

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

June 13, 2013

**Elihu M. Harris State Building
Oakland, California**

In Attendance

2013 Chair, Martin Brady

Commissioners Doug Bloch, Christine Bouma, Faith Culbreath, Kristen Schwenkmeyer, Robert Steinberg

Acting Executive Officer D. Lachlan Taylor

Absent

Commissioners Sean McNally and Angie Wei

Approval of Minutes from the December 14, 2012 CHSWC Meeting

CHSWC Vote

Commissioner Culbreath moved to approve the Minutes of the December 14, 2012 meeting, and Commissioner Bloch seconded. The motion passed unanimously

Interim Briefing Presentation: California Firefighter and Peace Officer Cancer Death Benefit Study: AB 1373

Mark Priven, Bickmore Risk Services

Mr. Priven stated that this is an interim briefing on Assembly Bill (AB) 1373, which deals with death benefits for firefighters and peace officers in the state. There are two parts to the issue: one, whether the claim qualifies to be a workers' compensation claim; and two, if the claim is determined to be a workers' compensation claim, and if it is a death cancer claim, what the death benefits are. The presumption for a workers' compensation claim over the age span of an employee is critical. For example, if a peace officer or firefighter began work at age 25 years, as long as that peace officer or firefighter is active, cancer would be presumed to be occupational; it is rebuttable but presumed to be occupational. Then there is a period of time after that person becomes inactive when cancer is still presumed to be an occupational injury and under workers' compensation. That period of time depends on the length of service. In addition, then there is a period when the person remains inactive, when it is not presumed to be occupational but can still become a workers' compensation claim.

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Mr. Priven stated that AB 1373 addresses death benefits of the workers' compensation claims. Currently, for a peace officer or firefighter starting at age 25, if diagnosed with cancer, and the survival period is 240 weeks or less, then there is a death benefit. AB 1373 addresses the length of time when someone would be eligible for the death benefit. It would extend the period of time for eligibility by a certain amount that is not yet written into the bill. Mr. Priven stated that for the sake of discussion, he is considering an additional 240 weeks, because that is one of the figures being considered, for a total of 480 weeks. One question is what percent additional cost that might represent; a second question is specifically what the dollar value would be. Mr. Priven stated that he does have a percentage result, but that he does not have a dollar figure.

Mr. Priven stated that the analysis was approached from two separate angles. Workers' Compensation Information System (WCIS) data, the data reported by employers to the Department of Industrial Relations (DIR), were used, and cancer death claims associated with firefighters and peace officers between 2000 and 2012 were identified for a total of 174 cases. However, information is missing about when someone is diagnosed with cancer. That is important because that is when the 240-week time clock starts ticking. If the person is still active, the date of injury is reasonably close to the date of diagnosis. If the person has already become inactive, then it is typically the last day the person was active, or the last date of service; however, the date of diagnosis is not actually known.

Mr. Priven stated that national survey data were also used. The type of cancer has a large impact on survival rates, so a national distribution of type of cancer was used, as well as a second scenario with the distribution of the type of cancer found in WCIS. There were a total of four scenarios, two for WCIS data based on date of diagnosis, and two for survey data based on type of cancer distribution.

Mr. Priven stated that if benefits were extended to 300 weeks instead of 240 weeks, using WCIS data, there would be a little over a 3% increase in claim frequency. This is not cost, just claim frequency. Extending it out to 360 weeks would result in a 5-6% increase; other extended weeks would result in higher percentage increases. Using survey data with the distribution of the types of cancer yields much larger numbers.

Mr. Priven stated that the biggest assumption is that the death benefit does not impact the frequency of workers' compensation claims. That is, it does not affect how many cancer claims are determined to be workers' compensation claims. Over ten years, WCIS identified only 174 cancer death claims. If you look at the number of active firefighters and peace officers as well as the inactive ones in the state, it would appear that there should have been thousands of firefighter and peace officers who died of cancer, whether they were active or became inactive. However, out of the thousands of cancer claims, only 174 were reported to WCIS. One conclusion is that WCIS has a very small population of claims; another conclusion is that a lot of cancer death claims are not currently in the workers' compensation system. If extending the death benefit impacts these numbers, then the results of the study findings are not correct and cannot be considered.

Mr. Priven stated that for the WCIS data, a key assumption is when the date of diagnosis is, because that is when the statute of limitations begins, whether it is 240 weeks or 300 weeks, or

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whatever is decided. If the person is active, then what is coded in WCIS as the date of injury is pretty close to the date of diagnosis. If the person is no longer active, for example someone at 60 years old, what shows up in WCIS as the date of injury is the last date they are employed, which will be assumed to be 55 years. The date reported to employer is used as a proxy for date of diagnosis. He stated that one scenario is to use the distance from the last date employed, and the other scenario is to use the distance from reporting to the employer, but the results did not differ that much between the two scenarios.

Mr. Priven stated that there were limitations to WCIS data, due to the availability of only 174 death claims, and this make it difficult to extrapolate to the entire state. There is a further limitation in that it is not known what percentage WCIS data are of total state coverage, preventing extrapolation despite the first limitation. As previously mentioned, change in utilization is another factor. A change in the statute of limitations for the death benefit does not explicitly change whether a cancer death becomes a workers' compensation claim, but if it does change, then the calculations for claims increase will be incorrect. He stated that the average cost per death claim is not known, so there are no results for cost impacts. The baseline is \$250,000; however, that would change depending on the number of dependents, and as the benefits are extended out to later years, the people receiving those benefits are older and age would impact the number of dependents. Therefore, looking at past trends in death benefits will not inform the future because it is a different population with a different age and different distribution of dependents. In the vast majority of cases in the WCIS data, the type of cancer could not be determined because type of cancer is not coded. A lot of the cases simply said "multiple body part" or "internal" but did not detail a specific type of cancer.

