lowe's HIW, Inc.	Lowe's	11,500
1237	AT&T	Sedgwick CMS Extended Medical Provider Network	11,500
0409	Barrett Business Services, Inc.	CorVel HCO/CorVel HCO Select	12,000
0310	COP/CPB of the Church of Jesus Christ of the Latter-day Saints	Deseret MPN	12,143
1089	Intel Corporation	Broadspire-Concentra Standard MPN	13,223
0591	Securitas Security Services USA, Inc.	Broadspire-Concentra Standard MPN	13,500
0951	Alliance of Schools for Cooperative Insurance Programs	WellComp Medical Provider Network	13,764
0815	The Walt Disney Company	The Liberty Mutual Group MPN	13,924
0688	County of San Bernardino	CorVel MPN	14,000
0020	Southern California Edison	SCE Select	15,077
0219	Hewlett Packard Company	Sedgwick CMS Extended Medical Provider Network	15,388
0169	American Building Maintenance (ABM)	ABM Network	15,712
0025	The County of Riverside	First Health Comp America Select	16,600
1203	Nordstrom Inc.	Nordstrom Medical Provider Network	17,000
0187	Countrywide Financial Corporation	Countrywide Network	18,000
0849	Ventura County Schools Self-Funding Authority	WellComp Medical Provider Network	19,566
0034	Sun Microsystems, Inc. (Sun)	First Health Network	20,000

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MPN Log Number	Name of Applicant	Name of MPN	Number of Covered employees
0963	San Diego Unified School District	TRISTAR - CompAmerica Primary HCO	20,000
1258	City and County of San Francisco	City and County of San Francisco Medical Provider Network	20,000
0304	Manpower Inc.	Cambridge Manpower MPN	20,320
0545	Tenet Healthcare Corporation	First Health CompAmerica Primary HCO Network (or "First Health Primary")	20,439
1086	Marriott International, Inc.	Marriott's Medical Provider Network	20,511
0339	Pacific Gas and Electric Company	PG&E Medical Provider Network	21,000
0375	County of Orange	Intracorp	21,400
1273	County of Orange	Cambridge Orange County MPN	21,500
1275	Mainstay Business Solutions	WellComp Medical Provider Network	22,500
0977	Southern California Permanente Medical Group	Kaiser Permanente MPN	26,353
0328	Kmart Corporation	Sedgwick CMS Extended Medical Provider Network	26,460
1084	Kaiser Foundation Hospitals, a California Corporation	Kaiser Permanente MPN	29,880
0382	Costco Wholesale	Costco MPN	31,000
0755	Pacific Bell Telephone Co.	Liberty Mutual Group MPN	34,131
0482	Pacific Bell Telephone Company	Sedgwick CMS Extended Medical Provider Network	34,131
0167	Kelly Services, Inc	Kelly Services Medical Provider Network	58,500
0335	Safeway, Inc.	Safeway Select MPN	60,000
0055	Federated Dept. Stores, Inc.	CorVel HCO / CorVel HCO Select	62,541
0077	Albertsons, Inc.	New Albertson's Inc. CA MPN	65,352
0509	City of Los Angeles	Interplan Health Group	69,500
0582	Target Corporation	Target Medical Provider Network	75,300
0062	County of Los Angles	Interplan Health Group	87,000
0061	County of Los Angeles	First Health CompAmerica Select HCO, a certified HCO	87,000

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MPN Log Number	Name of Applicant	Name of MPN	Number of Covered employees
0060	County of Los Angeles	CorVel HCO	87,000
0162	Los Angeles Unified School District	Sedgwick CMS Extended Medical Provider Network	122,647
1009	Regents of The University of California	Regents of The University of California MPN	189,925

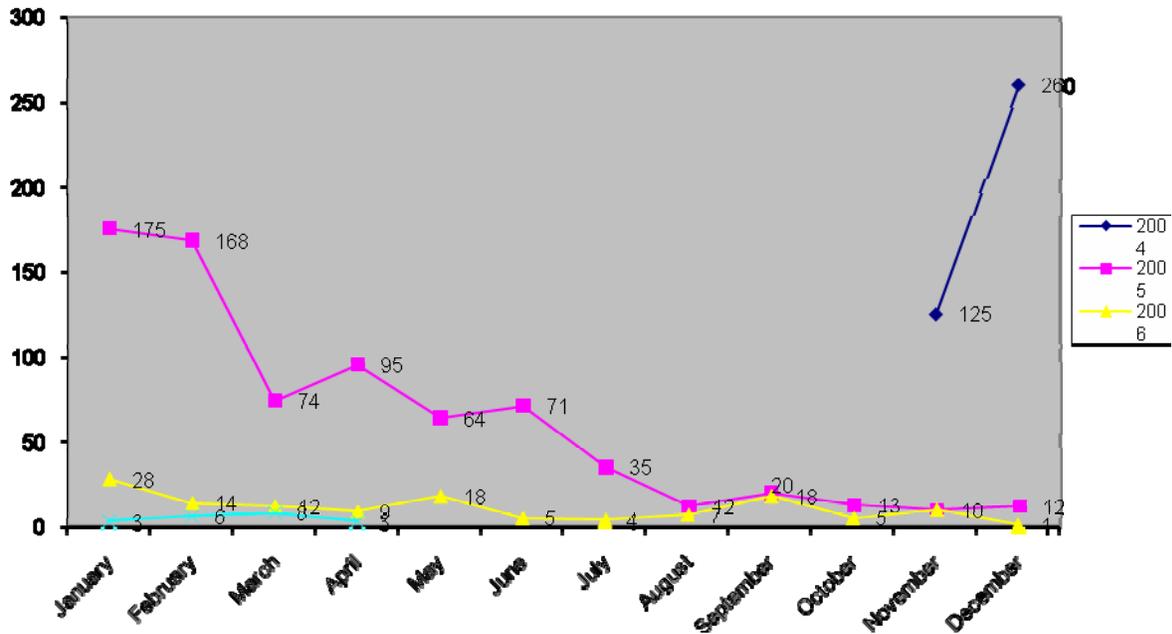
The following table and graph indicated the number of MPN applications approved by month and year of receipt.

Table 2: Number of MPN Applications Received by Month and Year of Receipt

Month	Year			
	2004	2005	2006	2007
January		175	28	3
February		168	14	6
March		74	12	8
April		95	9	3
May		64	18	4
June		71	5	5
July		35	4	14
August		12	7	5
September		20	18	3
October		13	5	7
November	125	10	10	
December	260	12	1	
TOTAL	385	749	131	58
% Of Total Received	29.1%	56.6%	9.9%	4.4%

SYSTEM PERFORMANCE

Figure 1: MPN Applications Received by Month and Year of Receipt



Dat

a Source: DWC

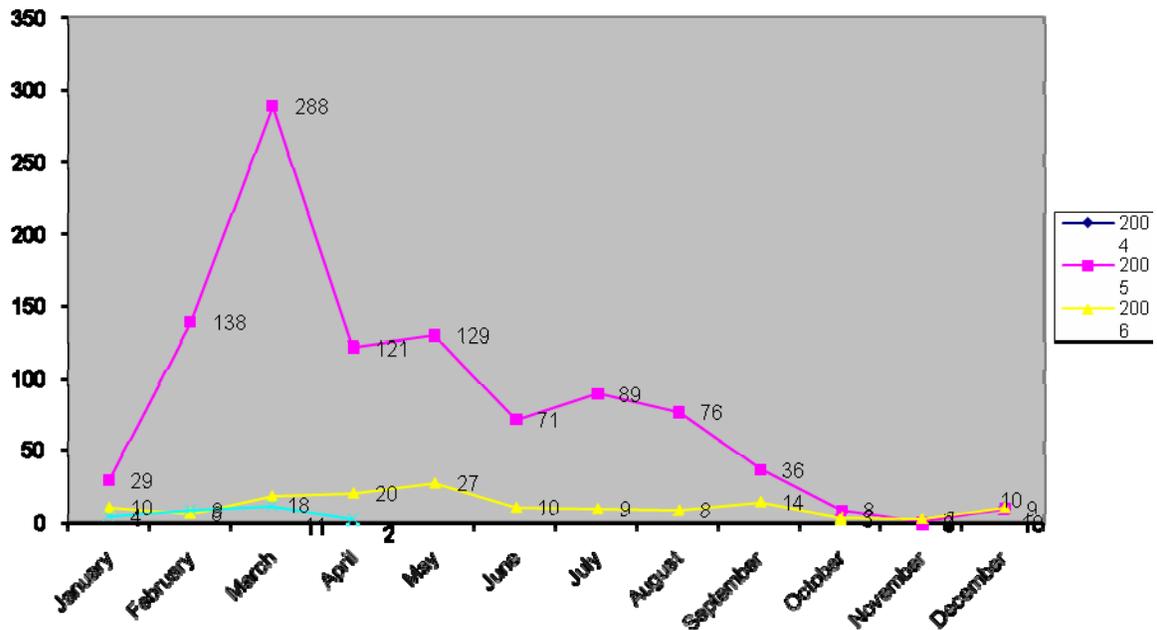
The following table and graph indicate the number of MPN applications approved by month and year of approval.

Table 3: Number of MPN Applications Approved by Month and Year

MONTH	YEAR			
	2004	2005	2006	2007
January		29	10	5
February		138	6	8
March		288	18	11
April		121	20	4
May		129	27	5
June		71	10	6
July		89	9	7
August		76	8	6
September		36	14	6
October		8	3	3
November	0	0	2	
December	10	9	10	
TOTAL	10	994	137	61
% Of Total Approved	0.8%	82.7%	11.4%	5.1%

SYSTEM PERFORMANCE

Figure 2: MPN Applications Approved by Month and Year of Approval



Data Source: DWC

Material Modifications

MPN applicants are required by Title 8 CCR §9767.8 to provide notice to DWC for any material change to their approved MPN application. In addition, MPN applicants approved under the emergency regulations must update their application to conform with the permanent MPN regulations when providing notice of material change to their approved application.

As of April 15, 2007, 272 applicants had filed a material modification with DWC. Of these, 258 were approved under the emergency regulations and as such had to update their application to conform to the permanent MPN regulations. Fourteen (14) were approved under the permanent regulations. Some applicants have more than one material modification. Twenty-eight (28) applicants had two material modification filings while one had three filings and one had seven filings.

In terms of how many material modification filings were received at DWC, 78 material modifications were filed in 2005, 239 in 2006, and 114 in 2007.

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MPN Applicants

Table 4 shows the distribution of MPN applicants by type of applicant. The majority, 59.4 percent, of MPN applications were filed by insurers, followed by self-insured employers (35.9 percent).

Table 4: Distribution of Approved MPN Applications by Type of Applicant

Type of Applicant	Number	Percent
Insurer	692	59.4%
Self-Insured Employer	419	35.9%
Joint Powers Authority	41	3.5%
Group of Self-Insured Employers	12	1.0%
State	2	0.2%
Total	1,166	100.0%

HCO Networks

Health care organization networks (HCO) networks are used by 654 (58.2 percent) of the approved MPNs. The distribution of MPNs by HCO is shown in Table 5 and Figure 3. First Health HCO has 33.8 percent of the MPN market share followed by Prudent Buyer HCO, which has 11.4 percent, and Corvel HCO, which has 9.3 percent.

MPN applicants are allowed to have more than one MPN. As a result, 54.3 percent of applicants have more than one MPN, including 19.3 percent with 19 to 35 MPNs (See Table 6). The names of MPN applicants with 10 or more approved MPNs are shown in Table 7. ACE American Insurance Company leads with 35 MPNs, followed by Zurich American Insurance Company with 27 MPNs, and AIG Insurance Carrier and American Home Assurance Co., each with 25 MPNs.

The following table and Figure 3 indicate the number of MPN applicants using HCO Networks:

Table 5: Number of MPN Applicants Using HCO Networks.

Name of HCO	Number	Percent of Application Received	Percent of Application Approved
CompAmerica (First Health)	380	58.1%	33.8%
Prudent Buyer (Blue Cross)	128	19.6%	11.4%
Corvel	104	15.9%	9.3%
Medex	27	4.1%	2.4%
CompPartners	6	0.9%	0.5%
Astrasano (Concentra)	4	0.6%	0.4%
PacMed	2	0.3%	0.2%
Net-Work	2	0.3%	0.2%
Intracorp	1	0.3%	0.1%
Total Using HCO	654	100.0%	58.2%

SYSTEM PERFORMANCE

Figure 3: Percentage of Approved MPNs Using HCO Networks by HCO

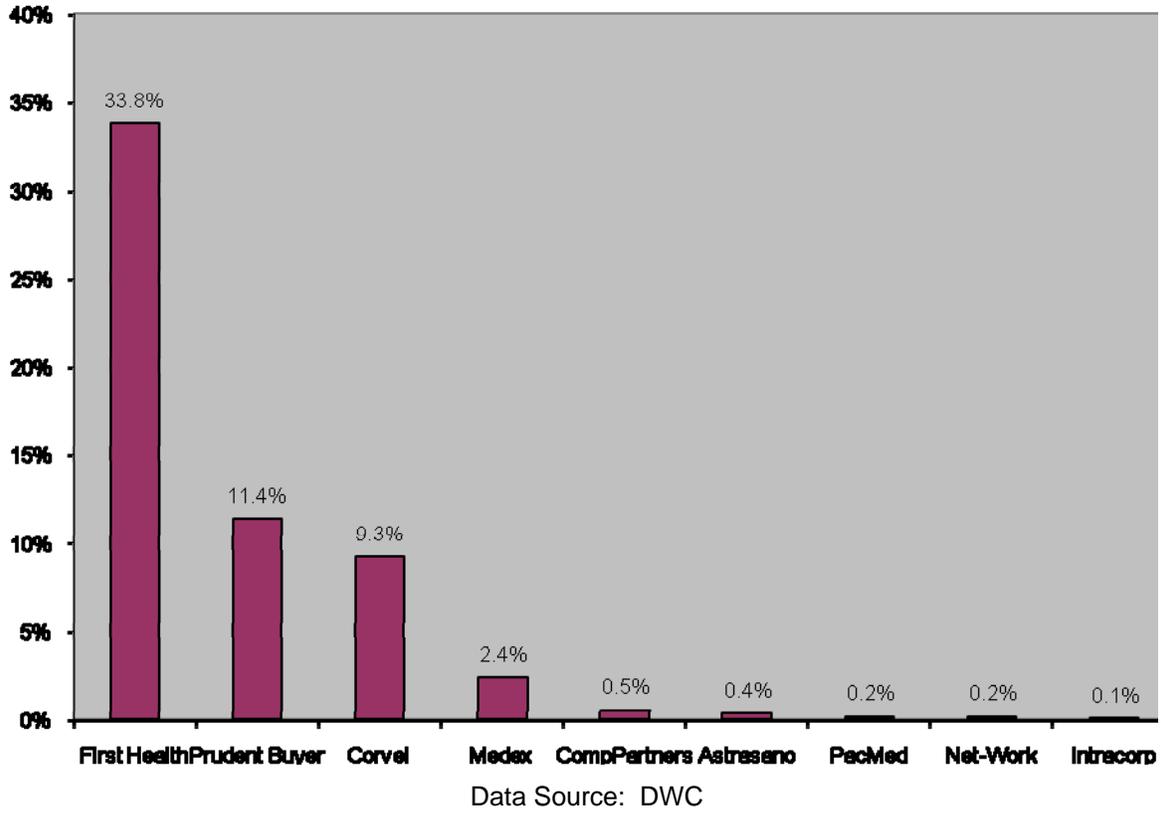


Table 6: Distribution of Approved MPNs with Number of MPNs per Applicant

Number of MPNs	Number of Applicants	Percent
18-35	114	19.3%
10-17	87	7.5%
5-9	147	12.6%
2-8	174	14.9%
1	533	45.7%
Total	1166	100.0%

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Table 7: Names of MPN Applicants with 10 or More MPNs

Name of MPN	Number
ACE American Insurance Company	35
Zurich American Insurance Company	27
AIG Insurance Carrier, American Home Assurance Co.	25
Fidelity & Guaranty Insurance Company	24
Discover Property & Casualty Insurance Company	20
United States Fidelity & Guaranty Company	20
The Insurance Company of the State of Pennsylvania	19
Fidelity & Guaranty Insurance Underwriters, Inc	19
National Union Fire Insurance Company of Pittsburgh PA	18
Old Republic Risk Management, Inc.	18
American Zurich Insurance Company	14
Commerce & Industry Insurance Company	12
Birmingham Fire Insurance Company of Pennsylvania	11
Landmark Insurance Company	10
Safety National Casualty Corporation (SNCC)	10
New Hampshire Insurance Company	10
Granite State Insurance Company	10
Continental Casualty Company (CNA)	10

Covered Employees

The emergency MPN regulations did not require MPN applicants using HCO provider networks as deemed entities to report estimated numbers of covered employees. Since HCO networks were used by 58.2 percent of applicants, the figure for covered employees therefore excludes these applicants. In addition, the covered employee numbers are being reported at a time when material modifications are common. A complete count will be available as all applicants go through the material modification process. Currently, information is only available for 56 percent (650) of MPN applicants. The total estimated number of covered employees, as reported by these MPN applicants, is 13,536,397.

Employers/Insurers with MPN

Neither the number nor the name of insured employers using MPNs can be obtained from MPN applications. Insurers are not required to report who among their insured employers are using their MPN. The list of self-insured employers with a self-reported number of covered employees greater than five thousand is shown in Appendix A. This list includes among others some large companies such as Albertsons, AT&T, FedEx, Safeway, Home Depot, Target Corporation, Rite Aid, Raley's, and Federated Department Store.

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MPN Complaints

The MPN program has set up a complaint logging and resolution system. Complaints are received by phone, fax, e-mail, and mail. Since January 2006, DWC has received 83 complaints. DWC has contacted the liaison of the MPNs and resolved and closed 80 of the complaints.

Status of the MPN Program

The MPN program is a new program that is growing and as such, key elements such as the intake, application tracking, and review process represent a work in progress. It has improved over time but there is still room for improvement. Professional as well as clerical staff could benefit more from training on programs such as Excel and Access which could facilitate the intake logging process. In addition, scanning of copies of application documents could reduce the space that is currently being used by MPN applications. Currently, two hard copies of each application are kept by DWC.

The staffing of the program has grown from two professional staff to two clerical staff and four professional staff (not including two medical doctors and one legal counsel who are readily available for consulting).

Up to this point, the main focus of the program has been to review and approve MPN applications. However, more research on the MPN provider networks and the functioning of MPNs needs to be done in the near future to provide information on the following: What percentage of the different networks overlap? That is, which networks have the same doctors? What are the economic profiling policies of the different networks? Which areas of the state are covered by MPNs and which areas lack providers? Which provider specialties are lacking?

DWC does not have any mechanism to monitor if approved MPNs are indeed functioning according to their approved application. However, a complaint tracking system has been put in place and so far, DWC has received 83 complaints. Most of the complaints were regarding insufficient provider listings given to the injured worker. On the other hand, one major player, UPS, came to DWC headquarters and reported how effective their MPN has been in workers' compensation medical cost-saving.

Health Care Organization Program

HCOs were created by the 1993 workers' compensation reforms. The statutes for HCOs are given in California Labor Code Sections (LC) 4600.3 through 4600.7 and Title 8 CCR sections 9770 through 9779.3.

HCOs are managed care organizations established to provide health care to employees injured at work. A health care service plan (HMO), disability insurer, workers' compensation insurer, or a workers' compensation third-party administrator (TPA) can be certified as an HCO.

Employers who contract with an HCO can direct treatment of injured workers from 90 to 180 days depending on the contribution of the employer to the employees' non-occupational health care coverage.

An HCO must file an application and be certified according to Labor Code Section 4600.3 et seq. and Title 8 CCR sections 9770 et. seq. HCOs pay a fee of \$20,000 at the time of initial certification and a fee of \$10,000 at the time of each three-year certification. In addition, HCOs are required annually to pay \$1.50 per enrollee based on their enrollment figure as of December 31st of each year.

Currently, the HCO program has 25 certified HCOs. The list of certified HCOs and their most recent date of certification/recertification are given in Table 8. Even though there are 15 certified HCOs, only seven have enrollees. The rest are keeping their certification and use their provider network as a deemed entity for Medical Provider Networks.

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Table 8: List of Currently Certified HCOs by Date of Recertification/ Certification

Name of HCO	Date of Certification/Recertification
Applied Occupation	04/12/2007
Astrasano HCO (Concentra)	08/09/2004
CompPartners Access	07/24/2005
CompPartners Direct	07/23/2005
Corvel	12/30/2005
Corvel Select	12/30/2005
First Health/ CompAmerica Primary	09/05/2004
First Health/ CompAmerica Select	09/05/2004
Intracorp HCO Plan B	12/30/2005
Kaiser Foundation Health Plan	12/03/2006
MedeEx Health Care	03/16/2004*
MedEx 2 Health Care	10/10/2003*
Network HCO	04/15/2004*
PacMed HCO	03/29/2004
Prudent Buyer HCO (Blue Cross)	11/13/2005

Note: * in the process of recertification.

Table 8 does not include Genex, and Sierra HCOs shown in Table 9 but decided not to keep their HCO certification.

HCO Enrollment

At its maximum point, mid-2004, HCO enrollment had reached about half a million enrollees. However, with the enactment of the MPN laws, the enrollment for the large HCOs such as First Health and Corvel declined dramatically. Compared to the 2004 enrollment, First Health lost 100 percent of its enrollees while CorVel's declined by 96 percent to 3,719. Astrasano, Genex, and PacMed HCOs were certified in 2004 and never had enrollees. Applied Occupation was certified in April 2007. As of December 2006, the total enrollment figure had fallen by 64 percent from the 2004 number of 481,337 to 172,197.

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Table 9 shows the number of enrollees as of December 31 of each year 2004 through 2006.

Table 9: List of HCOs by Number of Enrollees for 2004 through 2006

Name of HCO	Year		
	December-04	December-05	December-06
Astrasano	0	0	0
CompPartner Access/ Direct	60,935	61,403	53,279
CorVel/ Corvel	100,080	20,403	3,719
CompAmerica Primary/ Select (First Health)	218,919	2,403	0
Genex	0	0	0
Intracorp	6,329	3,186	2,976
Kaiser	30,086	67,147	66,138
Medex/ Medex 2	62,154	66,304	46,085
Net Work HCO	1,204	0	0
Prudent Buyer (Blue Cross)	1,390	0	0
Pac Med	0	0	0
Sierra	240	0	0
TOTAL	481,337	220,846	172,197

HCO Program Status

Even though HCO enrollment has decreased significantly because HCOs use their network as deemed entities for MPNs, DWC still has the mandate to ensure that all HCO documentation is up to date and all fees are collected. In 2006, the HCO staff work load included a review of one new filing for Applied Occupation, material modifications due to a 10 percent or more change in provider listing from CompAmerica Primary and Select (First Health) and Prudent Buyer (Blue Cross). In addition, since the beginning of 2006, there were five recertification filings. Three of these, Kaiser, Medex, and Medex 2, still have HCO enrollees and thus their filing was more involved.

