

## **CHSWC RECOMMENDATIONS**

In the interest of California's workers and employers, the Commission on Health and Safety and Workers' Compensation (CHSWC) recommends steps to ensure adequate and timely delivery of indemnity and medical benefits for injured workers.

In addition, CHSWC recommends an overall culture of safety to prevent workplace injuries.

### **WORKERS' COMPENSATION INDEMNITY AND MEDICAL BENEFITS AND ADMINISTRATION**

Senate Bill (SB) 863, the workers' compensation reform legislation passed in 2012, incorporated many of CHSWC's previous recommendations for statutory improvements in the workers' compensation system, and the Division of Workers' Compensation (DWC) is carrying out many of the commission's recommendations for administrative improvements.

CHSWC recommends that the system continue to be examined in light of the passage of SB 863. Research to inform future recommendations is underway in the Department of Industrial Relations (DIR), DWC, and CHSWC.

Specific recommendations that await the results of pending research include the following areas:

- Permanent Disability Compensation
- Return-to-Work
- Medical Care Quality, Accessibility, and Cost
- Timeliness and Cost of Dispute Resolution

### **RETURN-TO-WORK SUPPLEMENT**

The RAND study "Identifying Permanently Disabled Workers with Disproportionate Earnings Losses for Supplemental Payments" defines workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. CHSWC concurs with the definition of "disproportionately low" as meaning that actual measured earnings after the disability award are below what is expected based on the severity of the disability rating and supports the study's recommendation to target benefits to these particular workers.

#### *Recommendation*

- Ongoing monitoring of the utilization of this benefit

### **MEDICAL CARE IN WORKERS' COMPENSATION**

#### **Monitoring Medical Care and Costs**

In the past, problems in the medical-legal process have included delays in selecting evaluators, obtaining examinations, and producing the evaluation reports. Deficiencies also have existed in the content of reports when they failed to comply with the legal standards or omitted necessary components and thus necessitated the submission of supplemental reports. These problems

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contributed to an increase in frictional costs and delays in resolving disputes and delivering benefits to injured workers.

Significant changes in the medical care process for injured workers have resulted from the reform legislation enacted in 2012. One of the changes is that medical necessity disputes are now resolved using an Independent Medical Review (IMR) process. IMR, which is administered by the DWC Administrative Director, requires that an injured worker's objection to a utilization review (UR) decision be resolved through an IMR. An in-person qualified medical evaluator (QME) will still be used for impairment ratings in unrepresented cases, and an agreed medical evaluator (AME) or QME will be used in represented cases.

### *Recommendations*

- Evaluation of the medical care reform changes resulting from the passage of SB 863. The topics for evaluation can be broken into four broad areas: medical necessity determinations, medical provider networks, appropriate fees for medical and other services, and medical evaluations.
- Evaluation of the overall impact of the SB 863 medical care reforms to assess how they have affected medical utilization, medical expenses, and access and quality measures.
- Evaluation of reports and forms required by DWC as part of managing the injured worker's treatment.
- Monitoring of the use of UR and IMR in the California workers' compensation system.
- Continuing the CHSWC and DIR evaluation of implementing electronic reporting in the system to reduce delays and improve the efficiency of the delivery of workers' compensation medical care.

## **ANTI-FRAUD EFFORTS**

### **Underground Economy**

Although most California businesses comply with laws regarding health, safety, and workers' compensation, some businesses do not and thus operate 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. In addition, the underground economy costs the state economy an estimated \$8.5 billion to \$10 billion in tax revenues every year.<sup>1</sup>

### *Recommendations*

- Continuing to research ways to reveal the underground economy and enforce compliance with workers' compensation and health and safety laws.

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<sup>1</sup> <http://www.lhc.ca.gov/studies/226/Report226.pdf>.

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- Reviewing the work of the Department of Industrial Relations' Labor Enforcement Task Force (LETF) to improve the targeting of fraud through cross-agency efforts.