Mr. Priven then stated that the national survey data are publicly available and show survival rates by type of cancer, gender and age group. The data reflect all cancer types for males, since most of the population considered is male, (although both male and female are weighted together in the statistics). A little over 35% of people die within one to five years; about 5% die in the period of 6-10 years; and the remainder survive 11 or more years. He stated that they interpolated to obtain the 240-week scenarios. Interestingly, the age at diagnosis does not have a large impact on all cancers combined. Of the WCIS cancer death claims with identifiable types of cancer, lung cancer for males was by far the leading cause of cancer death, and lung cancer has a much higher mortality rate in the first five years. The distribution of the type of cancer has a huge impact on the statistics of the potential impact of AB 1373. For lung cancer, age also did not seem to be a strong determinant of death outcome. However, for brain cancer, age makes a very big difference, and brain cancer is common among the types of cancers in the WCIS statistics. The distribution of the type of cancer has a huge impact on the statistics of the potential impact of AB 1373. For lung cancer, age also did not seem to be a strong determinant of death outcome. However, for brain cancer, age makes a very big difference, and brain cancer is common among the types of cancers in the statistics. The distribution of cancers in WCIS data reveals: 14% lung cancer; 4% pancreatic cancer; and so on, but the big number is "Other" at 71% - i.e., not known or not able to be identified in the WCIS data. He stated that when looking at the national data, the data had to be weighted using the same distribution.

Mr. Priven then stated that the national data has limitations. There are no solid statistics on the cancer rate of California safety workers versus nationwide. The National Institute for

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Occupational Safety and Health (NIOSH) is doing some work in this area. He stated again that they do not know the number of cancer claims that are actually reported as workers' compensation claims. The survival rates in the national survey data are just survival; if diagnosed with cancer, the years of survival do not mean the death was by cancer, as one could die of something else. The national survey data therefore are not a perfect match but are the best data available.

Questions from Commissioners

Commissioner Bouma asked if when Mr. Priven used the term "benefit change," whether he meant a change in the statute of limitations. Mr. Priven confirmed that this was what was meant. Commissioner Bouma stated that there have been expansions in the statute of limitations for HIV and asbestosis claims to one year from date of death and asked if those might be instructive or within the scope. Mr. Priven responded that he would look at that. Commissioner Bouma also asked about the date of diagnosis. Mr. Priven stated that the problem is that the use of the term "date of injury" in the insurance industry for loss runs is different from "the date of injury" that is used in the statute.

What is in statute is close to what is actually most akin to date of diagnosis. The date of diagnosis determined as occupational is when the clock starts running for the 240 or 480 weeks, etc. In the loss run in WCIS, if you find out you have cancer after you have retired, then you cannot put date of injury during a period when you are not covered, that is, when you are not an employee, so the date of injury becomes your last date of employment. Commissioner Bouma asked whether Mr. Priven could come up with cost estimates despite the limitations, and whether he could consider both those who have already been diagnosed and new cases. Mr. Priven responded that they could separate scenarios of retroactive claims and new claims after an effective date. Commissioner Bouma responded that that was what she meant, and Mr. Priven stated that they could that.

Commissioner Steinberg stated that Mr. Priven was asked to determine the financial impact of AB 1373 and whether he would explain exactly what AB 1373 intends to do. Mr. Priven responded that firefighters and peace officers are eligible for death benefits associated with cancer claims if the time period between the date of diagnosis/date of injury as written in the statute and death is 240 weeks. AB 1373 is extending that 240-week period to a longer period, which has not yet been specified. Commissioner Steinberg stated that it is not really increasing benefits. Mr. Priven responded that that is correct and the term benefit is a misnomer and incorrect to use. AB 1373 applies to workers' compensation claims; it does not touch whether or not a cancer is presumed to be workers' compensation; it only extends the death benefit period for a claim that is already determined to be workers' compensation. Compensability is not the issue here either, only the death benefit.

Commissioner Steinberg asked what the takeaway of his work was on the financial impact of AB 1373. Mr. Priven responded that that is still a big unknown. If there is no impact on utilization, then it appears that the impact on claim frequency would not be that great. Whether it impacts new claims coming in and becoming workers' compensation claims is a very big unknown.

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Commissioner Bloch stated that his union represents police officers throughout Northern California, so like Commissioner Bouma, he has great interest in the subject. He stated that while he has no criticism of the study, he has a hard time with studies such as this because each line on the chart represents a worker who died. In the case of police officers and firefighters, we are talking about people who spent their life being of service to the rest of us, keeping us safe, and he keeps that in mind when he considers the impact of the bill. He stated that the biggest question he had was about the low rate of utilization of workers' compensation in the case of cancer deaths. Commissioner Bloch asked what Mr. Priven believes could explain how such a low number of these deaths (174 cases) ended up in the workers' compensation system. Mr. Priven responded that he did not know, but the first step is to determine what percent of the firefighters and peace officers in the state would have their workers' compensation claims reported to the WCIS in a way that cancer claims could be identified. If it is a low percentage, then 174 could be the correct number. Mr. Priven stated that he too was surprised by the low number, but until they can figure out what percent of the state actually reports, it is difficult to know. Commissioner Bloch asked if there was a way to get around the data limitations. Mr. Priven responded that he would ask the Commission to comment on that. Acting Executive Officer Judge Taylor stated that while they are trying to find better information, there does not seem to be a way to reconcile the small number in WCIS with what one would expect to see just from the general cancer rate in the population and that this is a data quality issue.

Chair Brady asked if there were other states that have looked into this subject. Mr. Priven responded that he is familiar with Nevada, and that their statute of limitation is even longer. Chair Brady stated that given the described limitations of the data, if this were an airplane, one would not get in it. He then stated that this appears to be the first few steps of a much longer journey. Perhaps NIOSH would have additional data, and he asked about the timeline for that report. Mr. Priven responded that results were due as early as this summer, and that the additional data would be very helpful. Chair Brady stated that he wanted to acknowledge the challenges Mr. Priven faced in collecting bits and scraps of data, so he believes there is a broader message about thinking about the design and what way of obtaining data would be reliable in the long-term.

Commissioner Bouma stated that she and Commissioner Bloch and perhaps others have a more anxious and urgent feeling about trying to take the data that are available and draw some conclusions. She stated that she thinks she saw some encouraging conclusions related to impacts, even when measured against the general population, about how these different timelines may or may not bring more people into the system. She stated that, as Commissioner Bloch pointed out, each data point represents a potentially diseased peace officer or firefighter whose families are trying to figure out how to proceed with or without a death benefit that may help them put their kids through college or provide whatever assistance they require going forward. She stated that she has a deep interest in using the data for scenarios to determine for policy makers who may, whether they want to wait for the NIOSH study or make a decision now, want to stop the rather arbitrary nature of how these benefits get cut off. They will want to have some sense of a cost, whether that is just creating scenarios of ages of families and dependency and then some sort of assumptions from there. She stated that she did not know whether they could anticipate something like that as part of the final presentation or report; she assumed that this would be consolidated in some kind of report. Mr. Priven responded that he does not know at this time

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whether there will be costs in the final report. That would require overcoming some hurdles, and he does not know if that can be done. He stated that he agrees that it would be useful to have costs as part of the final report, and he will do what he can to include costs but cannot promise it.