Proposed Regulatory Changes

HCOs are required to file a data report annually according to Labor Code Section 4600.5(d) (3) and Title 8 CCR section 9778. However, since WCIS now requires reporting of medical services provided on or after September 22, 2006, as mandated by Title 8 CCR section 9700 et seq., HCO data collection on the same subject is redundant and thus DWC can propose to repeal the sections of the law mentioned above.

Update the pre-designation rules for workers who are covered by an HCO (Labor Code Section 4600.3) so that the rules will be the same as the pre-designation rules for workers who are covered by MPNs (Labor Code Section 4600) or 30-day employer control.

Contingent upon full payment of the HCO loan from the General Fund, DWC can recommend the elimination of the surcharges and assessment fees currently collected annually from HCOs.

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For further information...



The latest information on Health Care Organizations may be obtained at www.dir.ca.gov/dwc and <http://www.dir.ca.gov/dwc/HCO.htm>

Pre-Designation under Health Care Organization versus Medical Provider Network

An employee's right of pre-designation under an HCO has become different from the right under an MPN. The general right of pre-designation under Labor Code Section 4600 as it existed in 1993 was mirrored in Section 4600.3 for HCOs. Eligibility to pre-designate was subsequently restricted by the 2004 amendments of Section 4600. The provisions of the HCO statutes were not amended to conform, so employees who would not otherwise be eligible to pre-designate a personal physician may become eligible if their employers adopt an HCO. An HCO may lose medical control more frequently than an MPN due to this lack of conformity in the statute.

For further information...



The latest information on MPNs may be obtained at www.dir.ca.gov/dwc and http://www.dir.ca.gov/dwc/MPN/DWC_MPN_Main.html

DIVISION OF WORKERS' COMPENSATION MEDICAL ACCESS STUDY

Medical Access Study – Released February 2007

Labor Code Section 5307.2 of SB 228 mandates that the AD of the DWC contract with an independent research firm to perform an annual study of access to medical treatment for injured workers. There are two major goals to the study: the first is to analyze whether there is adequate access to quality health care and health-care products for injured workers; and the second is to make recommendations to ensure continued access. The Labor Code has one mechanism for the AD to respond to a finding of insufficient access, should one exist, by making appropriate adjustments to the Fee Schedules; in addition, if substantial access problems exist, the AD may adopt fees in excess of 120 percent of Medicare fees.

Data for two of the surveys, the *Injured Worker Survey* and the *Provider Survey*, were collected by the San Francisco State University (SFSU) Public Research Institute. A third survey was administered to claims administrators, including insurers, third-party administrators, self-insured and self-administered employers.

Results of the injured worker study included that:

- 83 percent of those surveyed felt they were able to get access to quality medical care for their injury.
- 78 percent of those surveyed were satisfied with the overall care they received for their injury. This figure compares with 77 percent who were satisfied with their overall care in a 1998 DWC Study and with 83 percent in a 2004 Pennsylvania study.

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- Comparing responses in both the injured worker survey and the provider survey to questions about occupational medicine behaviors indicated that:
 - 83 percent of injured workers and 84 percent of providers responded that they felt that the physician understood the worker's job demands.
 - 87 percent of workers and 92 percent of providers responded that the physician discussed work restrictions.
 - 81 percent of injured workers responded that their physician discussed ways to avoid re-injury.

The survey looked at RTW. Findings included that:

- 2.4 percent of injured workers reported that they did not get specialty care.
- 5.5 percent reported that they got specialty care but had difficulties obtaining it.
- 2.3 percent reported that they did not get any of the recommended occupational therapy or physical therapy treatment.
- 6.3 percent reported that they got specialty care but had difficulties obtaining it.

Findings of the survey about RTW included that:

- 78 percent were currently working at the time of the interview.
- 11 percent were not working for reasons unrelated to their injury.
- 10 percent reported that they were not working as a result of their injury.
- 55 percent reported that they had not fully recovered more than one year after injury, although these workers may be back at work even though they are not fully recovered.
- 45 percent reported that they were fully recovered, and 10 percent reported that there was no improvement. These figures for RTW are somewhat comparable to previous studies: 70 percent of workers had not fully recovered in the 1998 DWC study, and 72 percent in the 2000 Washington State study had not fully recovered; however, these studies had shorter time frames.

Results of the provider survey, which assesses the physicians' perception of access to care and therefore is not a qualitative measure, included that:

- 65 percent of physicians felt that access to care has declined since 2004.
- 27 percent reported that access to care stayed the same.
- 7 percent reported that access to care improved.

Conclusion

Main findings of the study included that:

- Most injured workers have access to quality care.

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- Most injured workers are satisfied with their care, and levels of satisfaction appear unchanged since 1998.
- The percentage of injured workers experiencing problems accessing care is low; however, the number of individuals potentially affected is large, given the large number of workplace illnesses and injuries reported each year in California.
- Providers' perceptions of access and quality differ substantially from injured workers' perceptions.

Providers' negative ratings of access and quality are concentrated among certain provider types and specialties.

INFORMATION AND ASSISTANCE UNIT

The DWC I&A Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning rights, benefits and obligations under California's workers' compensation laws. DEU, often the first DWC contact for injured workers, plays a major role in reducing litigation before WCAB.

In calendar year 2004, the DWC I&A Unit:

- Handled 400,929 calls from the public.
- Reviewed 12,250 settlements.
- Conducted 24,283 face-to-face informal meetings with members of the public seeking advice on workers' compensation matters.
- Made 22 public presentations, in addition to regular monthly workshops for injured workers at eight district offices.

In calendar year 2006, the DWC I&A Unit:

- Handled 408,529 calls from the public.
- Reviewed 15,883 settlements.
- Conducted 23,377 face-to-face meetings with injured workers at the counter.
- Made 163 public presentations.

After the enactment of SB 899 in April 2004, DWC held a special three-day statewide training seminar for all I&A officers, as well as other DWC staff, to provide early guidance on implementing the new reform law. Later in the year, efforts commenced to revitalize the monthly workshops in all 24 district offices and to update all I&A guides and fact sheets.

UNINSURED EMPLOYERS BENEFITS TRUST FUND

Claims are paid from the Uninsured Employers Benefit Trust Fund (UEBTF) when illegally uninsured employers fail to pay workers' compensation benefits awarded to their injured employees by WCAB. The number of new UEBTF cases and dollar amounts associated with new opened claims for the past five fiscal years are shown below:

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(By Fiscal Year)

	2005/06	2004/05	2003/04	2002/03	2001/02
New Cases Opened	1,794	1,451	1,251	1,083	1,001
Total Benefits Paid (millions)	\$28,259	\$26,359	\$22,014	\$18,901	\$22,400
Total Revenue Recovered (Collections, DLSE Penalties, Inmates Without Dependents)	\$9,293	\$7,575	\$8,376	\$5,946	\$5,480

ADJUDICATION SIMPLIFICATION EFFORTS

Division of Workers' Compensation Information System

WCIS is intended to be an information source to help the AD of the DWC and other State policy makers carry out their decision-making responsibilities and to provide accurate and reliable statistical data and analyses to other stakeholders in the industry. The specific legislative mandate for WCIS states that it should provide information in a cost-effective manner for:

- Managing the workers' compensation system.
- Evaluating the benefit-delivery system.
- Assessing the adequacy of indemnity payments.
- Providing data for research.

WCIS has been collecting information about workers' compensation injuries via electronic (computer-to-computer) data interchange since March 2000. As of the end of April 2007, the system had collected more than 5.7 million employers' first report of injuries (FROI), as well as subsequent reports of injury (SROI) pertaining to over 1.15 million unique indemnity claims. Hundreds of claims administrators provide data to WCIS, representing all segments of industry in California.

The most important current use of the WCIS database is for estimating the impact of the 2005 PDRS. Data from WCIS are being used in conjunction with data from DWC's DEU and from Employment Development Department (EDD) to assess the existence and magnitude of post-injury wage loss experienced by permanently disabled workers. This analysis will help the AD to determine whether and how to adjust the new PDRS to mitigate the impact on injured workers of diminished future earnings.

Some other uses of WCIS have included the creation of several informational tables and reports that have been posted to the WCIS website which give, for example, statistical descriptive information about industry-wide characteristics of injuries, such as age, gender, part of body, etc. Data are provided regularly to state agencies such as the Department of Health Services (DHS) and Division of Occupational Safety and Health (DOSH) for selected injuries. In addition, WCIS has been used to create special analyses for the Division of Labor Standards and Employment (DLSE), CSHWC, the Bureau of State Audits, and EDD. Additionally, WCIS data have been used for law-enforcement related to fraud and for analyzing claim denial for the Workers' Compensation Insurance Rating Bureau (WCIRB). Outside researchers, at the University of California San Francisco and Boston University, also have been provided with data extracts from WCIS, and DWC has initiated a quarterly timeliness of (claims) payments report at the request of a state legislator.

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New WCIS regulations make mandatory the reporting of medical bill payment data for all workers' compensation claims. With these data supplementing existing WCIS information regularly collected, DWC researchers and others will be able to perform numerous additional types of analyses. Examples in the public policy arena include: the creation, evaluation and maintenance of fee schedules; the study of medical provider treatment patterns; identification of areas of employer, employee, and provider fraud and abuse; and evaluation of the cost, utilization and other related impacts of legislative changes affecting medical and benefit costs to injured workers.

Carve-outs: Alternative Workers' Compensation Systems

A provision of the workers' compensation reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as carve-outs.

CHSWC is monitoring the carve-out program, which is administered by DWC.

CHSWC Study of Carve-Outs

CHSWC engaged in a study to identify the various methods of alternative dispute resolution (ADR) that are being employed in California carve-outs and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

Since carve-out programs have operated only since the mid-1990s, the data collected are preliminary. The study team found indications that: the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid RTW have not occurred; and that the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have not occurred.

For further information...



How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers." CHSWC (2006). Available at www.dir.ca.gov/CHSWC/chswc.html.

Impact of Senate Bill 228

Senate Bill (SB) 228 adds Labor Code Section 3201.7, establishing the creation of a new carve-out program for any unionized industry that meets the requirements. This is in addition to the existing carve-out in the construction industry (already covered in current law by Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the AD. The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is the recognized or certified as the exclusive bargaining representative that establishes any of the following:
 - An ADR system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the

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appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.

- The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
 - The use of an agreed, limited list of qualified medical evaluators (QMEs) and agreed medical evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
 - A joint labor-management safety committee.
 - A light-duty, modified job or RTW program.
 - A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more equals \$50,000, and the minimum group premium equals \$500,000.
 - Any agreement must include right of counsel throughout the ADR process.

Impact of Senate Bill 899

Construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

Recognizing that many cities and counties, as well as private industries, are interested in knowing more about carve-outs and about health and safety training and education within a carve-out, CHSWC hosted a conference devoted to carve-outs/alternative dispute resolution on August 2, 2007, in Emeryville, California. The conference was for all stakeholders in the workers' compensation system including: those in existing carve-outs; those considering establishing a carve-out; unions and employers; risk managers; government agencies; third-party administrators; insurers, policy makers; attorneys; and health care providers.

The conference provided an opportunity for the health, safety and workers' compensation communities and the public to discuss and share ideas for establishing carve-outs which have the potential to: improve safety programs and reduce injury and illness claims; achieve cost savings for employers; provide effective medical delivery and improved quality of medical care; improve collaboration between unions and employers; and increase the satisfaction of all parties.

Carve-Out Participation

As shown in the following table, participation in the carve-out program has grown, with significant increases in the number of employees, work hours, and amount of payroll.

Table 10: Participation in Carve-Out Program

Carve Out Participation	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Employers	242	277	550	683	442	260	143	512	316	462	739	981
Work Hours (in millions)	6.9	11.6	10.4	18.5	24.8	16.9	7.9	29.4	22.9	25.4	24.5	55.6
Employees (full-time equivalent)	3,450	5,822	5,186	9,250	12,395	8,448	3,949	14,691	11,449	12,700	12,254	27,784
Payroll (in millions)	\$157.6	\$272.4	\$242.6	\$414.5	\$585.1	\$442.6	\$201.9	\$634.2	\$623.6	\$1.2	\$966.0	\$1.400

* Please note that data is incomplete

Source: DWC

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2006 Aggregate Data Analysis of Carve-out Programs

DWC provided the following aggregate data analysis of carve-out programs for the 2006 calendar year.

Person hours and payroll covered by agreements filed

Carve-out programs reported that for the 2006 calendar year, they covered 55,569,530 work hours and \$1,377,706,764 in payroll.

Number of claims filed

During 2006, there were a total of 2,664 claims filed, of which 1,418 (53.2 percent) claims were medical-only claims, and 1,246 (46.8 percent) were indemnity claims.

Paid, incurred and average cost per claim

The paid costs for claims filed in 2006 totaled \$15,529,300, while the total incurred costs were \$28,238,168. Table 11 breaks down paid and incurred costs by claim component for all claims combined. Table 12 shows the average paid and incurred cost per claim by cost components across all claims. In contrast, Table 13 shows the cost by the type of claim filed.

Table 11: Total Paid and Incurred Cost by Claim Component

	Paid Cost	Incurred Cost
All Claims	\$15,529,300	\$28,238,168
Medical Cost	\$7,667,616	\$15,692,697
Temporary Disability	\$7,229,601	\$9,107,126
Permanent Disability	\$497,544	\$2,104,300
Death Benefit	\$15,080	\$596,670
Life Pension	\$0	\$0
Vocational Rehabilitation	\$6,514	\$364,831
Medical-Legal	\$112,944	\$372,543

Table 12: Average Paid and Incurred Cost Per Claim, by Cost Component for all Claims

	Paid Cost per Claim	Incurred Cost per Claim
All Claims	\$5,829	\$10,600
Medical Cost	\$2,878	\$5,891
Temporary Disability	\$2,714	\$3,419
Permanent Disability	\$187	\$790
Death Benefit	\$6	\$224
Life Pension	\$0	\$0
Vocational Rehabilitation	\$2	\$137
Medical-legal	\$42	\$140

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Table 13: Average Paid and Incurred Cost by Claim Type

	Paid Cost per Claim	Incurred Cost per Claim
Total Medical-Only Claims	\$433	\$481
Total Claims w/Indemnity	\$11,970	\$22,116

Number of litigated claims

Table 14: Total Number of Litigated Claims and Number of Claims Resolved by Stage of Litigation Process

Number of Litigated Claims		% of Litigated Claims	% of Total Claims
Claims that were resolved at or after mediation	5	8.3	0.19
Claims that were resolved at or after arbitration	53	88.3	1.99
Claims that were resolved at or after the Worker' Compensation Appeals Board (WCAB)	2	3.3	0.08
Claims that were resolved at or after the Court of Appeals	0	0.0	0.0
Total	60		2.25

Number of contested claims resolved prior to arbitration

Of the 2,664 claims filed in 2006, the ADR/carve-out programs reported that 1,873 or 70.3 percent were resolved, per Section 10203(b) (9).⁴⁵ This means that 791 or 29.7 percent of the claims filed did not have a determination of ultimate liability more than six months after the end of 2006. Of the resolutions, 1,601 or 85.5 percent of the cases were resolved prior to arbitration. Ninety-eight or 5.2 percent of the resolved claims were denied for reasons of compensability.

Safety history

In 2006, 51 injuries and illnesses reports were filed with the U.S. Department of Labor using OSHA Form 300⁴⁶ for employees covered under the carve-out program.

Number of workers participating in vocational rehabilitation programs

Seventy-one (2.7 percent) workers participated in vocational rehabilitation programs.

Number of workers participating in light-duty programs

One hundred sixty-four (6.2 percent) workers participated in a light-duty program.

⁴⁵ "Resolved" means that ultimate liability has been determined, even though payments for the claim may be made beyond the reporting period.

⁴⁶ OSHA requires employers to file an injury and or illness Form 300 if work-related injuries result in death, a loss of consciousness, days away from work, restricted work activity, and/or medical care beyond first aid.

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Worker satisfaction

Section 3201.7(h) of the Labor Code requires that DWC include information on worker satisfaction in its annual report to the Legislature on non-construction ADR programs. However, for 2006, neither of the two employers operating a 3201.7 program reported on worker satisfaction.

A listing of employers and unions in carve-out agreements follows.

Status of Carve-out Agreements as of August 2007

The following charts show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by DWC.

Construction Carve-out Participants as of August 15, 2007 Labor Code Section 3201.5

*Key: 1 = one employer, one union; 2 = one union, multi employer; 3 = project labor agreement

No.	Union	Company	Exp. Date
1. (3)	CA Building & Construction Trades Council	Metropolitan Water Dist. So. Ca-Diamond Valley Lake	11/07/06
2. (2)	International Brotherhood of Electrical Workers IBEW	NECA--National Electrical Contractors Assoc.	8/14/10
3. (2)	So. Ca. Dist. of Carpenters & 19 local unions	6 multi-employer groups—1000 contractors.	8/14/10
4. (2)	So. Ca. Pipe Trades Council 16	Multi employer—Plumbing & Piping Industry Coun.	8/24/10
5. (1)	Steamfitters Loc. 250	Cherne—two projects completed in 1996	Complete
6. (1)	Intern'l Union of Petroleum & Industrial Wkrs	TIMEC Co., Inc./TIMEC So. CA., Inc.	7/31/10
7. (3)	Contra Costa Bldg & Const. Trades Council	Contra Costa Water District - Los Vaqueros	Complete
8. (2)	So. CA Dist. Council of Laborers	Assoc. Gen'l Cont'rs of CA, Bldg. Industry Assoc. -So. CA., So CA Contrs' Assoc., Eng. Contrs' Assoc.	7/31/08
9. (3)	Ca. Bldg. & Construction Trades Council	Metropolitan Water Dist. So. Ca. Inland Feeder-Parsons	Ended 12/31/02
10. (3)	Bldg. & Construction Trades Council of Alameda County	Parsons Constructors, Inc. National Ignition Facility—Lawrence Livermore	9/23/09
11. (2)	District Council of Painters	Los Angeles Painting & Decorating Contrs Assoc.	10/28/09
12. (1)	Plumbing & Pipefitting Local 342	Cherne Contracting - Chevron Base Oil 2000 project	Complete
13. (3)	LA Bldg & Const. Trades Coun. AFL-CIO	Cherne Contracting —ARCO	Complete

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No.	Union	Company	Exp. Date
1. (3)	CA Building & Construction Trades Council	Metropolitan Water Dist. So. Ca-Diamond Valley Lake	11/07/06
14. (2)	Operating Engineers Loc. 12	So. California Contractors' Assoc.	4/1/08
15. (2)	Sheet Metal International Union	<i>Sheet Metal-A/C Contractors National Assoc</i>	4/1/08
16. (3)	Bldg & Construction Trades Council San Diego	<i>San Diego Cny Water Authority Emer. Storage Project</i>	2/20/09
17. (3)	LA County Bldg. & Const.Trades Council	<i>Cherne Contracting - Equilon Refinery - Wilmington</i>	3/1/07
18. (3)	Plumbers & Steamfitters	<i>Cherne Contracting - Chevron Refinery - Richmond</i>	7/1/05
19. (3)	Plumbers & Steamfitters	<i>Cherne Contracting - Tesoro Refinery - Martinez</i>	7/1/05
20. (3)	LA/Orange Counties Bldg. & Const.Trade Coun	<i>Cherne Contracting - Chevron Refinery - El Segundo</i>	7/26/05
21. (2)	District Council of Iron Wkrs- State of CA and Vicinity	California Ironworker Employers Council	2/25/09
22. (2)	Sheet Metal Wkr Intern'l Assoc #105	<i>Sheet Metal & A/C Labor Management Safety Oversight Committee (LMSOC)</i>	4/17/09
23. (2)	United Union of Roofers, Waterproofers and Allied workers, Local 36 and 220	Southern California Union Roofing Contractors Association	07/31/08
24. (2)	United Union of Roofers, Waterproofers and Allied Workers, Locals 40, 81 & 95	Associated Roofing Contractors of the Bay Area Counties	7/31/09
25. (2)	United Assoc.-Journeyman & Apprentices--Plumbers & Pipefitters, Local #447	No.CA Mechanical Contractors Assoc & Assoc. Plumbing & Mechanical Contractors of Sacto Inc.	11/7/09
26. (2)	Operatives Plasterers and Cement Masons International Association, Local 500 & 600	So. California Contractors Association, Inc.	4/1/08
27.(1)	International Unions Public & Industrial Wkrs	Irwin Industries, Inc.	3/23/10
28.(2)	PIPE Trades Dist. Council No. 36	Mechanical Contractors Council of Central CA	4/14/10
29. (2)	No. CA Carpenters Reg'l Council/	Basic Crafts Worker' Compensation Benefits Trust	8/30/07
30. (2)	No. CA District Council of Laborers	Basic Crafts Worker' Compensation Benefits Trust	8/30/07
31.(2)	Operating Engineers Local 3	Basic Crafts Worker' Compensation Benefits Trust	8/30/07

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No.	Union	Company	Exp. Date
1. (3)	CA Building & Construction Trades Council	Metropolitan Water Dist. So. Ca-Diamond Valley Lake	11/07/06
32. (1)	Industrial, Professional & Technical Workers	Irish Construction	12/20/07
33.(3)	Building Trades Council of Los Angeles-Orange County	Los Angeles Community College District Prop A & AA Facilities Project	5/06/08

Key: 1 = 1 employer, 1 union; 2 = 1 union, multi employer; 3 = project labor agreement

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**Non-Construction Industry Carve-Out Participants as of June 18, 2007
(Labor Code Section 3201.7)**

No.	Union	Company	Permission to Negotiate Date/Expires	Application for Recognition of Agreement	Agreement Recognition Letter Date
1.	United Food & Commercial Workers Union Local 324	Super A Foods-2 locations 76 employees	09/01/04-09/01/05		
2.	United Food & Commercial Workers Union Local 1167	Super A Foods – Meat Department 8 employees	09/01/04-09/01/05		
3.	Teamsters Cal. State Council-Cannery & Food Processing Unions, IBT, AFL-CIO	Cal. Processors, Inc. Multi-Employer Bargaining Representative	7-06-04/ 7-05-05		
4.	United Food & Commercial Workers Union Local 770	Super A Foods – 10 locations - ~ 283 members	09/01/04-09/01/05		
5.	United Food & Commercial Workers Union Local 1036	Super A Foods - All employees, except those engaged in janitorial work or covered under a CBA w/Culinary Workers and demonstrators	09/01/04-09/01/05		
6.	Operating Engineers-Loc 3 Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/09/05	02/15/05	02/28/05
7.	Laborers - Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/09/05	02/15/05	02/28/05
8.	Carpenters- Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/09/05	02/15/05	02/28/05
9.	United Food & Commercial Workers Union Local 588	Mainstay Business Solutions	8/11/05-8/11/06	09/02/05	09/12/05
10.	Teamsters Local 952	Orange Conty Transportation Authority Coach Operators	04/17/06-04/17/07		

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**Non Construction Carve-Out Participants as of June 18, 2007 (continued)
(Labor Code Section 3201.7)**

No.	Union	Company	Permission to Negotiate Date/Expires	Application for Recognition of Agreement	Agreement Recognition Letter Date
11.	Teamsters Local 630	SYSCO Food Services	06/22/06-06/22/07		
12.	Teamsters Local 848	SYSCO Food Services	06/22/06-06/22/07		
13.	Teamsters Local 952	Orange Conty Transportation Authority Maintenance Workers	07/31/06-07/31/07		
14.	Long Beach Peace Officers' Assoc. & Long Beach Firefighters Assoc. Local 372/	City of Long Beach	12/11/06-12/11/07		
15.	SEIU Local 1877	Various Maintenance Companies	04/13/07-04/13/08		
16.	SEIU Local 721	City of LA	06/18/07-06/18/08		

For further information...