### **Workers' Compensation Payroll Reporting by Employers**

The cost of the workers' compensation insurance premium is based on an employer's payroll total. By misreporting payroll costs, some employers avoid the higher premiums they would incur with accurate reporting of their payroll. Employers can also misreport total payroll or the number of workers in specific high-risk, high-premium occupation classifications by reporting them in lower-risk, lower-premium occupations. A 2009 follow-up study to a study by CHSWC in 2007 found that between \$15 billion and \$68 billion of payroll is underreported annually. A related study on split class codes found that 25 to 30 percent of low-wage payroll is underreported or misreported.

#### *Recommendations*

- Focusing more Fraud Assessment Commission funding on premium fraud enforcement and medical provider fraud.
- Researching the extent of medical provider fraud.

### **Definition of First Aid**

Injuries that do not require treatment beyond first aid do not necessitate an employer report of injury for worker's compensation or a Cal/OSHA log. The definitions of first aid for those two purposes are different, however, leading to some uncertainty about when a minor injury is reportable. Even criminal evasion of workers' compensation obligations can hide behind that uncertainty. Employers have identified the conflicting definitions as a barrier to compliance, and prosecutors have identified the conflicting definitions as a barrier to prosecution of willful violations. The definition of first aid is pertinent only to reporting requirements, so a change in the definition would not change an injured workers' right to receive treatment.

#### *Recommendation*

- Amending the definition of first aid for purposes of workers' compensation reporting to align with the definition used for Cal/OSHA purposes.

### **PUBLIC SELF-INSUREDS**

California law requires every employer except the State to secure payment of its workers' compensation obligations either by obtaining insurance or by obtaining a certificate of consent to self-insure from the Director of the Department of Industrial Relations (the Director).

Unlike private self-insurers, public-sector employers are not required by law to post a security deposit, and no guarantee association is established by law to pay benefits to injured employers in the event that a public employer or a Joint Powers Authority defaults on its workers' compensation obligations.

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SB 863 added Labor Code Section 3702.4, which required CHSWC to examine the public-sector self-insured workers' compensation programs and to make recommendations to improve the administration and performance of the program. CHSWC contracted with Bickmore to assist in fulfilling this requirement.

### *Recommendation*

- As stated in the Bickmore Public Self-Insured Program Study, developing information on public self-insured employers to allow better understanding of the key cost drivers in the workers' compensation system and facilitate better understanding of the elements affecting injuries and claim costs in public entity self-insurance.

## **INFORMATION FOR INJURED WORKERS AND EMPLOYERS**

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

### *Recommendations*

- Working with the multiple divisions in the DIR to provide the forms, notices, and factsheets in multiple languages for information about the workers' compensation system.

## **HEALTH AND SAFETY**

CHSWC recognizes that injury and illness prevention is the best way to preserve workers' earnings and to limit increases in the cost of employer workers' compensation.

### *Recommendations*

- Continuing support by employers and the health and safety and workers' compensation community for the CHSWC statewide Worker Occupational Safety and Health Training and Education Program (WOSHTEP), one of CHSWC's most proactive efforts, which trains and educates workers, including young workers, in a wide range of workplaces and in agriculture on proven injury and illness prevention measures.
- Supporting ongoing partnerships and continued development of training and outreach materials targeted at teaching the importance of implementing the required written Injury and Illness Prevention Plan (IIPP).

## **INTEGRATION OF WORKERS' COMPENSATION MEDICAL CARE WITH OTHER SYSTEMS**

Health-care costs have been rising more quickly than inflation and wages. These costs create financial challenges for employers, especially those in industries that already have 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.

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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, reduce overall medical expenditure and administrative costs, and derive other efficiencies in care. Research also supports the contention that an integrated 24-hour care system has the potential to create medical cost savings as well as shorten the duration of disability for workers.

### *Recommendations*

- Disseminating the results of the evaluation and the opportunities and challenges of implementing an integrated occupational and non-occupational medical treatment and insurance product.
- Providing resources on integrated care for unions and employers interested in carve-out programs.
- Evaluating the impact of Medicare's implementation of its secondary payor rights with regard to settlement of workers' compensation claims and examining alternative ways of coordinating benefits between the two systems.

Seeking opportunities for increased integration of care between workers' compensation and non-occupational health coverage.