Report on Implementation of Senate Bill 863

Christine Baker, Director, Department of Industrial Relations

Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation

Rupa Das, Executive Medical Director, Division of Workers' Compensation

Lachlan Taylor, Acting Executive Officer, Commission on Health and Safety and Workers' Compensation

Christine Baker stated that the Department of Industrial Relations (DIR) is thriving despite resource challenges. She and her team of top-notch staff, some of whom are in this meeting, are dedicated and continue to improve responsiveness to the public demand. Implementation of workers' compensation reform has been one of DIR's key areas as well as labor law enforcement and eliminating the underground economy. DIR is also modernizing all internal systems. This in turn allows DIR to be more transparent and data-driven and to improve service to the public.

Ms. Baker stated that in the enforcement arena, DIR is ensuring effective inspections and payment of owed wages. This is helping to create a business-friendly environment of law-abiding employers. DIR's goal is to increase compliance with labor laws and not to punish employers who want to abide by the law, so that honest businesses can thrive and profit in California. This goal is being accomplished by targeting by two major efforts: using data and other methods to identify out of compliance employers; and a major outreach and education campaign. Ms. Baker stated that the work done at the Commission on Health and Safety and Workers' Compensation has served DIR greatly. She added that the Labor Enforcement Task Force (LETF) is a coordinated agency effort directed from the Director's Office of DIR to eliminate the underground economy. Efforts will ensure a level playing field for those employers who are law abiding. Ms. Baker stated that meaningful partnerships to fight the underground economy have been formed. In addition, there is an 800 line for tips and complaints. Complaints are run through DIR's databases and surveillance techniques, and this is yielding precise targets.

Ms. Baker stated that DIR strives to be the example of good government. Its teams need to be consistent and fair. Throughout DIR, comprehensive training has been launched and conducted regionally in order to save money. Training in many divisions had not been conducted for years. Ms. Baker stated that Labor Commissioner Julie Su has reinvigorated her division with new procedures, technology and training. Ms. Baker stated that many of DIR's systems for licenses and payments are online with an easy-to-use format. This is evident on the DIR website. In addition, backlogs in key areas have been reduced, and work is ongoing in other areas by doing a thorough evaluation of work processes and examining the regulations behind the delays. Ms. Baker stated that it is a short-term approach to do overtime to fix backlogs; instead, structural and technological changes are being implemented to ensure that DIR is effective and efficient.

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Ms. Baker stated that one area that has been historically a problem and has been neglected is the Qualified Medical Evaluator (QME) process, and an evaluation be done on workload, incoming documents, technology and backlogs has been requested. The QME panel process is a fundamental part of the delivery of benefits to injured employees in the workers' compensation system. The Division of Workers' Compensation (DWC) is simultaneously reviewing not only the method of processing panel requests by developing technical solutions, but also the statutes and regulations concerning QMEs.

Ms. Baker stated that the design, development and implementation of an online solution to automate processes and support the sustainability of meeting statutory and regulatory timeframes have begun. An online QME panel request form that is submitted via a web portal is the next step, as well as automated generating and emailing QME panel process documents. Ms. Baker stated that there has also been a revised review of all panels for compliance with the requirements of SB 863 and emergency regulations prior to issuing panels. Due to changes in the law, many requests are being rejected for non-compliance; therefore, an educational campaign will inform the public how to conform to SB 863, and tips for successful submission have been outlined in a recent *Newsline* which can be found on the DIR website.

Ms. Baker stated that repurposing and redistributing staff and resources to focus additional efforts on panel review and production in order to tackle the backlog is under way. DIR is improving and replacing the current mail processes with an automated mailing system. It is also redirecting staff from other units to free up Medical Unit staff to focus on panel review and production,

Ms. Baker stated that the Governor and Labor Secretary Marty Morgenstern who guide DIR strategically are very pleased with DIR's accomplishments, and efforts to improve the system for workers and employers are ongoing. The system needs to respond to the goals of improving benefit delivery, quality medical care, and return to work, as well as reducing costs, particularly the unnecessary costs.

Ms. Baker stated that review of our Uninsured Employer Fund (UEF) cases has been stepped up. There was a caseload of approximately 9,000, and there is now a total caseload of 3,000. This decrease was accomplished by desk audits and putting a new management team in place. The checks for injured workers of uninsured employers will shortly be issued out of the State Controller's office allowing better security and reducing the risk of fraud, from within and externally.

Ms. Baker stated that DIR's key focus is Senate Bill (SB) 863 which was negotiated by labor and management and championed by Governor Brown; it was a very unique point in workers' compensation history. SB 863 establishes fee schedules for copy services, interpreters, vocational experts, and in-home health care. It also provides additional payments for workers with disproportionate wage loss. It has increased benefits by over 30%. Studies for most of the fee schedules are underway with the support of the Commission. Once the studies are completed, the next step will be regulatory promulgation. Ms. Baker stated that she is grateful for the excellent support and work of CHSWC staff. The number of studies and regulations are substantial. DIR is looking at ASC ambulatory surgical centers, home health care, copy service,

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interpreter, vocational rehabilitation and high-quality medical care access, all of which will probably need regulatory action. Ms. Baker stated that Acting Administrative Director of DWC Destie Overpeck will speak about the Regulations completed, and DWC Executive Medical Director Rupa Das will speak about the Medical Unit which oversees the Independent Medical Review (IMR) and Independent Bill Review (IBR) processes, as well as the QME process.

Ms. Baker stated that there is a new program; the working title for the program is the “Special Earnings Loss Supplement” program. The term “return-to-work program” is misleading, but this new working title will be descriptive. The Special Earnings Loss Supplement will do what the permanent disability (PD) award cannot do, and that is to look back at a worker’s actual earnings loss after the PD award has issued. The Special Earnings Loss Supplement will provide a way to give supplemental payments to the outliers, the people whose actual experience is outside the expected range for their PD ratings. To identify which injured workers have unexpectedly high earnings losses, a new way of measuring and comparing earnings loss is needed. Previous RAND studies compared injured workers’ earnings against the earnings of matched controls in the same period. Matched controls for each injured worker are not available, so a worker’s loss from what he or she was earning before the injury needs to be identified. The before-and-after measurement will provide the worker’s percentage decline in earnings.