The latest information on carve-outs may be obtained at www.dir.ca.gov. Select "workers' compensation," then "Division of Workers' Compensation," then "Construction Industry Carve-Out Programs" (under "DWC/WCAB Organization and Offices").



CHSWC Report: "'Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry" (1999). Available at www.dir.ca.gov/CHSWC/chswc.html.



Carve-outs: A Guidebook for Unions and Employers in Workers' Compensation." CHSWC (2004). Available at www.dir.ca.gov/CHSWC/chswc.html.

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ANTI-FRAUD ACTIVITIES

Background

During the past decade, there has been a dedicated and rapidly growing campaign in California against workers' compensation fraud. This report on the nature and results of that campaign is based primarily on information obtained from the California Department of Insurance (CDI) Fraud Division, as well as applicable Insurance Code and Labor Code sections and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

Suspected Fraudulent Claims

Suspected Fraudulent Claims (SFCs) are reports of suspected fraudulent activities received by CDI from various sources, including insurance carriers, informants, witnesses, law enforcement agencies, fraud investigators, and the public. The number of SFCs represents only a small portion that has been reported by the insurers and does not necessarily reflect the whole picture of fraud since many fraudulent activities have not been identified or investigated.

According to CDI Fraud Division, the number of suspected fraudulent claims increased near the end of fiscal year 2003-2004. Several reasons for this increase include:

- The extensive efforts to provide training to the insurance claim adjusters and Special Investigation Unit (SIU) personnel by the Fraud Division and District Attorneys.
- Changing submission of SFCs by filling out the FD-1 Form electronically through the Internet.
- The Department promulgated new regulations to help insurance carriers step up their anti-fraud efforts and become more effective in identifying, investigating, and reporting workers' compensation fraud. A work plan to increase the number of audits performed by the Fraud Division SIU Compliance Unit has been established and continues with an aggressive outreach plan to educate the public on anti-fraud efforts and how to identify and report fraud. This has ensured a more consistent approach to the oversight and monitoring of the SIU functions with the primary insurers as well as the subsidiary companies
- Finally, CDI is strengthening its working relationship with WCIRB to support the Department's anti-fraud efforts

For fiscal year 2005-06, the total number of SFCs reported is 9,320.

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Workers' Compensation Fraud Suspect Arrests

After a fraud referral, an investigation must take place before any warrants are issued or arrests are made. The time for investigation ranges from a few months to a few years depending on the complexity of the caseload. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year. (See the table below)

Fiscal Year	Suspected Fraudulent Claims	Fraud Suspect Arrests
1992-93	8,342	125
1993-94	7,284	195
1994-95	4,004	344
1995-96	3,947	406
1996-97	3,281	456
1997-98	4,331	424
1998-99	3,363	456
1999-00	3,362	478
2000-01	3,548	382
2001-02	2,968	290
2002-03	3,544	369
2003-04	5,122	481
2004-05	6,492	439
2005-2006	9,320	574

Source: California Department of Insurance, Fraud Division

Workers' Compensation Fraud Suspect Convictions

Based on information from the Fraud Division and CWCI [Bulletin\[s\]](#), the number of workers' compensation fraud suspects *convicted* annually while many cases are still pending in court is reported in the table below.

Year	Fraud Suspect Prosecutions	Fraud Suspect Convictions
1993-94 Fiscal Year	363	181
1994-95 Fiscal Year	422	198
1995-96 Fiscal Year	346	248
1996-97 Fiscal Year	567	331
1997-98 Fiscal Year	637	375
1998-99 Fiscal Year	869	384
1999-2000 Fiscal Year	980	390
2000-01 Fiscal Year	822	367
2001-02 Fiscal Year	659	263
2002-03 Fiscal Year	739	293
2003-04 Fiscal Year	1,003	426
2004-05 Fiscal Year	970	423
2005-06 Fiscal Year	1,066	465

Source: California Department of Insurance, Fraud Division and California Workers' Compensation Institute

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Workers' Compensation Fraud Investigations

Types of Workers' Compensation Fraud Investigations

The following table indicates the number and types of investigations opened and carried for fiscal-years 2001-02, 2002-03, 2003-04, 2004-05, and 2005-06 reported by District Attorneys. Applicant fraud appears to be the area generating the most cases followed by premium fraud and medical provider fraud.

Type of Investigation	Fiscal Year 2001-02 Cases		Fiscal Year 2002-03 Cases		Fiscal Year 2003-04 Cases		Fiscal Year 2004-05 Cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Applicant	1,293	79.37%	1,263	72.63%	1,177	60.14%	1,478	69.19%
Premium	159	9.76%	207	11.90%	242	12.37%	172	8.05%
Fraud Rings	1	0.06%	7	0.40%	39	1.99%	4	0.19%
Capping	6	0.37%	5	0.29%	5	0.26%	3	0.14%
Medical Provider	98	6.02%	97	5.58%	97	4.96%	105	4.92%
Insider	8	0.49%	6	0.35%	14	0.72%	6	0.28%
Other	64	3.93%	93	5.35%	56	2.86%	43	2.01%
Uninsured	N/A		61	3.51%	327	16.71%	325	15.22%
TOTAL	1,629		1,739		1,957		2,136	

Geographically, the great majority of suspected fraud cases in 2004 and 2005 came from Los Angeles County (29 percent) followed by Orange County (8 percent) and then San Diego County (7 percent).

Some of the categories for fraud-related investigations were changed in the fiscal year 2005-2006 as reflected in the table below.

Type of Investigation	Fiscal Year 2005-06 Cases	
	Number	Percent
Claimant Cases	1,573	57.05%
Premium Fraud Cases	331	12.01%
Medical Provider*	193	7.00%
Insider Fraud	25	0.91%
Uninsured Employer Fraud	580	21.04%
Other Types of Workers' Compensation Fraud	55	1.99%
TOTAL	2,757	

*Includes Capping and Fraud Rings

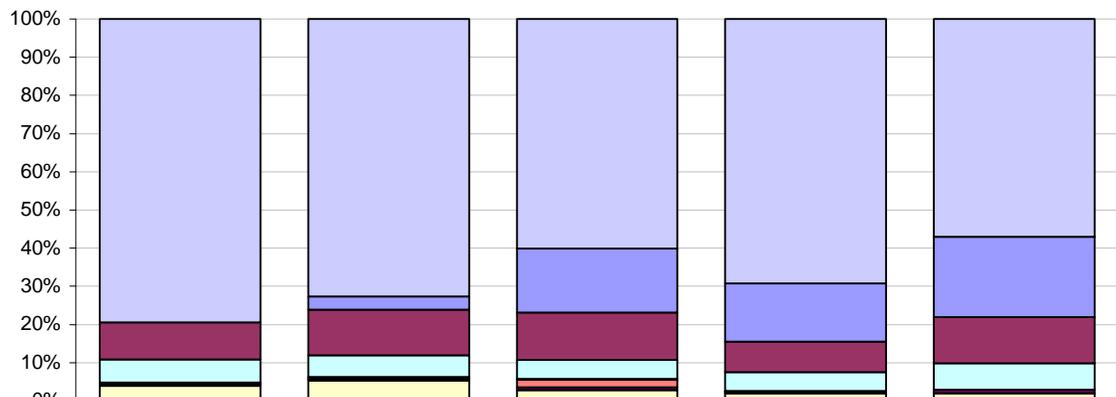
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Trends in Workers' Compensation Fraud Investigations

The chart below illustrates the changing focus of workers' compensation investigations over the past three fiscal years, by showing what types of investigations comprise what percentage of all the investigations each year. For example, investigations of applicants were nearly 80 percent of all investigations during 2001-02; in other words, eight out of ten of all investigations were directed at applicants.

As seen in the chart, the focus of the investigations has been changing. Applicant fraud investigations have dropped from nearly 80 percent of the total in 2001-02 to about 57 percent of the total number of investigations in 2005-06. At the same time, there has been an increase in the percentage of investigations of uninsured employers and premium fraud. The percentage of investigations of medical provider fraud has increased slightly between 2004-05 and 2005-06.

Type of Fraud Investigations by Percentage of Total



	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
Applicant	79.4%	72.6%	60.1%	69.2%	57.05%
Uninsured Employer	0.0%	3.5%	16.7%	15.2%	21.04%
Premium	9.8%	11.9%	12.4%	8.0%	12.01%
Medical Provider*	6.0%	5.6%	5.0%	4.9%	7.00%
Capping	0.4%	0.3%	0.3%	0.14%	N/A
Fraud Rings	0.1%	0.4%	2.0%	0.19%	N/A
Insider	0.5%	0.3%	0.7%	0.3%	0.91%
Other	3.9%	5.3%	2.9%	2.0%	1.99%

* For FY 2005-06, Capping and Fraud Rings were included in the Medical Provider category

Data Source: California Department of Insurance, Fraud Division

Underground Economy

While most California businesses comply with health, safety and workers' compensation regulations, there are businesses that do not. Those businesses are operating in the "underground economy". Such businesses may not have all their employees on the official company payroll or may not report wages paid to employees that reflect their real job duties. Businesses in the underground economy are therefore competing unfairly with those that comply with the laws. According to EDD, the California underground economy is estimated at \$60 billion to \$140 billion.⁴⁷

⁴⁷ http://www.edd.ca.gov/taxrep/txueoind.htm#What_Does_It_Cost_You

SYSTEM PERFORMANCE

Potential Areas for Improvement in Workers' Compensation Anti-Fraud Efforts

Study on Medical Provider Overpayments and Underpayments of All Types

Workers' compensation fraud ranges from employer premium fraud to fraudulent provider billing practice to medical-legal "mills" to applicant and insider fraud. Numerous factors exacerbate and perpetuate workers' compensation fraud, including personal and business economic hardship, public acceptance of insurance fraud, and inadequate resources to investigate insurance fraud cases. According to the Bureau of State Audits, the extent and nature of fraud within the workers' compensation system is not adequately measured or monitored. Currently, there is no way to evaluate if anti-fraud efforts have reduced the overall cost that fraud adds to the system by as much or more than what is spent annually to fight it.

To address this concern, at the December 10, 2004 meeting of CHSWC, William Zachry, Chair of the Fraud Assessment Commission (FAC), requested that CHSWC assist with anti-fraud research by establishing a working group to develop a proposal that would assist the FAC to identify measure and focus anti-fraud efforts effectively.

Selected members from the workers' compensation labor and management community were invited by CHSWC and FAC to attend the first working group meeting to support this effort. The proposed budget of \$1 million was approved by the Legislature in July 2006 for a study to identify medical provider overpayments and underpayments of all types including fraud, waste, abuse, billing and processing errors. The study could help to reduce the high medical costs in the workers' compensation system. The results of this study are projected to be available in 2008. In addition, CHSWC is also conducting a study to estimate the amount of premium fraud committed by employers in the underground economy.

Insurance Fraud Advisory Task Force

Insurance Commissioner Poizner has organized an Advisory Task Force on insurance fraud with several working committees. CHSWC Executive Officer Christine Baker is serving as a member of the Working Committee and is the Chair of the Workers' Compensation Fraud Focus Group working in partnership with CDI. The goal of the Workers' Compensation Fraud Focus Group is to create a report for the Fraud Task Force that will guide its efforts to improve the efficiency and effectiveness of California's anti-fraud efforts.

CHSWC PROJECTS AND STUDIES

Introduction

In response to its Labor Code mandate, the Commission on Health and Safety and Workers' Compensation (CHSWC) has engaged in many studies to examine the health and safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of most concern to the community.

CHSWC studies are conducted by staff and independent researchers under contract with the State of California. Advisory Committees are composed of interested members of the workers' compensation community and the public who provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990s and to assess the impact on workers and employers. While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies and to concerns and interests expressed by the Legislature and the workers' compensation community.

This report contains synopses of current and recently completed projects and studies followed by an overview of all CHSWC projects and studies. These projects are categorized as follows:

- Permanent Disability and Temporary Disability
- Return to Work
- Information for Workers and Employers
- Medical Care
- Community Concerns
- CHSWC Issue Papers
- Occupational Safety and Health



California Labor Code Section

77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may contract for studies it deems necessary to carry out its responsibilities."

PROJECTS AND STUDIES

OVERVIEW OF ALL CHSWC PROJECTS AND STUDIES

PERMANENT DISABILITY AND TEMPORARY DISABILITY STUDIES

Permanent Disability Schedule Analysis

Status: Completed

CHSWC Reports:

Memorandum to Christine Baker, Executive Officer of CHSWC regarding "Analysis of ratings under the new PD schedule, through June 2007," August 23, 2007

http://www.dir.ca.gov/chswc/Reports/memo_on_new_ratings_through_june_30_07_revised_aug_9.pdf

Permanent Disability Schedule Analysis (2006)

<http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-2006.pdf>

Impact of Changes to the Temporary Disability Benefits

Status: In Process

CHSWC Reports:

Permanent Disability Schedule Analysis (2006)

For further information...

See the project synopsis in the Projects and Studies section.

Initial Wage Loss Analyses

Status: Completed

CHSWC Reports:

Compensating Permanent Workplace Injuries: A Study of the California System (RAND, 1998)

http://www.rand.org/pubs/monograph_reports/MR920/

Findings and Recommendations on California's Permanent Partial Disability System - Executive Summary (RAND, 1997)

<http://www.dir.ca.gov/CHSWC/Reports/PPDFindingsAndRecommendations.pdf>

Enhancement of Wage Loss Analysis – Private Self-Insured Employers

Status: Completed

CHSWC Reports:

Permanent Disability, Private Self-Insured Firms: A Study of Earnings Loss, Replacement, and Return to Work for Workers' Compensation Claimants (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/PD-Study.pdf>

Enhancement of Wage Loss Analysis – Public Self-insured Employers

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Impact of Local Economic Conditions on Wage Loss

Status: Completed

CHSWC Report:

Trends in Earnings Loss from Disabling Workplace Injuries in California – The Role of Economic Conditions (RAND, 2001)

<http://www.dir.ca.gov/CHSWC/Reports/TrendsInEarningsLoss-EcoCondition.pdf>

PROJECTS AND STUDIES

PERMANENT DISABILITY AND TEMPORARY DISABILITY STUDIES (continued)

Permanent Disability Rating Tool

Status: Completed

CHSWC Reports:

An Evaluation of California's Permanent Disability Rating System, Summary (RAND, 2005)

http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System_Summary.pdf

An Evaluation of California's Permanent Disability Rating System, Full Report (RAND, 2005)

http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System.pdf

Evaluation of California's Permanent Disability Rating Schedule: Interim Report (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/PermanentDisabilityRatingSchedule-InterimReport.pdf>

Apportionment

Status: Completed

CHSWC Reports:

Understanding the Effect of SB 899 (Stats 2004, Chap 34) on the Law of Apportionment (October 2005)

<http://www.dir.ca.gov/CHSWC/FinalApportionmentPaper.pdf>

Background Paper on Causation and Apportionment, May 2004

http://www.dir.ca.gov/CHSWC/Causation_and_Apportionment_Final_May_2004.pdf

PROJECTS AND STUDIES

RETURN TO WORK

Impact of Recent Return-to-Work Reforms

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Return-to-Work Roundtable

Status: Completed

CHSWC Report:

Return-to-Work Roundtable, Summary of November 17, 2006

<http://www.dir.ca.gov/CHSWC/Reports/ReturnToWorkRoundtable-Final.pdf>

Assembly Bill 1987 and Return to Work

Status: Completed

CHSWC Report:

AB 1987 and Return-to-Work Incentives and Alternatives (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/RTW-AB1987.pdf>

“Best Practices” Encouraging Return to Work

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Review of Literature on “Modified Work”

Status: Completed

CHSWC Report:

Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? (1997)

http://www.dir.ca.gov/CHSWC/Modified_Work_Krause.html

Policies and Strategies to Help Injured Workers Return to Sustained Employment

Status: Completed

CHSWC Report:

Return to Work in California: Listening to Stakeholders' Voices (July 2001)

<http://www.dir.ca.gov/CHSWC/RTWinCA0701.html>

Primary Treating Physician Effectiveness in Return to Work (RTW) After Low-Back Injuries

Status: First phase: Completed

Second phase: In process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

Physical Workplace Factors and Return to Work After Compensated Low-Back Injury: A Disability Phase-Specific Analysis” (JOEM, 2000)

Predictors and Measures of Return to Work

Status: Completed

CHSWC Report:

Determinants of Return to Work and Duration of Disability After Work-Related Injury or Illness: Developing a Research Agenda: (2001)

<http://www.dir.ca.gov/chswc/Determinants.pdf>

PROJECTS AND STUDIES

WORKERS' COMPENSATION REFORMS

Assembly Bill 749 Analysis

CHSWC Summaries:

CHSWC and AB 749 as Amended (October 2002)

<http://www.dir.ca.gov/CHSWC/749Report/AB749asamended112202.html>

CHSWC and AB 749 (February 2002)

<http://www.dir.ca.gov/CHSWC/ab749.html>

Assembly Bill 227 and Senate Bill 228 Analysis

CHSWC Summary:

Reforms of 2003, October 2003 AB 227 and SB 228 (2003)

http://www.dir.ca.gov/CHSWC/Reports/Reforms_of_2003-AB227.pdf

http://www.dir.ca.gov/CHSWC/Reports/Reforms_of_2003-SB228.pdf

Senate Bill 899 Analysis

CHSWC Summaries:

Summary of Workers' Compensation Reform Legislation (2004)

<http://www.dir.ca.gov/CHSWC/Summary-of-SB899.doc>

Section-by-Section Review of SB 899 (2004)

<http://www.dir.ca.gov/CHSWC/Section-by-section-Review-of-SB899.doc>

Evaluation of the Division of Workers' Compensation (DWC) Audit Function (Special Study at the Request of the Legislature)

Status: Completed

CHSWC Reports:

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

<http://www.dir.ca.gov/CHSWC/FinalAuditReport.html>

Executive Summary (1998)

<http://www.dir.ca.gov/CHSWC/AuditSummaryCover.html>

Medical-Legal Study

Status: Ongoing

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Reports:

Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey (1997)

http://www.dir.ca.gov/CHSWC/DisabilityReport/data_and_methodology.html

Executive Summary (1997)

<http://www.dir.ca.gov/CHSWC/DisabilitySummary/execsummary.html>

Vocational Rehabilitation Study

Status: *In process*

For further information...

See "Best Practices" Encouraging Return to Work in project synopsis section.

CHSWC Reports:

Vocational Rehabilitation Reform Evaluation (March 2000)

<http://www.dir.ca.gov/CHSWC/Vocrehabreform2000.pdf>

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

<http://www.dir.ca.gov/CHSWC/rehab/rehabcover.html>

PROJECTS AND STUDIES

WORKERS' COMPENSATION REFORMS (continued)

Evaluation of Treating Physician Reports and Presumption

Status: Completed

CHSWC Report:

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

<http://www.dir.ca.gov/CHSWC/Report99/TPhysician.html>

Update of Treating Physician Reports and Presumption Study

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

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

<http://www.dir.ca.gov/CHSWC/Report99/TPHYCover.htm>

CHSWC Report:

Doctors and Courts: Do Legal Decisions Affect Medical Treatment Practice? (2002)

<http://www.dir.ca.gov/CHSWC/CHSWCLegalDecAffectMedTreatPractice/ptpfinalrpt.html>

Evaluation of Labor Code Section 5814 Penalty Provisions

Status: Completed

CHSWC Reports:

Issue Paper on Labor Code Section 5814 (April 2000)

<http://www.dir.ca.gov/CHSWC/LC5814Cvr.html>

Background Paper on Labor Code Section 5814 (March 1999)

<http://www.dir.ca.gov/CHSWC/LC5814.htm>

“Baseball Arbitration” Provisions of Labor Code Section 4065

Status: Completed

CHSWC Report:

Preliminary Evidence on the Implementation of Baseball Arbitration (November 1999)

http://www.dir.ca.gov/CHSWC/Baseballarbfinal_percent27rptcover.htm

CHSWC Response to Questions from the Assembly Committee on Insurance

Status: Completed

CHSWC Report:

CHSWC Response to Questions from the Assembly Committee on Insurance (2001)

PROJECTS AND STUDIES

OCCUPATIONAL SAFETY AND HEALTH

ISO 9000

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

The Disability Retirement Benefits for Public Safety Officers

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

The Relationship Between Employer Health-Promotion Measures and Workplace Injury and Illness Prevention: A CHSWC-NIOSH Study

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Project: Worker Occupational Safety and Health Training and Education Program

Status: Ongoing

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Reports:

State, National and International Safety and Health Training Program Resources (2003)

<http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html>:

Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List

<http://www.dir.ca.gov/CHSWC/MultilingualGuide/MultilingualGuideMain.html>

2006 WOSHTEP Advisory Board Annual Report

<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2006AdvBrdAnnualReport.pdf>

2005 WOSHTEP Advisory Board Annual Report

<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2005AdvBrdAnnualReport.pdf>

2004 WOSHTEP Advisory Board Annual Report

<http://www.dir.ca.gov/CHSWC/WOSHTEPReportNov2004.pdf>

California Partnership for Young Worker Health and Safety

Status: Ongoing

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

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

www.youngworkers.org for the California Partnership on Young Worker Health and Safety, providing information for teens, teen workers in agriculture, employers, and educators

<http://www.dir.ca.gov/chswc/TrainingProgramsResources/Surveycover.html>

Project: Child Labor Photography Exhibit and Teen Workshops

Status: Presented in 2004, 2005, and 2006

PROJECTS AND STUDIES

WORKERS' COMPENSATION ADMINISTRATION

Selected Indicators in Workers' Compensation

Status: Completed

CHSWC Reports:

Selected Indicators in Workers' Compensation: A Report Card for Californians, December 2005

http://www.dir.ca.gov/CHSWC/Reports/WC_ReportCard_Dec2005.pdf

Selected Indicators in Workers' Compensation: A Report Card for Californians, December 2006

http://www.dir.ca.gov/CHSWC/Reports/WC_ReportCard_Dec2006.pdf

Workers' Compensation Court Management and Judicial Function Study

Status: Completed

CHSWC Reports:

Improving Dispute Resolution for California's Injured Workers, Summary (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/ImprovingDisputeResolution-Summary.pdf>

Improving Dispute Resolution for California's Injured Workers, Full Report (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/ImprovingDisputeResolution.pdf>

Court Technology Project

Status: Completed

CHSWC Reports:

Briefing on the Use of Technology in the Courts" (2003)

Feasibility Study Report (Gartner, 2003)

Local Forms and Procedures – Labor Code Section 5500.3

Status: Completed

For further information...