Ms. Baker stated that to see whether the worker has a higher-than-expected decline in earnings for the PD rating, it is critical to know what is expected, that is, what is already contemplated by the PD award. To enable this, RAND has examined the before-and-after earnings of over 19,000 injured workers with PD ratings and will report the average decline associated with each rating level. Then the before-and-after decline for an injured worker can be compared against the average of the before and after experience of all the other workers at the same PD rating. Ms. Baker stated that RAND is putting the finishing touches on that analysis. In two or three weeks, the RAND paper will be ready for release following strict quality review and peer review processes. It will show the average decline in the before-and-after earnings for workers at all PD levels. If an individual’s earnings loss is greater than the average for the rating, then the worker is a candidate for the Supplemental Earnings Loss benefit. With help from RAND, the threshold will be decided. The goal is to focus the payments on workers who have a substantial disproportion between the expected earnings loss for their PD ratings. Candidates for the payments must have already received the supplemental job displacement benefit (SJDB), and there might be additional requirements. The goal is to make sure that the payments go to people who did not have an opportunity to return to work at their pre-injury employer and who still have higher-than-expected losses.

Ms. Baker stated that then the question will be how much will be paid to each eligible worker. The largest payment will go to a worker with the largest disparity between the expected earnings loss for the rating and the actual of earnings loss. Then the payment amount will be scaled down for workers who had losses that were closer to being in line with the expected losses for their ratings. This information will go into a table that ranks how severe the disproportion is between the worker’s percentage of earnings loss and the percentage that is expected for the PD rating. The most severe, or the highest rank, would be workers with ratings of 1 to 4 percent PD, and actual earnings losses of 95% or more. Workers whose losses barely exceed the threshold would be in the lowest rank. This approach will then take the pre-injury earnings into account when

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setting the amount of the Special Earnings Loss Supplement. Workers who had higher pre-injury earnings would be eligible for a higher payment for the same percentage loss. DIR is working with RAND to model different combinations of threshold benefit amounts and adjustments for higher-wage workers.

Ms. Baker stated that the Director's Office is drafting proposed regulations that specify how earnings will be measured so that post-award earnings can be compared to pre-injury earnings, as well as specifying conditions for eligibility that may further narrow the pool of candidates so that the payment amounts can be increased. The first draft regulations are expected to be released for public comment by the end of summer. After the program is up and running, DIR will continue to monitor the entire system and make adjustments as needed to achieve the program's goals. This system will be totally data-driven.

Ms. Baker stated that DIR has recently installed a system to collect lien filing fees, both activation and filing fees, which has collected over 11 million dollars since January (six months). The courts were inundated with liens. Monthly lien filing has dropped from 45,000 per month to an average of 2,000 per month and continues to drop. It is still early to get a sense of what the ongoing filing average and the long-term sustainability will be as there are still periods of fluctuation and an end-of-the-year rush. The reduced level of lien filings will allow the judges to focus on injured workers.

Ms. Baker then stated that with comprehensive work on the part of Barbara Wynn of RAND and the DWC team, DIR is preparing to move forward fairly shortly with Resource-Based Relative Value System (RBRVS) regulations. These regulations will put in place a fee schedule for physicians that will establish the right incentives for appropriate care and return to work. DIR will keep pace with updates and ensure all the changing technologies are available. The last time the fee schedule was comprehensively updated was in 1999, so a large percentage of codes and technologies are not in the current system. The new system should bring in new codes and technologies and provide annual updates.

Ms. Baker stated that DIR teams have been working tirelessly to put measures in place to ensure accountability to injured workers at a reasonable cost to employers, and is conducting ongoing evaluation of how the department is doing and what can be done better.

Questions from Commissioners

Commissioner Bouma asked if there is a way to look at the drop in lien filings and determine which types of liens are falling out. Ms. Baker responded that the provider is known and there should be a way to identify the liens falling out. The Commission could look at this in a study. Judge Taylor stated that administrative data and sampling could be done to identify this information.

Commissioner Bloch stated that he commends DIR for all the work being done, concurs that Julie Su is fantastic, and enjoys working with DIR on the underground economy. He stated that the issue of impairment schedules versus looking at future earnings capacity has been discussed before and has been the subject of intense litigation. He stated that he thought that SB 863 took

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future earnings capacity out of the question but that the RAND study appears to be looking at future earnings capacity. Ms. Baker responded that this is correct, and it will be supplanting the *Ogilvie* decision in the courts, and another methodology will be put in place for the funds that are available for injured workers. Commissioner Bloch suggested that members of his constituency and the public will have many questions and will want to have input into the regulations, and he asked if there would be an appropriate forum as well as working groups and other ways for being involved in the rule-making process. Ms. Baker responded that the rule-making process is the public process for that kind of feedback, and that advisory meetings will be held to get feedback before drafting regulations. At this time, the sample is being identified and the process will develop from that; the sooner the regulations are available, the sooner the funds can be distributed. Commissioner Bloch stated that the law took effect on January 1st and he asked what happens to a worker with an injury right now as the new rulemaking is taking shape. Ms. Baker responded that it takes at least 18 months on average before an injured worker is past temporary disability and has a disproportionate wage loss problem, and she stated that the new methodology will be ready by that time.

Commissioner Bloch asked about the QME backlogs and stated that his understanding is that there is a five-month backlog for represented workers, and Ms. Baker responded that the backlog is currently about three-and-a-half months. Ms. Baker responded that the Medical Unit has been committing overtime to get through the decisions, but that the new system will create greater efficiency. Commissioner Bloch asked if the number of QME doctors on the list is a factor in the delay, and Ms. Baker responded that it is not a factor.

Commissioner Steinberg asked if the supplemental wage loss amount of money is a yearly amount, and Ms. Baker responded that it is a yearly appropriation, and that it comes from an assessment on employers, user-funding. Commissioner Steinberg asked what the intention for this money is, and Ms. Baker stated that the study is in consultation with the Commission. Commissioner Steinberg asked when the RAND study would be available, and Ms. Baker responded that it would be before the next Commission meeting.

Chair Brady stated that he wanted to commend DIR for the transformational thinking going on. He also stated that he wanted to thank Commission staff for all the behind-the-scenes effort to conduct Commission meetings.

Destie Overpeck stated that two sets of SB 863 regulations were effective January 1, 2013: (1) the Ambulatory Surgery Center (ASC) Fee Schedule, which reduced the fee schedule from 120% of the Medicare outpatient fee schedule to 80% and is expected to yield \$62 million expected savings per year; (2) the Spinal Implant (Inpatient Fee Schedule) which removed duplicate payment for spinal implant surgeries and is expected to yield \$64 million in savings in 2013.

Ms. Overpeck stated that there are six sets of emergency regulations in effect as of January 1, 2013, which will continue in effect until normal rulemaking and permanent regulations. DWC has begun the process to re-adopt and extend emergency regulations for 90 days up to October 1, 2013. As soon as the permanent rulemaking (known as certificate of compliance) is complete, final regulations will be filed. The status of the six regulations is:

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- Electronic Document Filing and Lien Filing Fees regulation had public hearing on March 26, 2013. There will be another 15-day public comment period.
- Supplemental Job Displacement Benefit (SJDB) voucher regulation had a public hearing on March 19, 2013, and the second of two 15-day comment periods closes June 21st. That is hoped to be the last comment period, and regulations will be completed soon.
- Interpreter Certification regulations public hearing on March 19, 2013, and the second of two 15-day comment periods closes June 14, 2013. These regulations are defining what is required to be certified; the interpreter fee schedule will follow in a separate rulemaking after a study is completed which will guide the decision-making.
- Qualified Medical Evaluators (QME) regulations had a public hearing on April 4, 2013; the 1st 15-day comment period closes on June 18, 2013. Those regulations are expected to be finished by July 1, 2013.
- Independent Medical Review (IMR) regulations had a public hearing on April 4, 2013, and Independent Bill Review (IBR) regulations had a public hearing on April 19, 2013. Executive Medical Director Rupa Das will discuss IMR and IBR in more detail.

Ms. Overpeck stated the status of upcoming SB 863 Regulations is:

- Medical Provider Networks (MPN): draft regulations have been posted on the DWC forum for informal comments; proposed regulations will be issued soon.
- Resource-Based Relative Value Scale (RBRVS) Physician Fee Schedule: regulations are underway; it is expected that a notice of rulemaking will be issued very soon, and the final RAND report will be ready very soon.
- Predesignation/Chiropractor Primary Treating Physician: Draft regulations were posted on the DWC Forum for pre-designation changes and the cap on chiropractic treatments. The division expects to issue notice of rulemaking soon.
- Home Health Care Fee Schedule: RAND will provide a study and then the draft regulations will be begun.
- Copy Service Fee Schedule: Berkeley Research Group (BRG) will provide a study soon and draft regulations will follow.
- Interpreter Fee Schedule: BRG is working on this study, and draft regulations will follow.
- Vocational Expert Fee Schedule.

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Ms. Overpeck stated that there are at least two related regulations in addition to those just discussed. These are updated Benefit Notices, which are already posted on the DWC Forum, and audit regulations.

Dr. Rupali Das stated that SB 863 mandated many positive changes to workers' compensation. The Medical Unit has been addressing two major changes: one is the way that medical treatment disputes are resolved; and the second is way that bill payment issues are resolved.

Dr. Das stated that a lot of SB 863 implementation has been accomplished already, and none of that would have been possible without collaboration across the division and department and with external partners. The Medical Unit has a huge workload involving an unwieldy, all-paper system of requesting a Qualified Medical Evaluator or QME physician. Medical Unit staff is to be commended for their incredible work in rising to the challenge of this large workload; they are resourceful, hard-working, and supportive of each other. It is commonly known that there has been a backlog in issuing the list of QME physicians, known as a panel, from which an injured worker chooses an evaluator. All aspects of the QME process have been evaluated to improve the quality of QME physicians and to make the process of issuing QME panels more efficient and timely. The division has been successful in reducing the backlog of QME panels and is in the process of evaluating and implementing a technical solution to make the QME panel request process more efficient and effective.

Dr. Das stated that one of the most significant changes of SB 863 is how decisions about disputed medical treatments are made. Under the previous system, both "over-treatment" and "under-treatment" contributed to prolonged disability, a delay in workers returning to work and full health, and increased costs to employers and to society in general. Before SB 863, disputes regarding medical services were resolved in the courts by workers' compensation judges; it could take months or years after an injury and multiple evaluations by QMEs or Agreed Medical Evaluators (AMEs), who were chosen by the parties involved in disputes, to resolve a disputed case. Under the current system mandated by SB 863, Independent Medical Review (IMR) is used to resolve disputes about denied or delayed medical care and this takes the place of the system of AME or QME evaluations and decisions made by judges.

Dr. Das stated that IMR under SB 863 is modeled on a similar process used by the Department of Managed Health Care (DMHC) in the group health setting, under the Knox-Keane Act. IMR takes medical decision-making out of the litigation system and allows independent medical professionals, who are appropriately qualified and who do not have a stake in the outcome, to make medical determinations. In addition, it ensures that ill and injured workers obtain timely, medically appropriate care. IMR has been available as of January 1, 2013, for workers who were injured in 2013, and as of July 1, it will be available for all dates of injury. DWC has contracted with an IMR organization, called Maximus, to perform the reviews. IMR can only be requested by the injured worker or someone they designate if requested treatment is denied, delayed or modified following utilization review (UR), and there is no liability dispute. The contractor, Maximus, chooses the reviewers, who are specialty-matched to the medical issue being disputed; decisions are based on a review of the available records; no hands-on examination of the worker takes place. The IMR decision, grounded on evidence-based criteria, is required to be issued within 30 days of assignment to a reviewer (allowing time for the mail, the allowed timeframe is

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45 days), with 72 hours for an expedited request. This is in contrast to the months it might have taken to make a decision made in the previous system.

Dr. Das stated that in addition to IMR, the Independent Bill Review (IBR) process is available to resolve disputes regarding the amount to be paid to health care providers. DWC has also contracted with Maximus to provide IBR. IBR applies only to disputes about how much a provider is paid for a service they have already provided. It will not apply to disputes about whether treatment was authorized or necessary (those go through IMR), or cases where the injury itself is in dispute, or where there is a dispute about whether or not the provider is authorized to treat the injured worker, such as where there is a dispute about whether the provider is part of a medical provider network.