CHSWC 1998-99 Annual Report: Projects and Studies Section

Profile of Division of Workers' Compensation (DWC) District Office Operations

Status: Completed

For further information...

CHSWC 1997-98 Annual Report: Program Oversight Section

CHSWC Roundtable on Division of Workers' Compensation (DWC) Lien Workload

Status: Completed

For further information...

CHSWC 1998-99 Annual Report: Projects and Studies Section

PROJECTS AND STUDIES

INFORMATION NEEDS

Medical Booklet and Fact Sheet

Status: Completed

CHSWC Booklet and Fact Sheet:

The Basics About Medical Care for Injured Workers (2006)

<http://www.dir.ca.gov/CHSWC/Reports/MedicalCareFactsheet.pdf>

Getting Appropriate Medical Care for Your Injury (2006)

<http://www.dir.ca.gov/CHSWC/Reports/MedicalCareBooklet.pdf>

Benefit Notices Simplification Project

Status: Completed

CHSWC Reports:

Project to Improve Laws and Regulations Governing Information for Workers

Recommendations: Information for Injured Workers (May 2000)

<http://www.dir.ca.gov/CHSWC/IWCover.html>

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

<http://www.dir.ca.gov/CHSWC/navigate/navigate.html>

Workers' Compensation Information Prototype Materials

Status: Completed

CHSWC Report, Fact Sheets and Video:

Project to Augment, Evaluate, and Encourage Distribution of the Prototype Educational Materials for Workers (2000)

Workers' Compensation Fact Sheets and a video, "Introduction to Workers' Compensation"

<http://www.dir.ca.gov/chswc/EduMaterials.html>

Consolidating and Coordinating Information for Injured Workers

Status: English version completed. Spanish version completed.

CHSWC Reports:

Workers' Compensation in California: A Guidebook for Injured Workers, Third Edition, November 2006

<http://www.dir.ca.gov/CHSWC/Reports/WorkersCompGuidebook-3rdEd.pdf> (English)

Workers' Compensation in California: A Guidebook for Injured Workers, Third Edition, November 2006

<http://www.dir.ca.gov/CHSWC/Reports/GuidebookSpanishforInjuredWorkers2006.pdf> (Spanish)

Workers' Compensation Medical Care in California Fact Sheets

Status: Completed

Fact Sheets:

Workers' Compensation Medical Care in California: Quality of Care, Costs, Access to

Care, System Overview (2003)

http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm

Workers' Compensation Carve-Out Booklet

Status: Completed

CHSWC Report:

How to Create a Workers' Compensation Carve-Out in California: Practical Advice for Unions and Employers (2006)

<http://www.dir.ca.gov/CHSWC/carve-out1.pdf>

PROJECTS AND STUDIES

INFORMATION NEEDS (continued)

Workers' Compensation Carve-Out Guidebook

Status: Completed

CHSWC Report:

Carve-Outs: A Guidebook for Unions and Employers in Workers' Compensation (April 2004)

www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.doc

"Carve-Outs" – Alternative Workers' Compensation Systems

Status: Completed

CHSWC Report:

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

<http://www.dir.ca.gov/CHSWC/CarveOutReport/Carveoutcover.html>

PROJECTS AND STUDIES

MEDICAL CARE

Medical Study of Impact of Recent Reforms

Status: In process

CHSWC Report:

Working Paper: Pay-for-Performance in California's Workers' Compensation Medical Treatment System, RAND, August 2007

http://www.dir.ca.gov/chswc/Reports/Pay_for_Performance_Report_2007.pdf

Quality-of-Care Indicators: A Demonstration Project

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Barriers to Occupational Health Services for Low-Wage Workers in California

Status: Completed

CHSWC Report:

Barriers to Occupational Health Services for Low-Wage Workers in California

<http://www.dir.ca.gov/CHSWC/Reports/Barriers-To-OHS.pdf>

CHSWC Study on Spinal Surgery Second-Opinion Process

Status: Completed

CHSWC Report:

Report and Recommendations on the Spinal Surgery Second-Opinion Process, April 27, 2007

State Disability Insurance Integration Project

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Medical Treatment Study

Status: In peer review

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Study on Medical Treatment Protocols

Status: Completed

CHSWC Reports:

Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, April 2006)

http://www.dir.ca.gov/CHSWC/Reports/Evaluating_med_tx_guideline.pdf Full Report

Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, April 2006)

http://www.dir.ca.gov/CHSWC/Reports/Eval_med_tx_guideline_summary.pdf Summary

Updated and Revised CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines

http://www.dir.ca.gov/CHSWC/Reports/Medical_Treatment_Recommendations_Final_040606.pdf

CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (2004)

http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.pdf

Estimating the Range of Savings from Introduction of Guidelines including ACOEM (revised, Frank Neuhauser, October 2003)

<http://www.dir.ca.gov/CHSWC/EstimatingRangeSavingsGuidelinesACOEM.doc>

PROJECTS AND STUDIES

MEDICAL CARE (continued)

Health Care Organizations

Status: Completed

CHSWC Staff Report:

A Report on Health Care Organizations (HCOs) in Workers' Compensation (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/HCO-WC-Apr2006.pdf>

Repackaged Drugs Study

Status: Completed

CHSWC Issue Paper:

Paying for Repackaged Drugs under the California Workers' Compensation Official Medical Fee Schedule (May 2005)

http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf

Pharmacy Reporting Impact Study

Status: Completed

CHSWC Report:

Impact of Physician Dispensing of Repackaged Drugs on California Workers' Compensation, Employers' Cost, and Workers' Access to Quality Care (July 2006)

<http://www.dir.ca.gov/CHSWC/Reports/Physician-Dispensend-Pharmaceuticals.pdf>

Workers' Compensation Pharmaceutical Costs Study

Status: Completed

CHSWC Reports:

Study of the Cost of Pharmaceuticals in Workers' Compensation (June 2000)

<http://www.dir.ca.gov/CHSWC/Pharmacy/pharmacover.html>

Executive Summary (June 2000)

<http://www.dir.ca.gov/CHSWC/Pharmacy/ExecSumPharmaRpt.html>

Payment for Hardware Study

Status: Completed

CHSWC Report:

Payment for Hardware Used in Complex Spinal Procedures Under California's Official Medical Injured Workers (RAND, September 2005)

http://www.dir.ca.gov/CHSWC/Hardware_comp9.pdf

Burn Diagnostic Related Groups (DRGs) Study

Status: Completed

CHSWC Report:

Payments for Burn Patients under California's Official Medical Fee Schedule for Injured workers (May 2005)

<http://www.dir.ca.gov/CHSWC/WR-263.Burn050525.pdf>

Inpatient Hospital Fee Schedule and Outpatient Surgery Study

Status: Completed

CHSWC Report:

Inpatient Hospital Fee Schedule and Outpatient Surgery Study (Gardner and Kominski, 2002)

Summary of Findings of the Inpatient Hospital Fee Schedule and Outpatient Surgery Study (2002)

<http://www.dir.ca.gov/CHSWC/HospitalFeeSchedule2002/HFSchwcssummary.html>

PROJECTS AND STUDIES

MEDICAL CARE (continued)

California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work

Status: Summary of proceedings in process.

For further information...

See the project synopsis in the Projects and Studies Section.

<http://www.dir.ca.gov/chswc/CAResearchColloquium/Colloquium.html>

Integrating Occupational and Non-Occupational Medical Treatment – Pilot Project: Union Janitors and Unionized Building-Maintenance Employers

Status: In Process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Study on 24-Hour Care

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Reports:

24-Hour Care Roundtable, Summary of December 7, 2006

<http://www.dir.ca.gov/CHSWC/Reports/24-Hour-Care-Final.pdf>

Assessment of 24-Hour Care Options for California (RAND 2004)

<http://www.dir.ca.gov/CHSWC/Reports/24HourCare.pdf>

CHSWC Background Paper: Twenty-four Hour Care (October 2003)

http://www.dir.ca.gov/CHSWC/CHSWC_24hCare.pdf

Workers' Compensation Medical Billing Process

Status: Completed

For further information...

CHSWC Background Paper:

Background Information on Workers' Compensation Medical Billing Process, Prepared for the Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations (2003)

Workers' Compensation Medical Payment Systems

Status: Completed

CHSWC Staff Report:

Workers' Compensation Medical Payment Systems: A Proposal for Simplification and Administrative Efficiency, Prepared for the Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations (2003)

http://www.dir.ca.gov/CHSWC/CHSWC_WCMedicalPaymentSystem/CHSWC_WCMedicalPaymentSystem.pdf

Adopting Medicare Fee Schedules: Considerations for the California Workers' Compensation Program (RAND, 2003)

http://www.dir.ca.gov/CHSWC/MR-1776.0_070803_1.pdf

PROJECTS AND STUDIES

COMMUNITY CONCERNS

Public Access to Workers' Compensation Insurance Coverage Information

Status: Completed

CHSWC Staff Report:

CHSWC Issue Paper on Public Access to Workers' Compensation Insurance Coverage Information
(April 2005)

<http://www.dir.ca.gov/CHSWC/ProofofCoverage.pdf>

U.S. Longshore and Harbor Workers' Compensation Market in California

Status: Completed

CHSWC Staff Report:

United States Longshore and Harbor Workers' Compensation Market in California (April 2005)

<http://www.dir.ca.gov/CHSWC/USLongshoreAndHarborPaper.pdf>

Benefit Simulation Model

Status: Completed

For further information...

A CD with the "Workers' Compensation Benefit Simulation Model" with instructions for its use is available for purchase from CHSWC.

Workers' Compensation and the California Economy

Status: Completed

CHSWC Staff Report:

Update – Workers' Compensation and the California Economy (2000)

<http://www.dir.ca.gov/CHSWC/CalEconomy/CalEconomyCover.html>

Evaluation of Workers' Compensation Cost and Benefit Changes Since the Beginning of the 1989 and 1993 Reforms (*Special Study at the Request of the Legislature*)

Status: Completed

CHSWC Reports:

Workers' Compensation Costs and Benefits After the Implementation of Reform Legislation
(August 1999)

<http://www.dir.ca.gov/CHSWC/Report.htm>

Executive Summary Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability
(August 1999)

<http://www.dir.ca.gov/CHSWC/ExecutiveSummary.htm>

Summary Estimating the Workers' Compensation Reform Impact on Employer Costs and Employee Benefits" (August 1999)

<http://www.dir.ca.gov/CHSWC/Summary.htm>

CHSWC 1998-99 Annual Report incorporates this report.

Workers' Compensation Anti-fraud Activities

Status: In process

CHSWC/FAC Study

Medical Payment Accuracy Study

For further information...

See the project synopsis in the Projects and Studies section.

PROJECTS AND STUDIES

COMMUNITY CONCERNS (continued)

CHSWC Reports:

Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? What is the Impact on Honest Employers? August 2007

http://www.dir.ca.gov/chswc/Reports/Fraud_in_WC_payroll_Report_Aug_14_2007.pdf

Split Class Codes: Evidence of Fraudulent Payroll Reporting, August 2007

http://www.dir.ca.gov/chswc/Reports/Split_Class_Codes_13Aug2007.pdf

Workers' Compensation Anti-Fraud Activities – Report on the CHSWC Public Fact-Finding Hearing” (September 1997)

<http://www.dir.ca.gov/CHSWC/Fraud/Fraudreport.html>

CHSWC Staff Reports:

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

<http://www.dir.ca.gov/CHSWC/Fraud/Fraudcover.html>

Report on the Workers' Compensation Anti-Fraud Program (August 2001)

<http://www.dir.ca.gov/CHSWC/Finalfraudreport0801.html>

Attachments: <http://www.dir.ca.gov/CHSWC/WCSAntiFraudAttachment.html>

Illegally Uninsured Employers Study

Status: Completed

CHSWC Reports:

Uninsured Employers Benefits Trust Fund, Background Paper, April 27, 2007

<http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf>

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

<http://www.dir.ca.gov/CHSWC/uefcover.html>

State of the California Workers' Compensation Insurance Industry

Status: Completed

CHSWC Background Papers:

Draft study of the California Workers' Compensation Insurance Market Study, Hays, September 2003

http://www.dir.ca.gov/CHSWC/Reports/CA_InsuranceMarketStudy.pdf

State of the California Workers' Compensation Insurance Industry (April 2002)

<http://www.dir.ca.gov/CHSWC/StateInsuranceIndustry2002/Stateinsuranceindustry042002.html>

PROJECTS AND STUDIES

CHSWC ISSUE PAPERS

Study of Labor Code Section 132a

Status: Completed

CHSWC Background Paper:

Update on Labor Code Section 132a and Employer Termination of Health Insurance Coverage: Calif. Supreme Court Decision in *State of California, Dept of Rehab v. WCAB (Lauher)* (2003)

<http://www.dir.ca.gov/chswc/Lauher132aUpdate.doc> or

<http://www.dir.ca.gov/chswc/Lauher132aUpdate.pdf>

Information on Industrial Medical Council's (IMC) Disciplinary Actions Taken on Qualified Medical Evaluators (QMEs)

Status: Completed

CHSWC Background Paper:

Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulations of QMEs (July 2003)

http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.doc or

http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.pdf

School District Workers' Compensation Liability – Labor Code Section 3368

Status: Completed

For further information...

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Staff Paper:

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California (July 2004)

http://www.dir.ca.gov/CHSWC/CHSWC_AccesstoFunds.pdf or

http://www.dir.ca.gov/chswc/CHSWC_Accesstofunds.doc

Proof of Coverage

Status: Completed

CHSWC Background Paper:

Workers' Compensation Compliance and Proof of Coverage (February 2006)

<http://www.dir.ca.gov/CHSWC/Papers/ProofOfCoverage2006.pdf>

Tax Status of Self-Insured Groups

Status: Completed

CHSWC Staff Issue Paper:

Issue Paper on Tax Status of Self-Insured Groups (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/SIG-TaxStatus.pdf>

Strategic Plan

Status: Completed

CHSWC Staff Report:

CHSWC Strategic Plan (2002)

<http://www.dir.ca.gov/CHSWC/StratPlanReport2002/Stratplan2002.html>

PROJECTS AND STUDIES

DISASTER PREPAREDNESS AND TERRORISM

Impact of Terrorism on Workers' Compensation

Status: Completed

CHSWC Issue Paper:

CHSWC Background Paper on the Impact of Terrorism and California Workers' Compensation (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/ImpactTerrorism-WC.pdf>

Forum on Catastrophe Preparedness: Partnering to Protect Workplaces (April 2006)

Status: Completed

CHSWC Staff Report:

A Report on the Forum on Catastrophe Preparedness: Partnering to Protect Workplaces (2006)

<http://www.dir.ca.gov/chswc/forum2006.html>

PROJECTS AND STUDIES

SYNOPSIS OF CURRENT CHSWC PROJECTS AND STUDIES

PERMANENT DISABILITY

This section starts with a discussion of the comprehensive evaluation of permanent disability (PD) by the Commission on Health and Safety and Worker's Compensation (CHSWC) and continues with descriptions of CHSWC's other ongoing studies.

Background

The most extensive and potentially far-reaching effort undertaken by CHSWC is the ongoing study of workers' compensation PD in California. The CHSWC study incorporates public fact-finding hearings and public discussions with studies by RAND and other independent research organizations. The CHSWC study deals with major policy issues regarding the way that California workers are compensated for PD incurred on the job.

CHSWC realizes that the rating of PD is one of the most difficult tasks of the workers' compensation system, often leading to disputes and litigation. The manner in which California rates and compensates injured workers for temporary disability (TD) and permanent partial disability (PPD) has enormous impact on the adequacy of injured workers' benefits, the ability of injured workers to return to gainful employment, the smooth operation of the Division of Workers' Compensation (DWC) adjudication system, and the cost of the workers' compensation system to employers.

The Commission's PD project consists of two phases. The focus of the first phase of the evaluation is on measuring the long-term earnings losses and other outcomes for workers with PD claims. The second phase is intended to refine these measures and, at the same time, provide policy makers with suggestions for reforms intended to improve outcomes for injured workers at reasonable cost to employers.

Permanent Disability – Phase 1

Initial Wage Loss Study

The initial report from the CHSWC study of PD, "Compensating Permanent Workplace Injuries: A Study of the California System," examines earnings losses and the replacement of earnings losses for workers with PPD claims at insured firms in California in 1991-92. The main findings of this report include:

- PPD claimants experienced large and sustained earnings losses over the five years following injury. These losses amounted to approximately 40 percent of the earnings these workers would have made if injury had not occurred.
- Workers' compensation benefits replaced only 40 percent of pre-tax earnings losses and only 50 percent of after-tax earnings losses.
- Losses are largely driven by lower employment rates among PPD claimants over the years following injury.
- Earnings losses and disability ratings are not closely related, particularly for low-rated claims. Replacement rates and the fraction of losses that remain uncompensated after benefits are paid were lowest for the lowest-rated claims.

PROJECTS AND STUDIES

For further information...

-  CHSWC Report: "Compensating Permanent Workplace Injuries: A Study of the California System" (RAND, 1998)
-  CHSWC Report: "Findings and Recommendations on California's Permanent Partial Disability System- Executive Summary" (RAND, 1997)
-  Check out: <http://www.dir.ca.gov/CHSWC/Reports/PPDFindingsAndRecommendations.pdf>

Policy Advisory Committee

A CHSWC Permanent Disability Policy Advisory Committee was established to review the RAND report and the community's responses and to recommend further action. The committee began meeting in November 1997.

Goals Established by the CHSWC Permanent Disability Policy Advisory Committee

- Decrease in an efficient way the uncompensated wage loss for disabled workers in California.
- Increase the number of injured workers promptly returning to sustained work.
- Reduce transaction and friction costs, including costs to injured workers.

The CHSWC Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The workers' compensation community wanted additional information on how other factors, such as demographics and local economic conditions, affected the outcomes of the wage loss study. Observations were also made about the initial study parameters, as the study lacked data on employees of self-insured employers and data beyond the 1991-1993 period.

The Permanent Disability Policy Advisory Committee urged CHSWC to study those issues further, and CHSWC voted to continue the comprehensive evaluation of workers' compensation PD. Continuation of the evaluation of PD includes the following projects.

Enhancement of the Wage Loss Study to Include Self-Insureds

Stakeholders objected to the 1998 report, "Compensating Permanent Workplace Injuries: A Study of the California System," because they believed that self-insured employers, which account for one-third of claims in California, would have better outcomes for PPD claimants. Stakeholders felt that since self-insured employers are larger and higher-paying firms and since they directly bear the full cost of their workers' compensation claims, they should have more programs to encourage return to work (RTW) and a more motivated workforce.

Private Self-Insureds

The report entitled "Permanent Disability at Private, Self-Insured Firms" was released in April 2001. This report includes an unprecedented data-collection effort on PD claims at self-insured firms in California. The findings of this report include:

- Better RTW at self-insured firms led to a lower proportion of earnings lost by PPD claimants. During the five years after injury, self-insured claimants lost a total of 23 percent of both pre- and post-tax earnings, compared to the insured claimants' proportional losses of about 32 percent.

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- Since workers at self-insured firms have higher wages, they are more likely to have weekly wages that exceed the maximum temporary disability (TD) payment. Therefore, workers' compensation benefits replaced a smaller fraction of losses at self-insured firms. Workers at these self-insured firms experienced lower five-year wage replacement rates (48 percent) than workers at insured firms (53 percent).
- At both insured and self-insured firms, replacement rates were very low for workers with the lowest indemnity claims. At the self-insured and insured firms, claimants with total indemnity falling below the 20th percentile had 14 percent and 11 percent of their lost earnings replaced by benefits, respectively.
- PPD claimants with high pre-injury earnings and high indemnity claims experienced large dollar losses that were not compensated by benefits.

Status

Completed.

For further information...



CHSWC Report: "Permanent Disability, Private Self-Insured Firms" (RAND, 2001)

Check out: <http://www.dir.ca.gov/CHSWC/Reports/PD-Study.pdf>

Permanent Disability Rating Schedule Analysis

Background

Before Senate Bill (SB) 899, the California Permanent Disability Rating System (PDRS) came to be regarded as costly, inequitable, inconsistent, and prone to disputes. Workers who sustained similar earnings losses for different types of injuries received different amounts of compensation.

Prior to SB 899, CHSWC contracted with RAND to evaluate California's PDRS. The CHSWC Permanent Disability Study by RAND consisted of a detailed analysis of the disability rating schedule in order to provide empirical findings that could guide a revision that would be consistent with the economic losses experienced by permanently disabled workers. The study also empirically identified the components of the schedule that contribute to inconsistency and made recommendations to reduce them.

RAND recommended:

- Basing the PD schedule on the American Medical Association *Guides to the Evaluation of Permanent Impairment*, fifth edition (AMA Guides) with an adjustment to reflect average wage loss.
- Re-ordering of the PD schedule to ensure that injury severity was compensated appropriately.

With the enactment of SB 899 in 2004, the Governor and the Legislature intended to enact a PD rating system that would promote "consistency, uniformity, and objectivity."⁴⁸

⁴⁸ Labor Code Section 4660(d).

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SB 899 made changes to:

- The goal of the rating schedule, giving consideration to diminished future earning capacity in place of consideration to diminished ability to compete in an open labor market [Section 4660(a)], as well as promoting consistency, uniformity and objectivity [Section 4660(d)].
- The criteria for medical evaluations using the *AMA Guides* in place of the often subjective criteria traditionally used in California [Section 4660(b) (1)].
- The adjustment factors to be included in the Schedule for Rating Permanent Disabilities, specifying that diminished future earning capacity be a numeric formula based on average long-term loss of income according to empirical studies [Section 4660(b)(2)].
- The apportionment of disability between industrial injuries and other causes when a disability is caused by the combination of two or more injuries or diseases, such as a knee strain with pre-existing arthritis (Sections 4663 and 4664).
- The number of weeks of PD benefits payable for each percentage point of PPD, reducing payments by up to 15 weeks on all awards of less than 70 percent PPD [Section 4658(d)(1)].
- The dollar amount of weekly PD benefits depending on whether the employer offers to continue to employ the permanently disabled worker, if the employer has 50 or more employees [Section 4658(d)(2) and (d)(3)].

Description

Senate President pro Tem Don Perata and Assembly Speaker Fabian Nuñez requested information regarding a change in the California workers' compensation Schedule for Rating Permanent Disabilities effective January 1, 2005. They requested that CHSWC report to the Legislature on the impact of the change in the schedule, as well as how the schedule could now be amended in compliance with Labor Code Section 4660(b)(2), which requires the use of findings from a specified RAND report and other available empirical studies of diminished future earning capacity.

In response to this legislative request, CHSWC developed a paper that evaluated the impact of the changes in the PDRS using data from the Disability Evaluation Unit (DEU) that did not exist when the latest reform was adopted.

Findings

- At the time the 2005 schedule was adopted, adequate empirical studies did not exist to permit accurate calculation of the relationship between impairments evaluated according to the *AMA Guides* and diminished future earning capacity.
- The 2005 schedule has reduced average PD awards (dollar value of award based on rating) by more than 50 percent for unrepresented cases and by about 40 percent for represented cases.
- The 2005 schedule has reduced the average PD rating (rated percentage of disability) by about 43 percent for unrepresented cases and by about 40 percent for represented cases.
- Revisions of the schedule can be formulated immediately and revised periodically. (See CHSWC study "Permanent Disability Rating Schedule Analysis.")

The CHSWC Permanent Disability report provides a methodology for updating the PDRS to obtain more consistent ratings for all types of injuries. The report recommends a new mathematic formula using administrative data from DWC and the latest available wage loss data, to make all ratings

PROJECTS AND STUDIES

calculations consistent. The ratings are then entered into the existing system to calculate the level of benefits. An important recommendation in the report is that periodic revision to the rating schedule be adopted such that any future trends in medical impairments and earnings losses can be detected and incorporated in the formula.

The report also suggests that, beyond using a consistent methodology, overall levels of ratings and compensation should be considered a separate public policy issue. The report acknowledges that issues of benefit adequacy and affordability are issues for policy makers to debate.

Status

Completed. CHSWC voted on February 9, 2006, to approve and release the report "Permanent Disability Rating Schedule Analysis."

For further information...

-  CHSWC Report: "Permanent Disability Rating Schedule, February 23, 2006.
-  Check out: <http://www.dir.ca.gov/chswc> and <http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-2006.pdf>

APPORTIONMENT

Understanding the Effect of SB 899 on the Law of Apportionment

Background

Apportionment is the process in which an overall permanent disability (PD) that was caused at least in part by an industrial injury is separated into the components that are and are not compensable results of that injury. Senate Bill (SB) 899, signed into law by Governor Schwarzenegger on April 19, 2005, profoundly changed the law of apportionment. Decades of interpretation of the old law of apportionment are called into question, with some principles still being applicable and others being reversed. The Commission on Health and Safety and Workers' Compensation (CHSWC) report provides information on the effect of SB 899 on the prior law of apportionment, how apportionment is likely to be affected by the AMA *Guides*, and what the key issues are that remaining to be resolved. A summary of the paper follows.

Repeal of Preexisting Disease and Previous PD or Impairment Language

SB 899 repealed Labor Code Section 4663 which provided that if a preexisting disease were aggravated by a compensable injury, compensation was allowed only for the portion of the disability due to the aggravation reasonably attributed to the injury. SB 899 also repealed Labor Code Section 4750 which provided that an employee "suffering from a previous PD or physical impairment" could not receive compensation for a subsequent injury in excess of the compensation allowed for the subsequent injury "when considered by itself and not in conjunction with or in relation to the previous disability or impairment" and that the employer was not liable "for the combined disability, but only for that portion due to the later injury as though no prior disability or impairment had existed."

Causation

To replace the repealed sections, SB 899 reenacted Section 4663 in an extensively revised form and added a new Section 4664. The revised Section 4663 provides that "apportionment of permanent disability shall be based on causation." Apportionment is determined by the approximate percentage of the PD caused by the direct result of the industrial injury and by the approximate percentage of the PD caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. A PD evaluation is not considered complete unless it includes an apportionment determination. Labor Code Section 4664(a) was added to emphasize that the employer is only liable for the percentage of PD "directly caused" by the injury. On their face, the repealed sections do not appear inconsistent with the new sections, but the case law interpreting the repealed sections considerably limited their application.

The problem faced by members of the workers' compensation community is how the authors of this legislation intended permanent disabilities to be apportioned under the new law. The final Senate floor analysis says only that it was intended to "replace present law on apportionment with statement that apportionment of permanent disability is based on causation." It is clear, however, that the announced purpose of SB 899 was to reduce the cost of providing workers' compensation.

Resolved

Since SB 899, there was lack of agreement among workers' compensation judges, commissioners, and appellate courts about which formula should be used in computing the amounts of PD awards.

The three possible methods were:

- Formula A: subtract the percentage of non-industrial disability from the percentage of combined disability, the remainder being the amount of compensable disability.

PROJECTS AND STUDIES

- Formula B: determine the number of weekly benefits authorized for the combined disability, multiply it by the percentage of industrially related disability, and award the resulting number of weeks.
- Formula C: subtract the dollar value of the non-industrial disability from the dollar value of the combined disability.

The issue has now been resolved by the Supreme Court in *Brodie v. WCAB* (2007) 40 CA4th 1313, 35 CWCR 143, 72 CCC 565.

In *Brodie* and several consolidated cases, the Supreme Court said that the changes in the law of apportionment made by SB 899 affected only how the percentage of PD for which an employer is responsible is determined, but not how the compensation due for that disability is calculated. If the Legislature had intended a departure from formula A, it would have so indicated. There was no sign of intent to depart from formula A in the legislative history.

Thus, it is now settled that apportioned awards are calculated by subtracting the percentage of non-industrial disability from the percentage of combined disability. The remainder is the percentage of compensable disability for which benefits are awarded.

Unresolved

Many other issues, including the definition of "directly caused," remain to be resolved although some cases such as *Sherman v. Los Angeles Unified. School District, supra*, have hinted at it. Because there has not been a clear issue of remote causation in any of the reported decisions to date, the Board has not been faced with defining "directly caused." Sections 4663 and 4664 require that compensable PD be "caused by the direct result of injury" and "directly caused by the injury." There is authority however, that "direct cause" is synonymous with "proximate cause."

Status

CHSWC approved the release of the draft report on Apportionment at its August 9, 2007 meeting.

PROJECTS AND STUDIES

THE IMPACT OF CHANGES TO TEMPORARY DISABILITY BENEFITS

Background

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the workers' compensation system on an ongoing basis.

The temporary disability (TD) system was changed in Senate Bill (SB) 899 to limit TD to two years. Many other states limit TD; however, this limitation is spread over different time frames in case of surgery or other factors. Current statute limits TD to being paid only for lost time during the first two years after injury.

The Legislature has asked that CHSWC provide information on what it would cost employers if the limits were relaxed to allow up to two years of TD to be paid within five years of injury.

Project Team

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Objectives

CHSWC requested a study examining the potential costs and benefits of relaxing the restriction that the 104 weeks of benefits be paid within the first two years after commencement of benefits. Specifically, the study would determine what the additional benefit cost of extending the time frame to three, four, or five years from benefit commencement while maintaining the limit of a maximum of 104 weeks of aggregate benefit payments would be.

Data for the study were requested from the California Workers' Compensation Institute (CWCI) and the Industry Claims Information System (ICIS). The University of California (UC) Berkeley, in conjunction with the CWCI, examined a large database of claims involving TD. The claims covered a period prior to the introduction of the limits on TD imposed by SB 899. The claim data were made available for the CHSWC study from the ICIS database maintained by CWCI.

The data in ICIS are most representative of the experience of insured employers. The analysis is across all employers in the database, and the experience of individual employers or industry segments or self-insured employers may vary from the results listed above.

Results

The study results include:

- Extending the period during which a worker would be eligible for TD payments beyond the current two years from payment commencement would only increase the cost of the TD benefit by three percent or less.
- Because nearly all of these payments would occur in the third year, it makes virtually no difference in direct benefit costs if eligibility is extended to three years or as long as five years.
- If TD payments represent 20 percent of benefit payments, the effect on total workers' compensation costs would be an increase of 0.6 percent or less.

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The reasons for the limited impact of the relaxation of the eligibility period on total TD costs are:

- Only approximately eight percent of workers' compensation claims involve payments beyond 104 weeks of the initial payment. (These claims often have extended disability periods, and prior to the legislation represented, they were approximately 34 percent of total TD payments.)
- Prior to the reforms, a large fraction of these claims extending beyond 104 weeks had disability payments continuously during the period. Most claims extending beyond 104 weeks would not be eligible for additional payments if the time frame for eligibility were relaxed by extending it to three, four, or five years.

Status

Completed.

PROJECTS AND STUDIES

RETURN TO WORK

Return-to-Work Study

Background

Several provisions of recent workers' compensation legislation, Assembly Bill (AB) 227, Senate Bill (SB) 228, and SB 899, included important statutory and regulatory changes meant to encourage return to work (RTW) at the at-injury employer. Studying the impact of these changes is important for understanding how to construct appropriate incentives for both employers and employees. The significance of the research extends beyond California because the innovations in the recent reform legislation may offer a model for other states to follow when reforming their systems.

Thorough evaluations are critical for improving California's workers' compensation system, lowering employer costs related to temporary disability (TD) and permanent disability (PD), lowering employers' indirect costs, such as hiring and training, and reducing workers' wage losses associated with TD and PD.

In response to the need for further research and analysis, the Commission on Health and Safety and Workers' Compensation (CHSWC) contracted with RAND to study the impact of recent RTW and vocational rehabilitation reforms on employer costs and injured-worker outcomes.

Objectives and Scope of the Study

The purpose and objectives of the RTW study are to comply with the request by Assembly Member Keene and Assembly Member Vargas to evaluate RTW efforts in California in light of the changes caused by current legislation, SB 899.

The study will include an evaluation of the current state of RTW and vocational rehabilitation or the supplemental job displacement benefit (SJDB) for injured workers in California, and will identify issues, evaluate the impact of recent legislative changes, and make recommendations for how to construct appropriate incentives for both employers and employees.

The study shall focus on, but not be limited to, all of the following important research questions that involve evaluation of the recent legislation on RTW:

- What has been or will be the impact of the 15 percent "bump up, bump down" (increase, decrease) on disability benefits, the subsidy program for workplace modifications by small businesses, and the SJDB voucher program (which replaced the old vocational rehabilitation benefits) on the likelihood that a permanently disabled worker returns to work at the at-injury employer? With what frequency are these incentives applied?
- Have the reforms led to a change in the duration of cases that we see on TD, with or without ever receiving PD benefits? If so, what are the implications for injured-worker outcomes and employer costs?

Project Team

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PROJECTS AND STUDIES

- After the reforms, are there workers who remain out of work for a substantial period without receiving permanent partial disability (PPD)? If so, how long do they remain on TD, and what is the likelihood that they eventually return to work? Are these workers effectively targeted by RTW programs?
- What impact have the reforms had on employer efforts to promote RTW? Have the reforms made it more cost-effective to implement a formal RTW program?
- Are there other steps that policy makers in California can and should take to improve RTW outcomes for injured workers?
- Will educational vouchers in place of vocational rehabilitation services improve worker outcomes while lowering employer costs?

Study information will be organized around five central themes:

- Evaluation of the trends in use of various programs affecting RTW.
- Evaluation of the impact of the reforms on the adoption of RTW programs by employers.
- Estimation of the impact of the reforms on the duration of work absences due to workplace disabilities.
- Review of the changes in the distribution of TD and PD benefits received.
- Assessment of the overall impact of these reforms on workers' compensation benefit adequacy and affordability in California.

Status

The study began in August 2005 and is expected to be completed in 2008, depending on data availability.

RETURN TO WORK

Return-to-Work Best Practices

Background

Many firms in California have adopted practices to improve return to work (RTW) of injured employees. Policy makers may wish to encourage increased emphasis on RTW as a means to reduce uncompensated wage loss.

Description

This project collected data on the RTW practices from a sample of 40 large, private self-insured California employers and examined their effectiveness. The data were collected prior to the recent reforms, but the detailed information about the efforts to improve RTW is useful to understand the nature of policies in place, the activities taken, and the type of coordination with medical providers.

The report will cover the following topics:

- How effective are employer practices to improve RTW?
- How much do employers and workers benefit in the long run?

Objectives

The objectives of this project are to:

- Provide information on the most effective RTW practices of California employers. This information is intended to assist employers and employees to determine which RTW practices may be applicable to their needs.

Findings

Preliminary findings of the study included that:

- Employer-based RTW programs improve employment outcomes of injured workers.
- Positive effects are driven by employers that make a substantial investment in programs.
- Investments in RTW programs appear to be cost-effective.
- Firms that have a written RTW policy with rules produce outcomes of fewer weeks on TD and fewer weeks to return to the at-injury employers, as well as fewer weeks until sustained RTW.

Status

The draft report is expected in 2008.

Project Team

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PROJECTS AND STUDIES

WORKERS' COMPENSATION REFORMS

Medical-Legal Study

Background

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission on Health and Safety and Workers' Compensation (CHSWC) initiated a project to determine the impact of the workers' compensation reform legislation on workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center (SRC) at the University of California (UC), Berkeley to carry out this study.

Description

The study analysis is based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. WCIRB data summarize accident claim activity, including such measures as degree of impairment, the type and cost of specialty examinations, whether the case was settled and, if so, the method of settlement employed.

Findings

The study determined that a substantial decline in total medical-legal costs occurred during the 1990s. This decline can be attributed to several factors:

- Almost half (49 percent) of the cost savings is due to improvements in the medical-legal process that reduced the number of examinations performed per claim.
- Ten percent of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of examinations per claim.
- Forty one percent of the improvement is a result of the overall decline in the frequency of reported PPD claims.

Status

The medical-legal study was initiated in 1995 and is ongoing.

Medical-Legal Project Advisory Committee

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ADMINISTRATIVE EFFICIENCY

Electronic Adjudication Management System (EAMS) Project

Background

The Commission on Health and Safety and Workers' Compensation (CHSWC) RAND Judicial Study, CHSWC staff, and the Division of Workers' Compensation (DWC) staff identified several problems with the current court system of DWC. These problems included a paper-driven system, which overburdened clerical staff, a lack of integration of antiquated computer systems with high file-storage costs, and difficulty in accessing information. This led to an initial Feasibility Study Report (FSR) known as the Court Technology Project.

Since then, an updated Feasibility Study Report (FSR) was prepared to include expanded needs for an Electronic Adjudication Management System (EAMS). This FSR was approved by the Department of Finance in 2004, and a Request For Proposal (RFP) was released in 2005. In 2006, a contract was awarded to Deloitte Consulting, and the project was officially begun in March 2007. The \$30 million project is expected to be completed in December 2008.

A Model for Change Using Technology

EAMS will eventually replace the current databases in use by the workers' compensation system, the Workers' Compensation Appeals Board (WCAB) On-line, Vocational Rehabilitation, Disability Evaluations Unit (DEU) and Uninsured Employers' Fund (UEF) Claims Management systems, with a Commercial Off-the-Shelf (COTS) case-management, calendaring, electronic document-management, cashiering and business intelligence solution. Also critical to the proposed system is the development of an enterprise relational database system that will combine data elements of the three primary systems, as well as add other data elements that will benefit DWC and other divisions within the Department of Industrial Relations (DIR).

In addition, the system will integrate with other existing systems, such as the Workers' Compensation Information System (WCIS) and AristoCAT court reporting software, in addition to supplementing DWC's call center, to drastically improve DWC's overall business intelligence and customer services capabilities. The solution will provide the best value to DWC/WCAB and the State by providing a cost-effective way of meeting the business and technical requirements specified in the FSR.

Electronic Adjudication Management System

Key components of the proposed system include:

- COTS case-management, calendaring, and cashiering system.
- COTS document-management system.

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PROJECTS AND STUDIES

- Upgrade of existing equipment to support new functionality.
- Migration of the DEU system to a modern platform.
- Division-wide relational database system with integration to WCIS.
- Integration of AristoCAT court reporting technologies into core business system.
- COTS reporting software tool.
- Claims-management software.

Integrating robust COTS solutions with existing technology investments will provide the following benefits:

- Meet the technical and functional requirements as well as the project objectives of DWC.
- Provide a cost-effective and industry-standard approach to managing and improving processes by going “paperless,” while retaining the ability to print documents when needed.
- Provide vendor support and ongoing maintenance terms and conditions mitigating technological risk.
- Provide public access to form creation and case tracking to stakeholders through a secure, web-based application that requires no additional equipment or software investments other than a broadband connection on a P4 or higher speed computer.
- Leverage current technology investments and feed information to WCIS in support of DWC business intelligence goals.
- Enable call center staff to be more effective and to field more calls that will not have to be routed to district offices.
- Improve customer service capability and the ability to exchange data with external stakeholders.
- Improve overall business intelligence and operational performance-reporting capabilities.

Status

The project began in February 2007 and is expected to be completed by December 2008.

INFORMATION FOR WORKERS AND EMPLOYERS

Guidebook for Injured Workers

Background

A *Guidebook for Injured Workers*, third edition, November 2006, was prepared for the Commission on Health and Safety and Workers' Compensation (CHSWC) based on educational fact sheets prepared in 1998 and 2000, and the first and second editions of this guidebook, prepared in 2002 and 2005. The *Guidebook* is available in Spanish and English.

Objectives and Scope

This Guidebook gives an overview of the California workers' compensation system. It is meant to help workers with job injuries understand their basic legal rights, the steps to take to request workers' compensation benefits, and where to seek further information and help, if necessary.

This new edition of the Guidebook describes the workers' compensation system as of November 2006. The Guidebook does not fully describe many rules, exceptions and deadlines that may apply. For example, if the date of injury was several years ago, the benefits and the steps to take may be different. Also, a union contract or a labor-management carve-out agreement may give additional rights or require different procedures.

The Guidebook provides injured workers with basic tips on how to take charge of their workers' compensation case and protect their rights. It also covers different kinds of workers' compensation benefits and how to continue working for the injured worker's employer.

Since the Guidebook cannot cover all possible situations faced by injured workers, additional resources are listed. They include governmental agencies, attorneys, health care providers, unions, and support groups, as well as books and other materials. Injured workers can use these resources to learn more about workers' compensation or to get personalized help with their case. Appendix information includes important laws and regulations pertaining to workers' compensation and injured workers' rights, as well as a Glossary that briefly explains many of the terms that are commonly used in workers' compensation.

Status

Completed.

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MEDICAL CARE

Medical Study of Impact of Recent Reforms

A Commission on Health and Safety and Workers' Compensation (CHSWC) study by RAND will evaluate recent legislative changes affecting medical treatment provided to workers who have sustained industrial injuries and illnesses in California. The study will also provide technical assistance in evaluating potential legislative and administrative refinements to the current system, including ways payment incentives might be used to improve the quality of care provided to injured workers.

Background

A series of legislative changes affecting medical care provided to California's injured workers has been enacted over the past few years to address medical utilization and cost issues. While there is evidence that these changes are reducing medical expenses, the impact of these changes on access, quality and outcomes is unknown. The study will evaluate the impact of the changes both on an individual provision-by-provision basis and in combination. The four topics for evaluation are: medical-necessity determinations; medical networks; provision for early medical treatment; and adoption of Medicare-based fee schedules. The study will evaluate the impact of the new provisions on cost, quality, and access of injured workers to appropriate and timely medical care and will identify issues and make recommendations for addressing areas of potential concern.

Senate Bills (SB) 228 and 899 made a number of changes that affect how medical-necessity determinations are made for medical care furnished to injured workers. Most notably, the changes included: the treating physician presumption was repealed; presumption was afforded the utilization schedule issued by the Administrative Director (AD) of the Division of Workers' Compensation (DWC) (i.e., the ACOEM guidelines); limits were placed on the number of chiropractic, physical therapy and occupational therapy visits per occupational injury; new utilization review (UR) requirements were established; and new appeals processes were created.

Effective January 1, 2005, employers may provide medical care through medical provider networks (MPNs) that injured workers will be required to use throughout the course of their treatment. The network must have a sufficient number of providers representing a variety of specialties in locations convenient to covered workers and must include physicians engaged in care of work-related injuries and illnesses, as well as physicians engaged primarily in care of non-occupational conditions. The network providers must agree to provide care in accordance with the utilization schedule adopted by the AD. A study funded by DWC on injured-worker access issues examined key questions regarding the impact of the networks on injured-worker access to care and patient satisfaction. This study,

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PROJECTS AND STUDIES

conducted by the University of California Los Angeles (UCLA) Center for Health Policy Research, includes a survey of injured workers and provider focus groups.

Additional research is required in three major areas to identify potential policy issues and “best practices” in network formation and operation:

- The process used to form medical networks, including the considerations affecting the employer decision to establish a medical provider network, the strategies used to form the network (pre-existing or new, narrow or broad), quality assurance and enrollment processes, profiling, and fee discounting, etc.
- The capacity of the networks to meet the needs of the injured worker.
- The impact of the networks on medical utilization, costs, and outcomes.

Under California’s Labor Code, a claim is presumed compensable unless it is rejected within 90 days. Prior to SB 899, this contributed to treatment delays, since employers had no incentive to accept liability before the 90-day period elapsed. SB 899 added a new requirement intended to facilitate prompt treatment for work injuries. An employer is required to authorize medical care in accordance with the medical treatment guidelines beginning within one working day after an injured worker files a claim and continuing until the claim is accepted or rejected. Until the compensability determination is made, liability is limited to \$10,000, and any treatment does not create a presumption of employer liability for the claim. The impact of this provision on access, costs, and quality needs to be examined, including:

- Time lapsed between date of injury, the date a claim is filed, the date initial treatment is obtained, and the date compensability is determined (initially and after any appeals).
- Employer medical costs (includes treatment, medical-cost containment and administrative expenses).
- Percentage of claims appealed and the proportion ultimately determined compensable/non-compensable.

In evaluating these issues, other factors that might affect impact, such as whether the injured worker is also covered by group health insurance and whether the worker is represented by an attorney, etc., should be taken into account.

Under SB 228, the Official Medical Fee Schedule (OMFS) for services other than physician services furnished to injured workers is linked to Medicare fee schedules or, in the case of pharmaceuticals, MediCal. The aggregate payment for each type of service (e.g., inpatient hospital services, outpatient hospital services) is limited to 120 percent of the amount payable under Medicare for comparable services. For most services other than physician services, fee schedules tied to 120 percent of the amounts payable under Medicare were implemented in 2004. Physician services were reduced five percent but not below the amount payable under Medicare. The impact of the fee schedule changes on access and cost should be evaluated. In addition, any issues of concern that are identified should be assessed, and options and recommendations for addressing them should be developed.

Medicare, group health insurance and managed care plans are devoting considerable effort to developing structured financial incentives to improve the safety and quality of care, i.e., paying for performance. Designing a pay-for-performance initiative is a complex undertaking that must pay equitably for medically necessary services, promote desired changes in the way care is delivered, and avoid unintended consequences.

PROJECTS AND STUDIES

Description

Information will be gathered for this study through the following activities:

- Review of all workers' compensation legislation passed during the 2003 and 2004 legislative sessions to determine if it should be evaluated for purposes of this project. This includes but is not limited to provisions pertaining to medical care in Assembly Bill (AB) 227, SB 228 in 2003, and SB 899 in 2004.
- Review of the rulemaking record for regulations implementing the legislative provisions referenced above and other relevant literature and studies pertaining to implementation of the provisions.
- Interviews with key informants involved in providing medical treatment to injured workers, paying for services that are provided, representing injured workers, and regulating the workers' compensation program.
- Case studies of at least four medical networks that examine the process of network formation and operation as well as the capacity of the networks to meet injured-worker needs. The networks chosen for study should be representative of the different models that have been established. The case study should include both key informant interviews and analysis of administrative data.
- Review of the literature pertaining to the use of financial incentives to encourage improvements in the quality and efficiency of care with respect to both medical treatment provided injured workers and medical care provided more generally within the health care system.

Status

Ongoing.