Dr. Das stated that both IMR and IBR have been successfully implemented. She has been closely involved in all aspects of both processes, from the development of the contracts to devising the communication templates to reviewing the quality of decisions. The process is strong and continues to improve. The top three accomplishments in the IMR and IBR processes are:

(1) Running programs like IMR and IBR requires considerable infrastructure, expertise and attention to detail. Efficient work flows and a harmonious working relationship with the current sole contractor, Maximus, have been implemented. There are regular meetings as well as ad hoc communications to resolve issues as soon as they arise.

(2) Another positive finding is that the system is doing what was intended to do: IMR applications are now being appropriately submitted; and medical necessity determinations for previously delayed, denied, or modified treatment requests are being made quickly by appropriately qualified physicians. As of June 11, 637 IMR applications have been received, and 76 final determinations have been issued. Medical treatment decisions have been issued within an average of 40 days from request. Although there are no statistics on comparable cases that were resolved through the prior QME system, it is fairly evident that IMR has been successful in resolving medical disputes more quickly than in the past. Using evidence-based criteria, IMR has approved services for 34% of requests and has denied services for 66 % of requests. Some IMRs come in with multiple requests for treatment.

Data are not available to make pre-SB 863 comparisons, but data from DMHC can provide information for the group health experience. For a 10-year period, from 2001-2010, IMR was overturned in 46% of cases and upheld in 54% on the group health side. While it is too early (only 76 cases) to draw meaningful conclusions, to date, IMR in workers' compensation has resulted in a lower percentage of approvals than in the group health side.

(3) Finally, every effort has been made to clarify the process for making IMR requests easy to understand and the results transparent. FAQs have been posted on the DWC website and more questions will continue to be added. Public meetings have been held to obtain input on the proposed IMR and IBR regulations, and last month, an interactive public meeting was held where staff from our contractor was available to answer

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questions from stakeholders. Individual redacted decisions have been posted to ensure that everyone has access to the information. In addition to providing transparency, this allows both providers and claims administrators the opportunity to learn from past decisions and to make improved decisions in the future. Continued improvements to all processes, including the way decisions are posted, will be ongoing.

Dr. Das stated that a couple of examples of IMR decisions illustrate how well the system is working. The first example is that of the first two IMR decisions that were issued. Two expedited requests came in as separate UR decisions involving the same worker and same date of injury. A worker fell and sustained an injury to his left wrist. An X-ray did not reveal fracture. Because there was continued wrist pain and swelling over the next two weeks, the treating physician requested both a CT scan to rule out a fracture as well as an MRI to rule out a ligament rupture. Both requests were denied by UR. IMR approved the MRI and denied the CT scan, stating that an MRI would be sufficient as an initial tool to evaluate for both the bone fracture as well as the ligament rupture. These two decisions were issued 10 days following receipt of the IMR applications; (expedited decisions are required to be issued in 72 hours, but an extension may be granted. DWC approved the extension for issuing the decisions because it took extra time to receive medical records). In the previous litigated system, this issue would have taken much longer to resolve; during this time, the worker may have remained off work and his condition might have worsened.

Dr. Das stated that in the second example, a worker sprained his ankle at work and three months later, continued to have significant pain despite physical therapy and oral medication. Because of the continued pain, UR approved a referral to an orthopedic surgeon but denied a request for a Salonpas patch. Salonpas is a commercial skin patch containing methyl salicylate, which is similar to aspirin. IMR overturned the UR denial because the evidence-based guidelines recommend these types of skin preparations of salicylate for treatment of short-term pain.

Dr. Das stated that IBR applications have been trickling in at a slower pace than IMR. To date, there have been 123 eligible applications. The first IBR decision was issued just yesterday, in favor of the provider.

Dr. Das stated that through separate efforts unrelated to SB 863, the Medical Evidence Evaluation Advisory Committee has been reestablished and is making efforts to update and improve the California medical treatment guidelines known as the Medical Treatment Utilizations Schedule or MTUS. These committee members are experts in their field and volunteer their time to developing evidence-based guidelines for the service of injured workers. The MTUS is the evidence-based medical treatment guideline that providers should be using to base their treatment of ill and injured workers, and it is also to be used as a guideline for UR and IMR decisions. If there is a denial, it must be based on the MTUS. The purpose of guidelines is to serve as a guide to decision-making; it is not the intent of the MTUS to treat medicine as a cookbook approach but that everything has to be individualized.

Dr. Das stated that two sets of regulations for public comment to guide medical decision-making are in process and should be in place by the end of the year: one is to guide evaluating the “strength of medical evidence” for requested medical treatments; and the other guideline is to

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guide the appropriate use of opioids in treating injured workers. Additional updates of other guidelines will follow in 2013. These efforts, though unrelated to SB 863, will provide a strong and accessible evidence base for medical decision-making that will improve IMR.

Dr. Das stated that she is grateful for the support of colleagues and staff of the DWC and DIR, as well as public feedback, and that the accomplishments she has just summarized are a result of collaborative work.

Questions from Commissioners

Commissioner Bloch thanked Dr. Das for the presentation and the real-life examples. He stated that IMR is a new process for him and that he is pleased to learn that there is an expedited process. He asked if the IMR process meant to ultimately replace QMEs and AMEs. Dr. Das responded that the role of QMEs has changed as a result of the SB 863; QMEs will no longer make decisions about medical treatment; that role has been moved to the IMR process. QMEs will still make decisions on PD and apportionment but not whether a disputed medical treatment should be given to the worker. As of July 1st, this change will cover all cases. Right now, it is limited to people who have been injured this year (since January 2013).

Commissioner Bloch asked how the IMR process will work for represented and non-represented workers. Dr. Das responded that the submission, requirements and eligibility for unrepresented workers are the same for represented workers. The request may be submitted by the worker or his/her designee. A represented worker is more likely to designate his/her attorney to submit the request. There is no difference in the way the requests are treated in terms of urgency or priority.