PROJECTS AND STUDIES

MEDICAL CARE

Pharmacy Repackaging Impact Study

Background

Pharmaceutical costs are one of the fastest-rising medical costs in California's workers' compensation system. According to the Workers' Compensation Rating Bureau (WCIRB), medical payments to pharmacists increased from 5.1 percent to 10.4 percent of total paid medical costs between 1995 and 2004. The use of repackaged drugs by workers' compensation medical providers has been raised as an issue leading to high and increasing prescription drug costs.

Repackaged drugs are drugs that have been purchased in bulk and repackaged into individual prescription sizes for dispensing in physicians' offices. Reimbursement for most pharmaceuticals is tied to the Medi-Cal Pharmacy Fee Schedule. However, since repackaged drugs are not found in the MediCal Pharmacy database, they may be reimbursed at a higher rate.

Description

On April 28, 2005, the Commission on Health and Safety and Workers' Compensation (CHSWC) voted to engage in a study of the impact of repackaged drugs on workers' compensation costs.

Issues related to repackaged drugs were highlighted in a report to CHSWC by RAND. This study used the CHSWC report by RAND as a basis to provide an analysis on the following:

- Do repackaged drugs lead to higher prescription costs for the same or similar drugs than dispensing by pharmacies?

If so, how much higher are costs, both average prescription costs and the total cost to the system?

- Are there alternative fee schedule policies, such as applying Medicare Maximum Allowable Ingredient Cost (MAIC) and Federal Allowable Cost (FAC) pricing rules, that could appropriately price these repackaged drugs if regulatory or statutory changes were introduced?
- Do the profit incentives connected to repackaged drugs cause physicians to change their prescribing practices?

If so, what are the changes for the type of drug, the amount prescribed, and/or the frequency of prescriptions? In addition, what effect do any changes in provider practice have on workers' compensation pharmaceutical costs?

The CHSWC study was conducted jointly by University of California, UC Berkeley, and RAND using data from the California Workers' Compensation Institute (CWCI).

Findings

Findings of the study include:

- Physician dispensing is much more common than most observers expected. In fact, 30.3 percent of prescriptions dispensed in the California workers' compensation system are dispensed by physicians directly from their offices.

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PROJECTS AND STUDIES

- Approximately half (50.8 percent) of the total cost of pharmaceuticals in the workers' compensation system is paid to physicians for prescriptions dispensed from their offices.
- Because of the structure of the Official Medical Fee Schedule (OMFS), physician-dispensed pharmaceuticals are much more costly than the same drugs dispensed by a pharmacy. On average, physician-dispensed drugs cost 490 percent of what is paid to pharmacies. In some cases, including the most commonly prescribed drug dispensed by physicians, the mark-up exceeds 1000 percent.
- It is estimated that for calendar year 2006, insurers and self-insured employers will pay \$649 million for prescription drugs. Of this paid amount, \$263 million will be paid to dispensing physicians in excess of what would have been paid for the same drugs if dispensed by a pharmacy.
- It is estimated that insured employers will face premiums for policy year 2006 which are \$490 million dollars higher than if all drugs were dispensed through pharmacies. This represents 2.2 percent of premium for the policy year.

Status

Completed.

For further information...

 Impact of Physician-Dispensing of Repackaged Drugs on California Workers' Compensation, Employers Cost, and Workers' Access to Quality Care (2006)

 <http://www.dir.ca.gov/CHSWC/Reports/Physician-Dispensend-Pharmaceuticals.pdf>

PROJECTS AND STUDIES

MEDICAL CARE

Paying for Repackaged Drugs

Background

Assembly Bill (AB) 749 and Senate Bill (SB) 228 made several changes affecting workers' compensation pharmaceutical costs that were intended to control the cost of pharmaceuticals. Some of these changes specified that:

- Pharmacies and other providers that dispense medicine and medical supplies will dispense a generic drug equivalent, unless the prescribing doctor states otherwise in writing or a generic equivalent is unavailable.
- The Administrative Director (AD) of the Division of Workers' Compensation (DWC) will also adopt an official pharmaceutical fee schedule establishing maximum fees for medicines and medical supplies provided to injured workers. The schedule will be based on the Medi-Cal payment system.

Pursuant to SB 228, the current pharmaceutical fee schedule became effective January 1, 2004, and is based on 100 percent of Medi-Cal reimbursement rates. This schedule will be in effect until the AD adopts an official pharmaceutical fee schedule.

However, the Medi-Cal fee database does not include repackaged drugs; therefore, these drugs are still reimbursed at the rates of the pre-SB 228 Official Medical Fee Schedule (OMFS) that was not tied to Medi-Cal reimbursement rates.

Description

Labor Code Section 127.6 of AB 749 requires "the Administrative Director (AD) in consultation with the Commission on Health and Safety and Workers Compensation, the Industrial Medical Council, other state agencies, and researchers and research institutions with expertise in health care delivery and occupational health care service, conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses."

In order to meet the above requirements of AB 749, the Commission on Health and Safety and Workers' Compensation (CHSWC) and DWC issued a request for proposal (RFP) for a study on medical treatment in December 2003. One part of the study focuses on analyzing appropriate maximum allowable fees for repackaged drugs.

Findings

According to the RAND study prepared for CHSWC and DWC:

- The payments for repackaged drugs dispensed by physicians based on the pre-existing OMFS schedule are higher than the pharmacy-dispensed drugs which are reimbursed according to the Medi-Cal formula.
- The OMFS fee schedule formula that applies to repackaged drugs was designed to encourage dispensing of generic drugs and reflected the assumption that the Average Wholesale Price (AWP) for generic drugs was significantly lower than the brand-name equivalent. However, the AWP prices reported by the repackagers do not appear to be related to their own acquisition

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PROJECTS AND STUDIES

costs, and the differential between the brand name and generic AWP for repackaged drugs is less than expected.

- The dispensing fee of the repackagers is unnecessary and could create inappropriate financial incentives for prescribing patterns. The dispensing fee is intended for pharmacist consultation, and the physician is generally reimbursed for evaluation and management services.

Recommendations

The study on repackaged drugs prepared by RAND for CHSWC and DWC recommends that the following options be considered in establishing a fee schedule amount for repackaged drugs:

- Use the Medi-Cal fee schedule payment amounts for pharmacy-dispensed drugs to reimburse repackaged drugs dispensed by physicians.
- Use the Medi-Cal fee schedule payment amounts for pharmacy-dispensed drugs minus the dispensing fee.
- Establish a premium for physician-dispensed drugs in place of the dispensing fee.

Status

A final report was approved by CHSWC at the April 2005 meeting.

For further information ...



Working Paper: Paying for Repackaged Drugs under the California Workers' Compensation Official Medical Fee Schedule (RAND, 2005)



http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf

MEDICAL CARE

CHSWC Study on Spinal Surgery Second-Opinion Process

Background

Labor Code Section 4062 provides a procedure for a second opinion if the employer objects to the doctor's recommendation for spinal surgery in the workers' compensation system. The employer has ten days from the receipt of the report to object to the report of the treating physician recommending that spinal surgery be performed.

Description

Faced with the perception that back surgery was being recommended too frequently and possibly inappropriately by treating physicians, the Legislature enacted Senate Bill (SB) 228 in 2003. SB 228 created the Spinal Surgery Second-Opinion Process (SSSOP) specifically for the narrow purpose of allowing employers and employees an avenue to resolve disputes over the medical necessity of spinal surgery. SB 228 also adopted Labor Code Section 4610 covering utilization review (UR), thereby formalizing the process for employers' objections to medical treatment.

A provision of SB 228 requires the Commission on Health and Safety and Workers' Compensation (CHSWC) to conduct a study on the SSSOP and issue a report concerning the findings of the study and recommendations for further legislation.

CHSWC contracted with the University of California (UC), Berkeley, for an evaluation of the SSSOP to determine how the SSSOP was affecting surgery decisions and, in turn, how it was affecting injured workers' outcomes. Subsequently, CHSWC added a survey component with injured workers to the study. This report updates the August 5, 2005 SSSOP Interim Report, incorporates the results of the survey, and proposes two alternatives to address additional concerns raised.

Summary

Frequency of Spinal Surgery

The CHSWC Interim Report found that spinal surgery for occupational injuries was 60 percent to 110 percent more common in California than nationally, suggesting that the workers' compensation community's perception that surgeries were too frequent was correct. An update extending the data from that study finds that the frequency of spinal surgery peaked in 2001 and has since declined by 20 percent. However, the decline in spinal surgery began well before the adoption of SSSOP, and the trend did not change subsequent to its implementation.

Survey Methods

The survey compared the response of workers who were subject to SSSOP to a similar number of workers whose employers requested a second opinion, but because of missed deadlines or other regulatory missteps, the request for a second opinion was denied.

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PROJECTS AND STUDIES

Findings

Analysis by UC Berkeley finds that the concurrent adoption of UR made important parts of the SSSOP legislation unnecessary, including:

- Even though employers could not compel a second opinion when failing to complete SSSOP, workers reported high and very similar probabilities that they received a second opinion in both groups.
- A reason for random assignment of second-opinion evaluators is the concern that workers may be directed to evaluators who favor one side's position. However, it was observed that both groups responded that the second opinion disagreed with the original recommendation for surgery at very similar rates.
- Most telling, the probability that the worker actually got surgery was nearly identical between the two groups, despite the differences in the process.
- The only statistically significant difference is on the return-to-work (RTW) measure. Workers who did not go through the SSSOP were more likely to be back at work on the interview date. The most likely explanation for this difference is that SSSOP took longer to complete than second opinions achieved under an alternative process. Time from surgery to interview is an important determinant of the probability that a worker will be back at work on the interview date.
- Respondents in both groups reported similar change in their back condition. Those reporting improvement were almost entirely balanced out by those reporting their condition as worse than before the original recommendation for surgery.

Consequently, given UR regulations, there is little support for SSSOP affecting employers' ability to obtain a second opinion or avoid unnecessary surgery. In addition, SSSOP does not seem to affect workers' ability to get a fair evaluation.

On the other hand, recent court decisions have made clearer the role of SSSOP as an avenue for workers to dispute UR decisions. For workers, the SSSOP offers access to independent opinions rendered by high-quality physicians appropriately trained to render decisions on spinal surgery.

Recommendations

Recommendations include:

- SSSOP should be eliminated, so that spinal surgery issues are subject to the same UR and agreed medical evaluator/qualified medical evaluator (AME/QME) process as other treatment issues, or
- SSSOP should become solely the method for an injured worker to challenge a UR decision denying authorization for spinal surgery, while UR would be the sole method for an employer to object to a recommendation for spinal surgery on the grounds of medical necessity.

CHSWC recommendations for changes in legislative language covering SSSOP are meant to clarify the interaction with UR, limit unnecessary employer requests for SSSOP assignment, and highlight the role of SSSOP for resolving workers' disputes of UR rejections of surgery. Modifications to SSSOP statutory language could significantly streamline the medical review process, limit delays, and reduce costs while still controlling unnecessary surgeries.

Status

Completed.

PROJECTS AND STUDIES

MEDICAL CARE

Quality-of-Care Indicators: A Demonstration Project

Background

Ensuring that workers receive high-quality medical care would benefit both workers and employers. Better medical care would enable workers to make faster and more complete recoveries and reduce time off work which drives economic losses for injured workers. From the employers' perspective, a lack of a recovery can create a need for more medical care over time, thereby increasing medical costs. Reducing temporary disability (TD) and permanent disability (PD) would decrease economic losses for employees.

The Commission on Health and Safety and Workers' Compensation (CHSWC) demonstration project by RAND would attempt to suggest a mechanism for monitoring and improving the quality of care provided to injured workers.

Description

A recent landmark study by RAND found that across all healthcare settings, adults in the U.S. receive only about half of the care recommended by published literature and experts. Researchers on the project also found that quality-of-care problems are pervasive for back and joint injuries, for which a third to half of U.S. patients do not receive appropriate care. The poor quality care generally provided for back and joint injuries suggests that many injured workers probably also do not receive the appropriate care.

The goal of the project would be to demonstrate quality measurement in a workers' compensation setting and would involve four objectives:

- Develop quality-of-care indicators for one work-related disorder, carpal tunnel syndrome.
- Apply the quality-of-care indicators to patients from several medical networks.
- Publish an anonymous report card comparing quality across networks.
- Consider how to translate the project into an ongoing quality-monitoring system.

Status

At its April 6, 2006 meeting, the Commission approved moving ahead with phase one of the project, the development of quality-of-care indicators for carpal tunnel syndrome.

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PROJECTS AND STUDIES

MEDICAL CARE

Occupational and Non-Occupational Integrated Care (ONIC) Pilot Evaluation Project

Background

Group health care costs have been rising much faster than inflation and wages. Costs have been rising even faster for treatment of occupational injuries in the California workers' compensation system. This creates major financial challenges for employers, especially those in industries with already high workers' compensation costs. Furthermore, group health care and workers' compensation medical care are typically delivered through separate provider systems, resulting in unnecessary, duplicative, and contraindicated treatment, and inefficient administration.

Description

The California HealthCare Foundation (CHCF) awarded a planning grant to the Commission on Health and Safety and Workers' Compensation (CHSWC) to evaluate the potential savings to both occupational and non-occupational health costs from integrating all care under a single provider.

The project seeks to demonstrate that delivering both occupational and non-occupational care within an integrated provider network will reduce overall costs. The project team is collaborating with union and employer representatives to integrate occupational and non-occupational medical services for janitorial workers and to evaluate cost savings and improvements in health care delivery.

The union, the Service Employees International Union (SEIU) Local 1877, and employer, DMS Facility Services, have negotiated, created, and entered into a labor-management "carve-out" agreement (authorized by California workers' compensation law) to allow medical services to be delivered with fewer constraints, delays, and disputes than in the state workers' compensation system. The carve-out agreement includes an alternative dispute resolution (ADR) system as an alternative to the state system involving formal legal proceedings before a workers' compensation judge.

Savings are expected in medical utilization, indemnity costs, and administration. Medical services are expected to be delivered with fewer delays and disputes, enabling injured employees to recover more fully and return to work sooner.

Project Team

This project is being coordinated by researchers from the Survey Research Center at the University of California (UC), Berkeley, and CHSWC with funding from the CHCF. Also collaborating on the project are Kaiser Permanente and the California Workers' Compensation Institute (CWCI).

Status

In process.

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MEDICAL CARE

State Disability Insurance Integration Project

Background

State Disability Insurance (SDI) makes support payments to people in the labor force who have disabilities resulting from non-work causes that preclude working. Workers' compensation makes support payments to workers who are off work as a result of occupational-related disabilities. Substantial overlap between these two systems results in a significant amount of litigation. Also, the two systems try to accomplish the same objectives; however, the objectives are complicated by the need to identify the cause of disability between occupational and non-occupational origins.

The integration of the two systems into a single seamless system could reduce the costs to both workers and employers while improving outcomes.

Description

In November 2003, Senator Richard Alarcón requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) study the integration of SDI and workers' compensation temporary disability (TD) insurance.

The current study covers the years 2000 to 2002. The proposed study design would extend these data to include the years 2003 to 2005 and cover a broad range of issues important to labor and management. The study would highlight the following issues:

- How recent changes to overall workers' compensation benefits, particularly permanent partial disability, apportionment and medical treatment, have affected the fraction of occupational injuries (employer-paid) being shifted to SDI (employee-paid).
- How the recent run-up in workers' compensation premiums may have affected whether claims are made in workers' compensation or SDI. It has been observed that workers' compensation claims were declining rapidly over this period while SDI claims were increasing.
- Whether the differences in the benefit rates affected the system in which claims were filed. Over the period 1993 to 2005, benefit levels in workers' compensation and SDI changed periodically by significant amounts and generally at different times in each system.
- Whether serious occupational injuries, those involving permanent disability (PD), have consequences for social safety-net programs, such as Medi-Cal, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), etc.

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PROJECTS AND STUDIES

This would be the first study of its kind to estimate the effects of occupational injuries on the broad spectrum of social welfare and social insurance programs.

Findings

Preliminary findings in the current CHSWC study on the relationship between occupational injury rates and SDI suggest that SDI may be paying benefits for a substantial fraction of conditions that are actually work-related, at least during periods of high workers' compensation premiums.

Status

The final report on the integration of SDI and workers' compensation TD benefits is expected to be available in 2008.

PROJECTS AND STUDIES

COMMUNITY CONCERNS

Fraud

Background

The California State Auditor Report on Workers' Compensation Fraud in 2004 indicated that:

- Currently, over 30 million dollars a year are spent on anti-fraud activities.
- Baselines for measuring the level of fraud need to be developed to evaluate if anti-fraud efforts have reduced the overall cost that fraud adds to the system by as much or more than what is spent annually to fight it.
- Efforts to detect and prevent workers' compensation fraud need to be adequate.
- Cooperation between agencies to improve efforts to detect and prevent workers' compensation fraud is critical.

At the December 10, 2004 meeting of the Commission on Health and Safety and Workers' Compensation (CHSWC), William Zachry, Chair of the Fraud Assessment Commission (FAC), requested that CHSWC assist FAC with anti-fraud research.

On February 4, 2005, a working group met and decided that FAC and CHSWC would partner with agencies, including the California Department of Insurance (CDI), to put together a study design on how to measure workers' compensation medical-provider fraud and other types of suspected workers' compensation fraud in California and then would issue a request for proposal (RFP) on the study.

Funds were allocated by FAC in 2006 to conduct a study of medical overpayments and underpayments as a way to benchmark medical-provider fraud and develop detection and measurement methods. A request for proposal (RFP) was made public in May 2006, and proposals were submitted in June 2006. Navigant Consulting was selected to conduct the Medical Payment Accuracy Study.

CHSWC is conducting complementary studies that address suspected fraud and non-compliance, as well as the measurement of their magnitude and type, and relies on the partnership with the FAC for review of results and proposed recommendations.

Description

There are six objectives in the fraud studies:

- Determine the extent of workers' compensation medical overpayments and underpayments of all types, including suspected fraud, waste, abuse, and billing and processing errors in order to allocate the appropriate level of resources to detect and evaluate suspected medical-provider fraud in California. This study is carried out jointly by the FAC and CHSWC.

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PROJECTS AND STUDIES

- Estimate the percent or number of uninsured employers.
- Identify uninsured employers operating in the underground or “gray” economy.
- Determine underreporting of injuries.
- Estimate the degree of premium avoidance by insured employers.
- Estimate the degree of misreporting of split class codes, when lower-wage worker payrolls are reported as higher-wage ones in order to take advantage of the lower premiums in the higher-wage class codes.

Roster of Fraud Studies and Delivery Dates

- Workers’ Compensation Medical Payment Accuracy Study
(Navigant Consulting, Catherine Sreckovich, Project Director, and Paula Douglass, Project Manager, 2008)
- Uninsured Employers Matching Project.
(UC Berkeley, Frank Neuhauser, in process)
- Uninsured Employers in the Underground or “Gray” Economy
(UC Berkeley, Frank Neuhauser, in process)
- Under Reporting Injuries
(Boston University, Leslie Boden, in process)
- Premium Avoidance by Insured Employers.
(UC Berkeley, Frank Neuhauser, 2007)
- Misreporting Split Class Codes
(UC Berkeley, Frank Neuhauser, 2007)

Workers’ Compensation Medical Payment Accuracy Study

About 50 percent of California’s workers’ compensation benefits paid in 2005 were for medical costs. Employers in California continue to experience higher costs for workers’ compensation claim medical care than employers in most other states. Identification of medical-provider overpayments and underpayments of all types, including fraud, waste, abuse, and billing and processing errors, could help to reduce costs.

The purpose of the study is to:

- Determine the extent of workers’ compensation medical overpayments and underpayments of all types in order to allocate the appropriate level of resources to detect and evaluate suspected medical-provider fraud in California.
- Develop baseline measurements for medical overpayments and underpayments of all types including suspected fraud, waste, abuse, and billing and processing errors.

PROJECTS AND STUDIES

The approach of the study:

- Identifies the extent of workers' compensation cases where medical provider overpayments and underpayments of all types exist, including the following cases:
 - Mis-diagnosis.
 - Documentation errors.
 - Over-billing.
 - Medically unnecessary services.
- Review a sample of workers' compensation bills and supporting documentation for medical services paid by insurance carriers and claims administrators, as well as conduct a survey of injured workers to verify that they received these services.

Status Update:

- Navigant has selected a random sample of injured workers from the Division of Workers' Compensation (DWC) Workers' Compensation Information System (WCIS).
- From the sample, Navigant will request data elements on medical bills from insurance carriers, self-insured employers, and third-party payors for the period of October 1, 2005, through September 30, 2006. The data elements include date of bill, date of injury, discharge date, and total amount paid per bill, etc.
- Letters have gone out to insurance carriers and third-party payors specifying the data elements requested for the study.

Next Steps: Medical Data Review and Audit

Processing Review includes:

- Selecting a random secondary sample of 1,000 injured worker cases with paid medical bills during the study period from the data received by the insurance carriers. This will form the basis of a medical services bill database.
- Conducting an electronic processing review of all medical bills to identify aberrant billing practices, payment of duplicate bills, and whether medical services billed are paid correctly according to the workers' compensation fee schedule.

Detailed Review and Audit includes:

- Selection of the tertiary sample of 1,000 medical bills from the medical services database.
- Manual audit and review of medical bills and supporting documentation to verify whether medical services billed and paid were correctly coded and consistent with the American College of Occupational and Environmental Medicine (ACOEM) guidelines given the injured workers' diagnosis, etc.
- Conducting an electronic contextual review three months before and after the date of payment to determine whether services on the sample of medical bills are consistent with other medical services paid to the injured worker.
- Conducting a survey of the injured workers to verify that the injured worker received services.

The joint FAC/CHSWC study is due by March 2008.

PROJECTS AND STUDIES

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Uninsured Employers Matching Project

Illegally uninsured employers impose substantial costs on the State of California, its employers and workers, totaling a net loss of over \$100 million in the last five years. The DWC Claims Unit paid out an average of \$22.6 million per year over the past five years from the Uninsured Employers Benefits Trust Fund (UEBTF). Recoveries and penalties averaged only \$2.3 million per year over this period. Currently, the funding for UEBTF comes from an assessment on employers, costing approximately \$37 million per year.

The purpose of the study is to:

- Permit estimation of the percent of, number of, employment at, and premium avoided by:

PROJECTS AND STUDIES

- Targeted industry employers out of compliance.
- All employers out of compliance.
- Demonstrate that an ongoing matching program is feasible for improved compliance efforts.

The impact of the study will:

- Protect workers from lack of workers' compensation coverage.
- Identify illegally uninsured employers and bring them into compliance.
- Reduce the cost to the State's UEBTF.
- Reduce the need of workers who are injured while working for illegally uninsured employers from using other social and benefit systems.
- Level the economic playing field for insured employers.
- Protect the State from increased liability faced by UEBTF.
- Demonstrate the potential of an enforcement data-matching program.