Commissioner Bloch asked whether in the statute there are timelines for decisions in the IMR process. Dr. Das responded that the request for IMR needs to be submitted within 30 days of UR of the decision; after the case has been assigned to a reviewer, the reviewer has only 30 days but with allowing for mail, it is practically 45 days to issue a decision; for an expedited case, it is 72 hours. This timeframe is after the case is assigned to a reviewer. It can take a little bit of time to assign the case to a reviewer, and a decision is to be issued 30 days after the case is assigned to a reviewer. Commissioner Bloch asked whether on the QME and AME process there are similar timelines to be met. Dr. Das responded that there are timeframes for when a QME and AME are required to submit the report, which is 30 days from the evaluation. The reason it takes so long is the time it takes to resolve any subsequent disputes before a judge. The QME decision could still go before a judge; the IMR medical decision is final and it cannot be overturned by a judge. There are reasons it can be appealed, but the medical decision itself cannot be appealed.

Commissioner Bouma thanked Dr. Das for the presentation and all the hard work. She asked if there is any comparison between how many UR appeals there were under the previous process and the new process. Dr. Das responded that statistics were not collected in the old process except for the number of QME panels, but now, the requests can be tracked. It would involve looking carefully at the statistics on the past system as to what comparisons could be made.

Commissioner Bloch asked if there are historical data comparing the number of QMEs and how long they took prior to SB 899 and now after SB 8643. Dr. Das responded that the number of

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QMEs and the number of panels are available, but data on the number of days it has taken to come to a decision are not available. Commissioner Bloch stated that he would be interested in seeing the information DWC does collect.

Chair Brady asked about the number of states in which Maximus provides services. Dr. Das responded that Maximus works in a number of states and they provide services for the federal government, particularly Medicare, but she does not know the exact number of states¹. California is the only state in which Maximus does IMR for workers' compensation cases. They may do IMR work for the federal government workers' compensation system, but she is not sure, and she stated that she would get that information.²

Commissioner Steinberg asked if Maximus covers the entire state, and Dr. Das responded that Maximus is currently the only contractor providing both IMR and IBR because there was a short time frame for getting the process in place. In the future, there may be additional contractors. Commissioner Steinberg asked how Maximus is compensated, and Dr. Das responded that the claims administrator pays Maximus for each individual IMR case. The provider pays initially for IBR, and if the case is decided against the provider, then the provider eats the fee. If the case is decided in favor of the provider, the claims administrator must pay the provider the amount of the decision as well as the cost of IBR.

Findings of the Medical Access Study

Esther Hirsh, Berkeley Research Group
Henry Miller, Berkeley Research Group

Henry Miller, director of the first year of the three-year Access to Medical Treatment Study, stated that the key objectives of the study were to determine whether or not injured workers had adequate access to medical care and to present recommendations to improve the system. The study was conducted in 2012 and included data for previous periods. Similar studies were conducted in 2006 and 2008. One of the objectives of the study was to see if changes had occurred since the 2006 and 2008 studies. Two key activities were undertaken as part of this study: one was a telephone survey of 500 injured workers; and the other was an analysis of medical bill data.

The survey included workers who were injured in 2011 or 2012. The characteristics of the survey population were that: the average age was 43; the breakdown between male and female workers was close to 50%; and 45% of the respondents were Latino. There was an opportunity for the interviewer to ask questions in Spanish as well as English; therefore, the survey did not lose respondents because of their lack of knowledge of English. Most of the respondents had orthopedic injuries: sprains; strains; and muscle and joint injuries. In terms of access, 85% of the injured workers were able to see a health care provider within three days of their injury. Physical

¹ She later submitted that there are approximately 40 states.

² She later reported that Maximus does not do IMR for the federal workers' compensation system.

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and occupational therapy was a common service that was provided, and 50% of the injured workers saw a physical or occupational therapist.

Mr. Miller stated that the findings of the survey were positive in terms of access and satisfaction. Over half (55%) of the injured workers traveled less than six miles to their first visit; 84% of all those surveyed were satisfied with their care; 62% said that their main provider was typically a general practitioner or sometimes a specialist; 62% said that the provider understood their physical and mental needs as related to their job; and only 7% of all respondents indicated that they had been denied care. The investigators asked how many workers were represented by attorneys, and the response was 11%.

Mr. Miller stated that medical bill data submitted to the Workers' Compensation Information System (WCIS) were examined, and this was the first time these data were examined. The 2006 and 2008 studies were entirely dependent upon surveys. The medical bill data received for the current study were from 2007 through 2011, creating a database of over 50 million medical bills. The study examined all regions of the State of California. A number of interesting facts were identified, including that: the number of general practitioners has been declining steadily throughout the state, so this is not a regional issue; injured workers were going to other types of physicians, specialists or chiropractors, and general practitioners were used somewhat less; orthopedists remain an important provider and are involved in injured workers' care, but the services they provided declined in two major urban areas, the San Francisco Bay Area and Los Angeles; the use of chiropractors generally remained constant, only declining in a couple of regions; and an unusually high rate of physical and occupational therapists in the San Diego area were used. Overall, a common range of treatments were provided and billed for, and there was nothing unique about that.

Mr. Miller stated that the study findings reveal that injured workers had access to needed care, and satisfaction with the medical care was fairly high. A proportion or percentage of injured workers indicated that the care they had received in the workers' compensation system was at least comparable to or better than the care that they had received through other health care services. In terms of overall data, use of certain providers such as chiropractors, mental health therapists and physical therapists has increased. The percentage of bills submitted by team management specialists also increased.

Mr. Miller stated that the study was the most comprehensive of the three studies. The authors of the Medical Access Study are working on a second-year study that will be part of the 3-year study as well. Issues that require additional investigation have been identified. One issue is how well injured workers understand medical provider networks (MPNs). A second issue is to investigate in more depth the potential impact of denials on workers. The two issues are survey-based activities. Another area to investigate is the services provided by general practitioners and specialists to evaluate the rate at which specialists enter and exit from the workers' compensation network. Mr. Miller stated that the study also looked at workers' compensation payment rates as compared to rates of the same services that are paid by other payers, health plans and others. The number of claims for injured workers has been declining since 2007, yet the number of bills submitted has not declined; that means that the number of bills per injured worker has been increasing and this is an area that would be important to investigate.

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Questions from Commissioners

Chair Brady stated that this study was conducted for the Division of Workers' Compensation (DWC) and he thanked the researchers for presenting their findings to the Commission and the public.