The approach of the study:

- Updates a successful compliance pilot conducted between CHSWC, the Workers' Compensation Insurance Rating Bureau (WCIRB), the Department of Industrial Relations (DIR)/Division of Labor Standards and Enforcement (DLSE), and the Employment Development Department (EDD).
- Matches EDD wage and employment data to policy coverage information maintained by WCIRB.
- Uses a sample of 2,000 employer records.
- Has WCIRB notify apparent lapsed or uninsured employers by letter requesting an explanation for apparent lapse or lack of insurance coverage.
- Has WCIRB provide DLSE with names of employers who do not respond or adequately demonstrate insurance coverage; DLSE will then follow up with a letter (Form 601).
- Has DLSE conduct an on-site inspection for employers who fail to respond or adequately demonstrate insurance coverage.
- Has DLSE assess and collect appropriate penalties.

PROJECTS AND STUDIES

Uninsured Employers Operating in the Underground or “Gray” Economy

Underground or “gray” economy employers may represent a major fraction of the uninsured employer population. These employers may only be detected during the process of obtaining jurisdiction for UEBTF⁴⁹ workers’ compensation cases.

The purpose of the study is to:

- Estimate the employers uncovered for workers’ compensation and reporting to neither the workers’ compensation nor the EDD system.
- Estimate the proportion of injuries in the “gray” economy.

The approach of the study is to:

- Analyze employers with claims in UEBTF who are uninsured but who are reporting employment to EDD.
- Calculate the percentage of UEBTF uninsured claims where employers did not report employment to EDD.
- Estimate uninsured employers in the “gray” economy.

Underreporting of Injuries

Underreporting of occupational injuries and illnesses may occur in response to increases in premium costs. Such underreporting is often proposed as a partial explanation for the continuing decline in occupational incidence rates.

The purpose of the study is to:

- Describe the proportion of injuries and illnesses that are underreported, and the demographic, work and employer characteristics of underreported injuries and illnesses.
- Describe the nature of non-reported injuries/illnesses and the reasons for non-reporting.
- Provide improved estimates of incidence and underreporting for all cases involving more than three days off work, or permanent partial disability.

The approach of the study is to:

- Use individual workplace injury reports to workers’ compensation agencies and Bureau of Labor Statistics (BLS) data to measure underreporting. Specifically, the research procedure is to:
 - Collect BLS and worker’s compensation injury data.
 - Use both sources to improve injury estimates:
 - Match individual injury records.
 - Get number of injuries reported to either
 - Estimate number reported to neither.

⁴⁹ UEBTF is also still commonly called the Uninsured Employers Fund (UEF).

PROJECTS AND STUDIES

Participating states were California, Minnesota, New Mexico, Oregon, Washington, West Virginia, and Wisconsin.

The data sources for this study are:

- State Workers' Compensation Databases:
 - Focus on lost-time injuries.
 - First and subsequent reports.
- BLS Annual Survey of Injuries and Illnesses:
 - Stratified probability sample of employers.
 - Based on OSHA 300 injury reports.
 - Provides state and national estimates of non-fatal injury incidence.

Preliminary Findings:

- Under the most conservative assumptions, 75 percent of California injuries with more than eight days off work are reported to WCIS.
- Using less conservative assumptions, 58 percent of these California injuries are reported.
- California's reporting rate falls in the middle of the other states studied.

Premium Avoidance by Insured Employers

In the absence of auditing or accountability, an employer seeking to minimize insurance costs has incentives to misreport payroll for different types of employees. If employers do misreport payroll, it would be expected to be more prevalent during periods when costs are high. Consequently, employers would report less payroll as workers' compensation costs as a percentage of payroll increase.

The purpose of the study is to:

- Examine the reporting behavior of employers' reported exposure compared to premium rates in order to determine possible trends and relationships in underreporting/misreporting.
- Examine self-insured employers' reporting behavior for any differences with insured employers.
- Describe reporting behaviors in low-risk, low-premium classes and high-risk, high-premium classes, at different premium rate levels in history.
- Determine the extent of underreporting.

The approach of the study is to analyze:

- Changes in reported exposure and premium rates over time, by different employers and by different risk and premium classes, using WCIRB data.

PROJECTS AND STUDIES

- Whether misreporting changes the relationships between exposure and premium rates, by comparing reported wages from the Current Population Survey (CPS), a Census Bureau survey conducted for BLS, with WCIRB reported payroll exposure.
- The extent to which experience modifications (Ex-mods) are correct for misreporting.

Findings

From 1997 to 2002 (the most recent data available), there was a substantial underreporting of premium by employers. It ranges from about 10 percent in 1997 when rates were substantially lower to an excess of 20 percent in 2002 when rates were several times higher than 1997. This amounts to about \$30 billion of underreported payroll in 1997 to around \$100 billion in payroll in 2002.

Between \$30 and \$100 billion of payroll is underreported over this period for employers that should be insured for workers' compensation insurance. This includes the underground economy and underreporting by employers that do have insurance. The result is that premium rates are likely to be unfairly high for honest employers; employers probably face rates two to five times higher in the high-risk class codes than they would face under full reporting. This result also affects the competitiveness of honest employers; not only are they facing higher premium rates, but they are also competing with employers in fields where workers' compensation costs are a very important part of competitive contracting. There are only limited incentives for insurers to accurately monitor underreporting, and underreporting is probably offset by the higher premium rates that are observed.

Split Class Codes

There is an incentive to save on workers' compensation costs by misreporting of payroll for different "class codes" of workers in class codes specifically designed for higher-wage workers in the construction industry. If misreporting of class codes is prevalent, honest employers are subsidizing dishonest employers. If misreporting is prevalent, honest employers will face higher premiums for their higher-wage employees and lower-wage employees.

The purpose of the study is to:

- Determine whether employers are misreporting lower-wage workers in class codes specifically designed for higher-wage workers.
- Determine the level that employers with high-wage workers are subsidizing the workers' compensation costs to employers for low-wage workers.

The approach of the study is to:

- Evaluate the payroll reporting by firms against payroll reporting by individual employees, using WCIRB data and data from the CPS.
- Analyze the differences, if any, between reported aggregate payroll relative to true payroll in the split classes (high-wage vs. low-wage).
- Examine data for all monthly CPS surveys for the years 1997-2004 and 2005, if available.

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Findings

Only about two-thirds of wages are apparently being reported in low-wage classes. Almost 20 percent more wages than expected are reported in high-wage classes. There is consistent misreporting of a significant fraction of low-wage payroll in the high-wage, low-premium rate classes.

Through these research studies, CHSWC, FAC and the Department of Insurance (CDI) will partner to:

- Develop baseline measurements to detect the level of fraud in the workers' compensation system.
- Coordinate efforts to detect and prevent workers' compensation fraud.
- Potentially reduce the overall cost that fraud adds to the workers' compensation system.

These research studies will benefit all members of the workers' compensation community.

Status

Ongoing.

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COMMUNITY CONCERNS

Uninsured Employers Benefits Trust Fund

Background

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710 through 3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

Description

UEBTF is administered by the director of the Department of Industrial Relations (DIR). Funding comes from assessments on all insured and self-insured employers annually, from fines and penalties imposed on illegally uninsured employers when they get caught, and from recoveries from illegally uninsured employers when UEBTF has paid benefits and is able to obtain reimbursement from responsible employers.

Concerns have been raised about UEBTF from both employers and workers. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers. Workers are concerned about the difficulties in obtaining benefits from UEBTF.

Findings

Findings of the study include:

- The identification and location of uninsured employers along with proper enforcement would reduce the costs to stakeholders of the workers' compensation system.
- The surest way to reduce the long-term cost of UEBTF is to reduce the prevalence of illegally uninsured employers. In the CHSWC 1998 study on illegally uninsured employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured.
- Labor Code Section 90.3 provided for a program to identify illegally uninsured employers. Due to lack of resources, this program was never implemented.
- There is a lack of knowledge of UEBTF and civil procedure.

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PROJECTS AND STUDIES

- Unrepresented applicants lack easy access to UEBTF. Of some 1800 claims filed during the past fiscal year, only four or five were filed by unrepresented applicants according to UEBTF. Injured workers will probably continue to require attorneys if they wish to pursue any of the additional remedies available against illegally uninsured employers.
- Applicants' attorneys have consistently complained about the many technicalities and formalities with which they must comply to file a valid claim. The process cannot be greatly streamlined because it is necessary to build a case that can ultimately lead to a civil judgment against the illegally uninsured employer.
- Medical providers incur increased losses on liens while waiting to get paid:
 - UEBTF does not get involved early enough in the claims.
 - According to UEBTF, it learns of a claim an average of 10 months after the injury.
 - Frequently, the claim is not promptly pursued by the injured worker because the employer pays bills directly for a while.
 - Other times, the injured worker does without treatment until a critical situation arises or he or she initially received treatment from Medi-Cal or another program.

Recommendations

Recommendations include:

- Publicize and enforce the workers' compensation coverage requirement:
 - Continue and expand efforts to ensure that all employers comply with the requirement to provide workers' compensation coverage.
 - Conduct outreach to workers, employers, medical providers, clinics, and social service programs regarding workers' compensation coverage requirements and reporting of uninsured employers.
 - Establish and fund a systematic enforcement of coverage program.
- Provide workers' compensation coverage information:
 - Continue the effort to provide convenient and rapid public access to workers' compensation insurance coverage information. Currently, 26 states provide proof of coverage verification online.
 - Ensure that proof of coverage data are presented in a standardized, uniform format so as to be easily utilized.
 - Provide rapid access to coverage information without processing written requests to the Workers' Compensation Insurance Rating Bureau (WCIRB).
 - Ensure that non-confidential information on Division of Labor Standards Enforcement (DLSE) investigations is publicly available and accessible online.
- Improve methods to help workers access benefits from the UEBTF:
 - Develop a simplified guide on the UEBTF claims process for injured workers.
 - Educate Information and Assistance (I&A) Officers on UEBTF procedures to improve access for injured workers.

PROJECTS AND STUDIES

- Encourage reporting of suspected illegally-uninsured employers:
 - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, require medical providers to report suspected uninsured employers to the California Department of Insurance (CDI) on the FD-1 fraud form.
 - Require UEBTF to report suspected uninsured employers to the Department of Insurance (CDI) and other enforcement agencies.
 - Establish a “hotline” number for employees, employers and others to report uninsured employers and trigger an investigation of coverage by DLSE.
- Protect and improve UEBTF:
 - Improve UEBTF procedure while preserving the authority of UEBTF to recover funds from the illegally uninsured employers.
 - Create a presumption of earnings, not to exceed the average wage of the occupation, so that UEBTF is protected from workers’ uncorroborated claims of weekly wages that were not reported by the employer.
 - Research ideas to measure performance, identify double billing, and identify opportunities for earlier identification of likely UEBTF claimants.
- Further educate the workers’ compensation community:
 - Although the Division of Workers’ Compensation (DWC) provides ample information online on UEBTF guidelines, the process is still complicated. I&A Officers may benefit from additional training on advising workers on how to handle the UEBTF claim process.
 - Education for practitioners would facilitate their handling of basic civil procedures.
 - I&A officers, attorneys and the community would benefit from briefings regarding the UEBTF process. While the UEBTF process is necessarily different from the process of submitting an insured claim, it can be manageable if the participants understand the requirements.

Next Steps

- Develop legislative language as determined.
- Create a roundtable for discussion on UEBTF issues.

Status

Completed. At its February 23, 2007 meeting, the Commission members approved the release of the report to the public.

For further information...

-  CHSWC Report on the Uninsured Employer Benefits Trust Fund.
-  Check out: <http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf>

COMMUNITY CONCERNS

CHSWC Response to Community Concerns Regarding DWC Workers' Compensation Audits

Background

The 1989 California workers' compensation reform legislation established an audit function within the Division of Workers' Compensation (DWC) to monitor the performance of insurers, self-insured employers, and third-party administrators to ensure that industrially injured workers were receiving proper benefits in a timely manner. The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of workers' compensation benefits to industrially injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.

Concerns about the DWC Audit

Mark Gerlach, a consultant for the California Applicants' Attorneys Association, raised several concerns about the current audit process based upon the 2005 Audit Report issued by the DWC:

- One of the advantages of the new audit process was that it was intended to allow more audits to be done. It was felt that DWC could no longer do full audits given limited resources, but by doing mini-audits, more audits could be done. However, in 2003, DWC conducted 70 audits; in 2004, it conducted 48 audits; and in 2005, it conducted 46 audits.
- The number of files that were audited has been reduced, but the number of violations has not been reduced.
- The new audit process was expected to create better results by possibly getting larger penalties against employers.
- The DWC audit process looks at several different issues, including unpaid compensation, first payment of temporary disability (TD), and first payment of permanent disability (PD). Concern was expressed that performance in these areas has not improved. In 2005, \$623,000 in unpaid compensation was found in 480 claims out of the 3,000 indemnity files audited. If these numbers are extrapolated to the entire workers' compensation system, there could be \$68 million dollars unpaid.
- For first payment of TD, the standard to pass the profile audit review (PAR) exam in 2003 was that 24.7 percent were late but passed the exam; in 2006, it was 26 percent. For first payment of PD, in 2003, it was 14.03 percent, and in 2006, it was 15.83 percent. These are statistics for those firms making late payments but still passing the PAR and therefore not getting any penalties and not getting another audit, even though there were late payments.
- The problems evidenced in the audits have been continual since they were first started in the early 1990s; moving to the mini-audit process has not improved the system. It is important to look into how to build in the proper incentives/disincentives against egregious behavior of claim administrators.

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PROJECTS AND STUDIES

A Preliminary Analysis of Audit Concerns

Frank Neuhauser of the University of California (UC) Berkeley performed a brief analysis for the Commission on Health and Safety and Workers' Compensation (CHSWC) of the DWC audit process. Mr. Neuhauser's findings are based on DWC Audit Reports from audit years 2001-2005.

Findings include:

- PAR audits appear to be accomplishing the objective of improving performance of claims adjusting locations.
- Performance does appear to be improving particularly among the most problematic claims administrators.
- The number of locations audited appears low despite the streamlining of the audit process introduced by reform legislation.
- Similarly, the number of claim files reviewed is low.
- Workload per audit should have decreased, due to fewer files required per audit (up to 59 files per audit, down from up to 138 per audit). Consequently, the number of audits should have increased.
- The recent reforms to workers' compensation made auditing files more complex due to overlapping statutory rules.

Recommendations

Recommendations include:

- DWC Audit and Enforcement Unit should track and report on the frequency and average underpayment of compensation for the randomly selected audits at randomly selected locations. This would allow policy makers to evaluate trends and performance of the system.
- In collaboration with the Audit Unit, CHSWC could determine if the indemnity trends are a result of the changes in the benefit levels or increases in the amount of payment due.
- DWC should adjust staffing levels commensurate with performance requirements of the system.
- All locations should be audited at least once every five years. This would require DWC to audit approximately 100 locations per year.
- Conduct a more complete analysis of the audit process, which would require data similar to that obtained with the cooperation of DWC/Audit Unit during the CHSWC study. Specifically, data on all randomly selected files at randomly selected locations would be needed. This would involve only the randomly selected locations, and within those locations, only the results on the files randomly selected for the initial PAR audit.
- CHSWC should host an Audit Roundtable with the worker's compensation community to assess further what is working and what is not.

Status

Completed.

CHSWC ISSUE PAPERS

Public Access to Workers' Compensation Insurance Coverage Information and Data Matching for Enforcement

Background

In April 2005, Assembly member Keith Richman requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) prepare an issue paper regarding public access to workers' compensation insurance coverage information or proof of coverage (POC) as part of an enforcement effort at compliance.

Labor Code 90.3 provides for a targeted program of workers' compensation insurance-coverage enforcement that was never implemented. In an effort to demonstrate how that part of the Labor Code could be implemented, CHSWC conducted a pilot study in 1998 to match records from the Employment Development Department (EDD) and the Workers' Compensation Insurance Rating Bureau (WCIRB) of California. The pilot study found a significant number of uninsured employers and recovered penalties in excess of the costs of the pilot. When Assembly member Richman requested an issue paper

on public access to coverage information as part of an enforcement effort at compliance, this data matching statute, as well as the CHSWC pilot, was included in the discussion because the data-matching enforcement program has been created but is not financed or operational.

Insurance Codes 11751.5 and 11752.5(d) require interagency cooperation with data requests for the purposes of enforcing compliance, as well as cooperation with data requests from the licensed rating agency. However, there is no Labor Code that requires cooperation with data requests from the licensed rating agency (i.e., WCIRB); rather, the Department of Industrial Relations (DIR) relies on the statutory authority of the Department of Insurance (CDI) to obtain cooperation for data requests.

Many states currently permit public access to workers' compensation data for verification purposes. As of February of 2007, more than half (28) of the states in the nation had an online workers' compensation insurance verification tool, and not one state reported any constituencies that were against its use or existence.⁵⁰ Likewise, many states conduct ongoing data matching for the purposes of enforcement and with results of increased compliance and increased penalties.

Subsequent to the drafting of this report, amendments to Assembly Bill (AB) 510 (Richman) were proposed and AB 1883 (De La Torre) was introduced in 2006. In 2007, the two issues of public access and data matching were separated into independent bills to avoid confusing different but related activities. Senate Bill (SB) 869 (Ridley-Thomas) addressed data matching, and AB 507 (De La Torre) addressed public access to coverage verification via a website.

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⁵⁰ Most, if not all, states provide a disclaimer about the accuracy of the data on their websites, as any errors or corrections may be the responsibility of several sources. Not one state reported any complaints about the accuracy of the data or any complaints about the existence of the websites; however, it should be emphasized that the study did not specifically focus on determining the level of accuracy of states' websites.

PROJECTS AND STUDIES

Description

WCIRB is the only current source of workers' compensation verification data; it acts as the "statistical agent" and licensed rating agency of CDI. Workers' compensation insurance policy data are supplied by insurers to WCIRB using a "WCPols" data file format developed by the International Association of Industrial Accident Boards and Commissions (IAIABC). Current practice in California does not allow the supply of coverage data from insurers directly to the Department of Industrial Relations (DIR). DIR and CDI rely on WCIRB to provide coverage data upon request. At present, POC information is only available to "parties to a claim," that is, once litigation has begun.

The public at large does not have any mechanism by which to verify if an employer is covered by workers' compensation insurance. To date, WCIRB's mainframe system does not allow for easy conversion to a relational database; therefore, making queries for lapsed coverage or sorts by employer identification number or other unique identifier is a manual process as opposed to an automated one.

The Division of Labor Standards Enforcement (DLSE) is responsible for verifying POC, but they do so as part of all the wage and labor standards laws that are enforced. DLSE neither singles out insurance coverage for specific enforcement actions nor uses a data-driven methodology to identify uninsured employers. DLSE has primitive access to WCIRB records through an unreliable phone modem but cannot download a database or otherwise manipulate the data for investigative purposes. DLSE has access only to simple yes/no queries, and these queries must be manually entered one at a time.

Findings

There are many advantages to improved public access to workers' compensation data:

- Better access to POC should change the behavior of some employers who believe the risks of going without coverage are worth the savings until or if they are ever identified; improved access is an added deterrent.
- Workers would be protected from the lack of workers' compensation coverage; employees and/or their representatives can verify that an employer is covered for workers' compensation above and beyond the law.
- The State of California and WCIRB would save time and money on resources spent handling inquiries and requests for data via forms, letters and phone calls. While the State does not directly provide such information, it would still save additional resources spent on handling misdirected inquiries and requests.

There are also many advantages to a more robust program of enforcement through data matching including:

- The State could identify illegally uninsured employers more easily, which could reduce the Uninsured Employers Benefit Trust Fund (UEBTF) payout of over \$20 million each year, saving employers from such surcharges to compensate for the "free riders."
- Insured employers are currently placed at a competitive disadvantage with respect to uninsured employers. A POC database could level the economic playing field for insured employers by identifying illegally uninsured employers and bringing them into compliance.
- Taxpayer money could be saved by reducing the need for injured workers to use other social and benefit systems because the employer is illegally uninsured.
- Workers would be safer, knowing that enforcement of workers' compensation coverage keeps employers in all sectors of the economy in compliance with the law.

PROJECTS AND STUDIES

Recommendations

Recommendations for Public Access

Recommendations for public access include:

- Determine the desirability and legality, in particular given the referenced case law with respect to the confidential and proprietary nature of policy effective dates, of making POC data available to the public in California, regardless of whether or not someone is a party to a claim.
- Determine whether WCIRB should be mandated to make public access of POC via the Internet, or whether WCIRB will deem the service valuable enough to WCIRB members and the related workers' compensation community to host it on its own.
- Determine how such public access will be funded. The costs of hosting an online public-access database may be recoverable, especially when manual paper requests currently require \$8 administrative fees to cover overhead (\$8 x 38,000 requests equals \$304,000 per year). Public access may reduce many of these paper requests and lower costs.

Recommendations for Enforcement

Recommendations for enforcement include:

- That WCIRB adopt what many other states are doing by providing daily POC database downloads so that the State may carry out its mandate to enforce employer compliance by conducting a program of matching EDD records with WCIRB records.
- That EDD provide monthly database downloads of employer-identification data, including federal employer identification numbers (FEINs), business names and addresses, so that the State may carry out its mandate to enforce employer compliance by conducting a program of matching EDD records with WCIRB records.
- That DLSE be provided with funding to create and conduct an ongoing data-matching program to identify uninsured employers, contact uninsured employers, assess penalties, and bring the uninsured into compliance. Such a program may be funded by fines once started, with most of the penalties returned to UEBTF. Such a program should create periodic reports on results, including fines levied, to CDI.

Status

CHSWC approved the release of this study in February 2006. CHSWC is monitoring the launch of additional websites dedicated to online coverage verification services.

For further information...

 CHSWC Report: "Workers' Compensation Compliance and Proof of Coverage," February 2006. <http://www.dir.ca.gov/CHSWC/Papers/ProofOfCoverage2006.pdf>

 CHSWC Report: "CHSWC Recommendations to Identify Illegally Uninsured Employers and Bring Them into Compliance," 1998. <http://www.dir.ca.gov/CHSWC/uefintro.html>

CHSWC ISSUE PAPERS

Tax Status of Self-Insured Groups

Background

All employers except the State are required to secure the payment of workers' compensation by either insurance or self-insurance, according to Labor Code Section 3700. Prior to 1993, private companies and public entities were allowed to self-insure. Private companies could only self-insure if they met the qualifications individually. Public entities could self-insure either individually or under pooling arrangements known as Joint Powers Authorities (JPAs).

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In 1993, the Legislature authorized the establishment of private industry self-insured groups (SIGs) for workers' compensation. The amendment was part of Chapter 121 of Statutes of 1993, which was one piece of a major workers' compensation reform package passed by the Legislature in that year.

According to the Department of Industrial Relations (DIR) Office of Self-Insurance Plans, "During 2001, group self-insurers began forming in the private sector for the first time. As of November 3, 2005, there were 22 self-insured groups listed on the roster of the Office of Self-Insurance Plans."⁵¹ SIGs are an established and increasingly available alternative for employers to comply with the obligation to secure the payment of compensation. As SIGs have begun to proliferate, an unexpected tax consequence is becoming evident.

Description

On March 23, 2006, Senator Abel Maldonado requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) evaluate issues of contributions, reserves, and taxation, and the possible need for tax exemption for SIGs formed under Labor Code Section 3700 et seq.

In response to this, CHSWC prepared an issue paper on the tax status of SIGs. The paper includes a discussion of the tax consequences of SIGs and makes recommendations regarding their taxation.

CHSWC Findings and Recommendations

SIGs are placed at an unnecessary disadvantage by the existing tax effects. The Legislature authorized SIGs as a cost-saving alternative for employers, but the benefits of that alternative are limited by taxation at a rate higher than the rate for conventional insurance. The current tax structure creates incentives that are contrary to the safety and security of both employers and workers. CHSWC recommends relieving the disproportional tax burden on SIGs.

Three approaches appear to be worthy of consideration:

- Tax exemption. Exemption from state income taxation would allow more of the members' contributions to be devoted to securing the payment of compensation to injured workers. This solution would provide the greatest savings to employers and the lowest risk that employers would be unable to meet assessments required to maintain the solvency of the SIG. This solution is consistent with the intention of the State in establishing the program. This solution also entails the simplest legislative language.
- Taxation equivalent to insurance companies. One might argue that SIGs are acting like insurance companies and should be taxed under the same 2.35 percent premium tax as

⁵¹ <http://sip.dir.ca.gov/GroupRoster.pdf>

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insurance companies. There are substantial differences between SIGs and insurance companies, however, such as insurance companies' requirements for and accounting of capital and surplus and how the companies are licensed and regulated. Furthermore, this alternative is complex and possibly would require an amendment to the State Constitution. This does not appear to be the best choice.

- Deductibility of additions to reserves and payment of dividends. SIGs could be allowed to calculate taxable income for the California franchise tax according to Subchapter L of the Internal Revenue Code. This solution would not have all of the advantages of tax exemption; however, it would relieve the worst of the problems under existing law.

Status

CHSWC approved the release of the paper at the April 6, 2006 Commission meeting.

For further information...

-  CHSWC "Issue Paper on Tax Status of Self-Insured Groups (SIGs)," April 2006.
-  Check out: <http://www.dir.ca.gov/CHSWC/Reports/SIG-TaxStatus.pdf>

PROJECTS AND STUDIES

OCCUPATIONAL SAFETY AND HEALTH

Worker Occupational Safety and Health Training and Education Program

Background

Labor Code Section 6354.7 establishes a Workers' Occupational Safety and Health Education Fund (WOSHEF) for the purpose of establishing and maintaining a statewide worker-training program. The Commission on Health and Safety and Workers' Compensation (CHSWC) has developed a Worker Occupational Safety and Health Training and Education Program (WOSHTEP) to raise awareness and promote injury and illness prevention through training and dissemination of materials by a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

Description

CHSWC has taken the following steps in implementing this program:

- **Prepared a Survey of State, National and International Worker Health and Safety Training Programs.** This survey includes websites and descriptions of available programs and lists courses for each program. The survey can be found as a link on CHSWC's website.
- **Created a labor-management Advisory Board** to oversee program activities that meets semi-annually. The WOSHTEP Advisory Board consists of employers and workers or their representatives who assist in guiding development of curricula and broadening partnerships with worker-based organizations, labor studies programs, employers, insurance companies, and other stakeholders in the workers' compensation community.
- **Conducted needs assessments with stakeholders that will continue on an ongoing basis.** Needs assessments are conducted with workers and their representatives, employers, insurers, community-based organizations serving hard-to-reach workers, and potential training providers.
- **Designed a core curriculum** and supplemental training materials based on the results of the needs assessment. This 24-hour curriculum is aimed primarily at "workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on a health and safety committee or serving as a designated safety representative." Participants who complete six core modules and three supplemental modules become Worker Occupational Safety and Health (WOSH) Specialists.
- **Developed a training-of-trainers curriculum to train a statewide network of trainers as mandated by the statute.** Training-of-trainer sessions were held in northern and southern California in 2005, 2006 and 2007, and network trainers have been co-teaching with mentor trainers from the Labor Occupational Health Program (LOHP) at the University of

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California, Berkeley, and the Labor Occupational Safety and Health (LOSH) Program at University of California, Los Angeles.

- **Created Small Business Resources** to target very small employers who do not have the resources to send employees to 24 hours of training. Materials have been developed for the small business restaurant industry, and generic health and safety materials have been developed that can be used by any small business in any industry.
- **Created health and safety programs for young workers, including a Young Worker Leadership Academy.**
- **Established resource centers** that house and distribute training materials and additional health and safety resources. These resource centers are located at LOHP and LOSH.
- **Prepared a Multilingual Health and Safety Resource Guide to Worker Training Materials on the Web for WOSHTEP.** This Guide, prepared by LOHP, is a collection of worker training materials, such as fact sheets, checklists and other educational resources that are available. It can be found as a link on CHSWC's website, and information from it can be printed to distribute to workers participating in workplace injury and illness prevention programs.

Next Steps

CHSWC has assessed fees to California workers' compensation insurance carriers pursuant to Labor Code Section 6354.7 for the next fiscal year. Next steps include:

- **Continued WOSH Specialist training by LOHP and LOSH** in a variety of industries for participants in diverse occupations and work settings. Courses are taught through community colleges, at employers' places of business, and in many other settings. Courses are taught in English, Spanish and Chinese.
- **Continued Refresher trainings or courses** to update WOSH Specialists on health and safety information to assist them in carrying out activities they choose to do in their workplaces after completion of the WOSH Specialist training.
- **Continued Awareness sessions** drawing on the WOSH Specialist curriculum to help promote awareness of and interest in the WOSH Specialist course. These trainings are presented in English and Spanish.
- **Ongoing development of a state-wide network of trainers** who will partner with mentor trainers from LOHP and LOSH to deliver WOSH Specialist courses.
- **Geographic expansion to the Central Valley and other areas of Northern and Southern California.** The University of California, Davis' Western Center for Agricultural Health and Safety has been identified as a Central Valley partner. In 2008, the Center will hire staff to conduct WOSHTEP activities under the direction of LOHP WOSHTEP staff. Expansion in southern California will include San Diego.
- **Dissemination of health and safety material for small businesses in any industry.**
- **Development of small business health and safety training materials and an outreach and training plan** for small businesses in the janitorial industry.
- **Ongoing Young Worker Leadership Academies and young worker programs.**
- **Additional outreach to ensure wider use of Resource Centers in Northern and Southern California** and wider distribution of multilingual resource training materials.
- **Ongoing evaluation of WOSHTEP** to identify accomplishments and outcomes.

PROJECTS AND STUDIES

For further information...

- 📖 CHSWC Report: "Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List" (LOHP, 2005).
- 📖 CHSWC Report: "California's Worker Occupational Safety and Health Training and Education Program: A Model for Other States." (IAIABC Journal, Spring, 2005 Vol. 42, No. 1.)
- 📄 WOSHTEP Advisory Board Annual Reports, 2004, 2005, 2006 and 2007
 - 2007 WOSHTEP Advisory Board Annual Report
http://www.dir.ca.gov/Chswc/Reports/WOSHTEP_AnnualReport2007.pdf
 - 2006 WOSHTEP Advisory Board Annual Report
<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2006AdvBrdAnnualReport.pdf>
 - 2005 WOSHTEP Advisory Board Annual Report
<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2005AdvBrdAnnualReport.pdf>
 - 2004 WOSHTEP Advisory Board Annual Report
<http://www.dir.ca.gov/CHSWC/WOSHTEPReportNov2004.pdf>
- 📄 Check out: <http://www.dir.ca.gov/chswc/WOSHTEP.html> for the WOSHTEP brochure and other WOSHTEP materials.

PROJECTS AND STUDIES

OCCUPATIONAL SAFETY AND HEALTH

California Partnership for Young Worker Health and Safety

Background

Over the past five years, an average of 48 teens have died each year in the United States as a result of work-related injuries, and an estimated 160,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

Description

The Commission on Health and Safety and Workers' Compensation (CHSWC) continues to put California in the forefront as a nationwide leader in protecting and educating teen workers. Over the past several years, CHSWC has sponsored and convened the California Partnership for Young Worker Health and Safety, established by Assembly Bill (AB) 1599 in September 2000. The Partnership is coordinated by the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley, with key support from the Labor Occupational Safety and Health Program (LOSH) at the University of California, Los Angeles (UCLA), and members of the Partnership. In addition to serving California, these efforts have inspired similar activity throughout the United States.

The California Partnership for Young Worker Health and Safety is composed of agencies and organizations dealing with youth employment and education issues, as well as others who can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, governmental agencies and others.

The purpose of the Partnership is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce.
- Foster awareness and skills in health and safety that will remain with youth throughout their working lives and allow them to take an active role in shaping safe work environments.
- Promote positive, healthy employment for youth.

Status

During the past year, the Partnership met three times. In addition, subcommittees held telephone meetings to develop and implement the following activities:

- **Promote the ninth annual California Safe Jobs for Youth Month public-awareness campaign in May**, which was established by former Governor Gray Davis's proclamation starting in 1999. This year's public-awareness and education activities have included: a teen poster contest (with posters distributed to 1,000 schools and hundreds of other youth-serving organizations); a teen video public service announcement (PSA) contest; distribution of a resource kit to over 2,500 educators and community groups (by 2,000 downloads from the website and 500 hard copies requested to date); activities by 10 youth teams throughout the State in their communities, which attended Young Worker Leadership Academies (see below), and a media campaign.

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- **Plan and conduct two Young Worker Leadership Academies.** Young Worker Leadership Academies (YWLAs) were held in Berkeley in January and in Los Angeles in February 2007. The Academies are part of the CHSWC Worker Occupational Safety and Health Training and Education Program (WOSHTEP) and are coordinated by LOHP and LOSH and supported by active participation by Partnership members. Young people from 13 different organizations around the State attended the Academies in 2007. The goals of each Academy were: to teach youth about workplace health and safety and their rights on the job; to help youth start thinking about ways to help ensure that young people do not get hurt on the job; and to provide a forum for these youth to plan for specific actions they could take in their own communities to promote young worker safety. A highlight this year was the active involvement of 11 graduates from the 2006 Academies. A reunion held in August 2006 at UCLA played a key role in inspiring alumni to return to the 2007 Academies as youth mentors, as well as to participate in the Teen Employment Scene conference described below. The alumni youth led many of the activities at the Academies and developed their own outreach projects: a newsletter; and a MySpace page.

- **Support Safe Jobs for Youth Month activities.** Safe Jobs for Youth Month 2007 got its kick-off on April 20, 2007, with the Teen Employment Scene, a day-long teen-led conference in San Pedro, California. This conference was planned and executed by three graduates of the 2006 YWLA held at UCLA, supported by their adult sponsor, LOSH staff, a mini-grant from the California Partnership among others, and participation by several Partnership members. The three 2006 Academy graduates recruited 19 other YWLA graduates and their teammates from 2006 and 2007 Academies to plan and lead eight workshops with topics ranging from identifying workplace hazards to dealing with sexual harassment and discrimination to addressing workplace stress. Three hundred students from five local high schools attended. Both teachers and students reported that the event was a great success.

During May and June 2007, 13 teams successfully conducted their specific projects including activities such as: designing informational brochures and fold-out informational business cards to distribute at schools; conducting workshops on job rights for teens at school and in the community; and developing video PSAs and a short interactive video.

- **Identify and implement strategies for using the work permit system as a mechanism for educating, teens, parents, and employers about workplace safety and job rights.**

California Partnership for Young Worker Health and Safety

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Partnership members are developing a short quiz and other information for teens who apply for work permits. This information dissemination and quiz will be pilot-tested with the Quick Permit Program used by the majority of school districts.

- **Make presentations at several prominent state and national meetings** highlighting the innovative approaches being taken in California to protect young workers. National annual meetings included those of the Young Worker Safety Resource Center and the American Public Health Association (APHA).
- **Coordinate the provision of information and resources on young worker health and safety by Partnership members.**

Over the past year, Partnership members with direct access to teachers, employers, and youth jointly reached and served hundreds of thousands of organizations and individuals throughout California with important health and safety information. Partnership members helped with promoting and recruiting for the YWLAs, the poster contest, the video PSA contest, and Safe Jobs for Youth month resources and activities, as well as with providing ongoing links to young worker health and safety information. Information and training were offered in both English and Spanish. In addition, the Partnership provides a space for youth voice and opinion on young worker health and safety issues. Several youth have made presentations to Partnership members about their issues, concerns, and innovative ideas to help reduce young worker injuries and illnesses.

Partnership accomplishments include:

- More than 1,900 teachers, employers and youth received direct training.
- Approximately 6,000 teachers, employers and youth received written information, such as the fact sheets for teens and for employers or the Safe Jobs for Youth Month Resource Kit produced by LOHP. Thousands more received information through listserv postings and email announcements.
- About 70 teachers, employers and youth received direct technical assistance via phone or via the http://www.dir.ca.gov/youngworker/youngworkers_main.html website.
- The average number of “hits” per day on the www.youngworkers.org website remained steady for a total of 156,000 hits during the past year. This represents an average of 419 hits per day. This has included over 45,000 requests for document downloads.

The most popular downloads included: the Safe Jobs for Youth Month Resource Kit materials (at least 15,000 for current and past years’ materials); the fact sheets for youth (2,230) and employers (1,300); and the PowerPoint presentation “Why is Job Health and Safety Important for Teens?”

California Partnership for Young Worker Health and Safety (continued)

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- At least 12 newsletter, newspaper, or web-based articles were published, in addition to at least four radio and television spots.
- Health and safety information continued to be integrated into ongoing statewide activities of many of the partners, including regular in-service training for work experience and WorkAbility educators, widespread use of health and safety curricula in job training and work experience programs, and organizational links to the <http://www.youngworkers.org> website.

In the coming year, priorities are to:

- Strengthen and expand youth involvement by holding two more Young Worker Leadership Academies and complete a guide with comprehensive instructions for holding an Academy so that other agencies and organizations can build on this model.
- Continue to strengthen activities of Partnership members, with a focus on outreach and information tools for the employer community, including the new generic small business health and safety resources and the restaurant safety training materials for small businesses which employ youth.
- Expand the membership of the Partnership to include greater representation from employers and youth organizations.
- Continue to share the California Partnership for Young Worker Health and Safety model with other states and assist them to replicate this model.

For further information...



Check out: <http://www.youngworkers.org> for information for teens, teen workers in agriculture, employers, parents, and educators.



UCLA-LOSH Youth Project. <http://www.losch.udcla.edu>.



Keeping California's Youth Safe on the Job – Updated Recommendations of the California Partnership for Young Worker Health and Safety, 2004. <http://socrates.bekeley.edu/-safejobs/downloads/pdf/2004Recommendations904.pdf>.

PROJECTS AND STUDIES

OCCUPATIONAL SAFETY AND HEALTH

The Relationship Between Employer Health-Promotion Measures and Workplace Injury and Illness Prevention: a CHSWC-NIOSH Study

Background

Poor health habits, such as smoking, problem drinking, unhealthy nutrition and sedentary lifestyles, have been identified as major causes of preventable illness and death in the United States and worldwide. These habits are associated with substantial medical costs and morbidity, making them prime targets of health-promotion activities. Currently, relatively little is known about the distribution of these costs to employers and how they differentially affect health care, disability, and workers' compensation.

Recently, the National Institute of Occupational Safety and Health (NIOSH) has begun a large, multi-year initiative to help employers build programs to reduce occupational injuries and promote the health of workers.

Description

A number of possible explanations exist as to why workplace health promotion and injury prevention could be related. Healthier individuals are more resilient to workplace injuries and less likely to miss time from work if they suffer a workplace injury. This issue is particularly important considering the prominent role of chronic conditions in workers' compensation. Poor health habits that make individuals more susceptible to chronic back pain, for example, could result in higher health care expenditures, higher workers' compensation expenditures, or both.

As part of the NIOSH initiative and the Commission on Health and Safety and Workers' Compensation (CHSWC) study on employer costs, RAND is undertaking an analysis for CHSWC that will provide a first look into the relationship between observable health habits and the onset of workplace injuries and illnesses and the possible effect of this relationship on employer costs. This analysis is part of the CHSWC study on identifying full employer costs of workplace injuries. The goal of the study is to lower employer cost and improve worker health.

As part of the analysis to be prepared by RAND, past studies on the effectiveness of prevention of injuries and illnesses and the promotion of health activities will be reviewed, and the results of each in light of a descriptive analysis of the relationship between health habits and workplace injuries, if any, will be discussed. This information will be used to formulate the potential magnitude of the impact of health-promotion activities on total payroll costs. This research should provide policy makers with new information on an important public health concern and should pave the way for new research into the relationship between health and work.

Status

In process.

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OCCUPATIONAL SAFETY AND HEALTH

Disability Retirement Benefits for Public Safety Officers

Background

The provision of public safety is one of the most important responsibilities of government. Workers charged with protecting the public routinely put their lives and well-being at risk. It is documented that, in general, public safety employees tend to have much higher-than-average rates of work-related injuries and illnesses, both fatal and non-fatal, as compared to other sectors. Because public safety occupations inherently entail significant risk and because of the social importance of the services these employees provide, public safety employees are usually rewarded with comparatively higher compensation in the event of a work-related injury.

The high incidence and high cost of injuries sustained by public safety employees raise a number of important policy questions. For instance, do workers' compensation and disability-retirement benefits provided to public safety employees adequately compensate them for disabling injuries? Could specific safety interventions reduce the frequency of injuries to public safety employees and thereby lower the cost of providing workers' compensation and disability retirement benefits to these workers? What types of injuries do public safety employees suffer and at what ages, as compared to other public employees?

Description

The high rate of injury and disability sustained by vital public safety employees, particularly police and firefighters, is of great concern to the workers' compensation community. In October 2004, Assembly members Juan Vargas and Rick Keene requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study of public-sector injury prevention. In particular, they requested a comprehensive evaluation and recommendations on effective public safety employee injury and illness prevention measures.

In response to the above bi-partisan request, CHSWC contracted with RAND in September 2005 to conduct a study that will assist the legislature in its goals to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured. The study would address the following topics:

- Describe the incidence and types of injuries suffered by public safety employees and assess how the distribution of these injuries differs from that of other public (and potentially private) employees.
- Explore which aspects of public safety employment lead to the greatest injury and disability rates and whether specific interventions could reduce the risk of injury among those workers.
- Estimate the impact of disability on earnings of public safety employees and assess the adequacy of workers' compensation and disability benefits provided to these injured workers.

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- Examine the extent to which disability retirements for public safety employees have changed over time and what factors have contributed to any observed trends.

Preliminary Findings

RAND has conducted in-depth discussions with members of eight California agencies covering fire/emergency-management services, law enforcement, and corrections. The key findings from these discussions included:

- Public safety employees face a wide range of safety and health risks that include slips, trips, and falls occurring as a result of vehicle crashes, training, and exercising.
- Factors that contribute to health and safety risks included work environment factors, department culture, and insufficient fitness levels.
- Fitness was universally cited as key component to safety and health; however, access to fitness resources varied considerably.
- There are opportunities to improve the safety and health of public safety workers. Several possible starting points for intervention include training, clear command guidance, monitoring and analyzing data, operating procedures, and improvements in technology and equipment.
- Current data monitoring is generally viewed as inadequate. There is a need to collect, disseminate and share more information, as well as to overcome the pressure not to report unsafe workplace events.
- Department-level interventions need the support of all parties.
- It is important to focus on feasible interventions of modifiable factors.

Status

A joint CHSWC/ NIOSH report is expected to be completed in 2008.

PROJECTS AND STUDIES

OCCUPATIONAL SAFETY AND HEALTH

ISO 9000

Background

There are a number of programs that might affect occupational health and safety, including: U.S. OSHA – the Voluntary Protection Program (VPP) and the Strategic Partnership Program (OSPP); U. S. EPA – Audit Policy; International Standards Organization (ISO) 9000 Quality Management Standard, the most widely known certification program; and ISO 14001, the Environmental Management Standards. Thousands of California workplaces are certified in ISO 9000, which means that products coming out of these workplaces use standard procedures certified to meet ISO 9000 standards. There have been evaluations of how ISO 9000 affects companies and customers but little evaluation of how this standard affects workers. This study will be the first to evaluate the effect of ISO 9000 on occupational health and safety.

Description

The purpose of this project is to evaluate the extent to which ISO 9000, the most widely known certification program, and the Environmental Management System Standard, ISO 14001, affect occupational health and safety records and workers' compensation costs. The study will also evaluate the extent to which such voluntary management programs attract facilities with better-than-average or worse-than-average occupational health and safety records and workers' compensation costs for the purpose of assuring the safety and health of California employees. Data will be provided by the Workers' Compensation Insurance Rating Bureau (WCIRB).

Preliminary Findings

Preliminary findings indicate that in comparison with similar, single-plant firms in California:

- Companies adopting ISO tend to be slightly safer workplaces.
- Companies adopting ISO do not experience a change in workers' compensation costs and do not lower their injury rates.
- Despite emphasis on writing and following strict procedures in a manufacturing setting, companies adopting ISO do not appear to have more cumulative repetitive motion injuries.
- Results may demonstrate that the mandatory Illness and Injury Prevention Program (IIPP) in California has more influence on workers' compensation costs and worker safety than ISO certification; Cal/OSHA and IIPPs have many requirements, including communications, inspections, evaluations, procedures, and training documentation for health and safety.
- Other effects may introduce bias in the preliminary results, requiring additional research.
- ISO 9000 is an opportunity to improve safety and health.

Status

In process.

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CHSWC AND THE COMMUNITY

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- What's New
- Research Studies and Reports
- Information Bulletins
- Commission Members
- Meeting Schedules and Minutes
- DIR Young Workers Website
- Information for Workers and Employers
- WOSHTEP
- Conferences
- Public Comments and Feedback
- Resources

CHSWC Publications

In addition to the many reports listed in the CHSWC Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports
1994 through 2006

CHSWC Strategic Plan 2002

CHSWC AND THE COMMUNITY

Community Activities

CHSWC is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

California Assembly Insurance Committee

Executive Officer presentation

California Chamber of Commerce

Executive Officer presentation

California Coalition on Workers' Compensation

Annual Conference
Executive Officer panelist

California Department of Correction and Rehabilitation

Risk Summit
Executive Officer presentation

California Workers' Comp Forum

Executive Officer presentation

Department of Industrial Relations

Division of Workers' Compensation
14th Annual Conference

Department of Insurance

Fraud Assessment Commission Meeting
Chair, Fraud Focus Group Meeting
Fraud Task Force Meeting

Industrial Claims Association

Roundtable Educational Conference
Executive Officer presentation

International Association of Industrial Accident Boards and Commissions

92nd Annual Convention
All Committee Conference

Kammerer and Company

Roundtable Educational Conference
Executive Officer presentation

Workers' Compensation Research Institute

Annual Issues and Research Conference

Workers' Compensation Research Group

Advisory Group Meeting

CHSWC AND THE COMMUNITY

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Their willingness to share the insights and knowledge derived from their years of experience has assisted CHSWC immeasurably in its mission to examine and recommend improvements in the health and safety programs and workers' compensation in California.

American Board of Independent Medical Examiners

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