Commissioner Culbreath asked whether the survey identified the occupations of the randomly selected workers. Ms. Hirsh responded that the workers were also randomly selected and there was no way to know if they were low-wage workers. The survey did identify education level, and there is some relationship between the level of education and wages. Interestingly, the randomly selected survey participants were a relatively highly educated group; there were quite a number of people who had post-high school education. Commissioner Culbreath stated that in the 2014 study, it might be interesting to identify access for lower-wage workers like janitors or in-home care workers. Ms. Hirsh responded that that was a great idea. She stated that currently, five years of WCIS data are available, and a sixth-year data set for 2012 will soon be available. The new data are claims data or bill data so that will not give the occupational incomes, but she stated that occupational income is something that the study researchers will think about.

Commissioner Doug Bloch stated that he supported his fellow commissioner's recommendation to examine low-wage occupations. He then stated that that it is important to know that 85% of the respondents were happy with the care they are getting in the system and that that is a very encouraging finding. He stated that he knows from his personal experience of working in politics that even when companies have polling and surveys and do random polling that there are times when it is important to do focus groups and look at specific segments of the population. This may be around people's income level, gender, age or occupation; the focus groups are tailored to subgroups.

Commissioner Bloch stated that it would be important to look at the 16% of the people who are not satisfied and find out why and that focus groups might be a good way to look at this group. He stated that he guesses that most of the 84% of the injured workers are those who did not have to travel very far, had minor injuries that did not involve any lost time from work, and when they saw their general practitioner, they were patched up really quickly and got back to work. Ideally, all workers' compensation claims should work in the same manner. However, he stated that the severely injured or disabled workers who may be in a long and drawn-out dispute of being denied services or fighting for them should be focused on in future studies; in this way, the studies would look at the 16% who are not satisfied with their care and figure out why they are not satisfied, as well as how to get to 100% satisfaction. Ms. Hirsh responded that the 84% of workers who were satisfied included some who were receiving long-term care. The current study, like the 2006 and 2008 studies, showed that the system is performing well for most people. She stated that the challenge for DWC is to ensure that the system works well for everyone, and the access studies aim to determine what DWC can do to provide a 100% positive experience.

Commissioner Bloch stated that he appreciated Ms. Hirsh's comments and shares them. He stated that he would be interested in trying to analyze the group that had the muscle strains,

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sprains to identify the more severe injuries and then to examine that group's satisfaction with the system. Ms. Hirsh responded that it might be possible to mine the WCIS data to find more severe injuries by using the diagnosis code and then try to contact those people. Mr. Bloch stated that he would like to reiterate his idea of a comparison of random polling versus focus group. Ms. Hirsh responded that the study welcomes all the suggestions presented.

Update on the Worker Occupational Safety and Health Training and Education Program

Robin Dewey, University of California, Berkeley Labor Occupational Health Program

Robin Dewey stated that the Commission's Worker Occupational Safety and Health Training and Education Program (WOSHTEP) was established through workers' compensation reform legislation in 2002 and is a statewide program funded by insurers authorized to write workers' compensation insurance in California and is administered by the Commission through three Resource Centers: the Labor Occupational Health Program (LOHP) at the University (UC) Berkeley; the Labor Occupational Safety and Health Program (LOSH) at UCLA; and the Western Center for Agricultural Health and Safety at UC Davis.

Ms. Dewey stated that the goal of WOSHTEP is to reduce injuries and illnesses and as a consequence, reduce workers' compensation costs. The major components of WOSHTEP are:

- The three-day Worker Occupational Safety and Health Specialist course which teaches worker leaders to become occupational safety and health specialists who can work with management and labor to identify and solve health and safety problems.
- Small Business Resources which provides training for the owners and managers of small businesses. This includes both general health and safety materials for small businesses but also industry-specific materials for small businesses in several industries.
- Awareness Sessions around the state for community organizations serving vulnerable working populations.
- An annual Young Worker Leadership Academy where young people learn about occupational health and safety and work together to plan outreach activities in their communities as part of Safe Jobs for Youth Month in May.
- Three Resource Centers devoted to helping WOSH Specialists, small business owners, community organizations, youth and others with health and safety issues.

Ms. Dewey stated that between 2012 and last month, 25 free 3-day WOSH Specialist courses were conducted across the state for worker leaders to prepare them to participate in health and safety issues in their own workplaces. Since the program started in 2005, over 3,000 WOSH Specialists in a number of different occupations, industries and workplaces have been trained. This represents a huge commitment from employers to release workers for three days. Sometimes these classes are "open enrollment classes" where participants from a variety of

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workplaces attend, and sometimes these classes are targeted to a specific group.

Ms. Dewey stated that the WOSH Specialist program has been quite successful and demand is increasing. Lately, in Northern California, through partnerships with regional and county-based risk management organizations and various unions who have helped promote WOSH Specialist classes, open enrollment WOSH Specialist classes have been oversubscribed. Recently, outreach for a class LOHP conducted in Napa brought in 70+ participants, making it necessary to divide the class into two sessions. The three Resource Centers have also offered open enrollment classes regularly in Sacramento, Contra Costa County, the Bay Area, the South Bay, Los Angeles and San Diego.

Ms. Dewey stated that recent WOSH Specialist classes held for specific audiences have included: the Northern California American Transit Workers Union; the Southern California Superior Court staff health and safety committees; supervisors from a farm labor contractor group; county hospital employees who are members of SEIU; and young men and women with employment challenges at a local Los Angeles-based Worksource Center. The three Resource Centers provide ongoing support and technical assistance to WOSH Specialists through a number of methods including email notices, newsletters and refresher classes.

Ms. Dewey stated that the WOSH Specialist program continues to identify individuals who can become WOSH Specialist course trainers (network trainers) to help extend the reach of this program. Typically, these network trainers go through a WOSH Specialist course and then a training-of-trainer (TOT) program where they learn how to teach the WOSH Specialist course or Awareness Sessions to their constituents and/or co-workers. For example, LOSH has provided a Specialist training and TOT for the Warehouse Workers Resource Center staff in Ontario, CA, providing Awareness Sessions for their members on hazards in the workplace.

Ms. Dewey stated that an exciting example of how the TOT model has worked well has been with California Prison Industries Authority (PIA). Cal PIA inmate workers do hazardous work, such as manufacturing, construction, agricultural work, etc., for the prison system. Cal PIA directors have made a commitment to having all health and safety coordinators around the state trained to deliver the WOSH Specialist training to their inmate workers. About half of the coordinators have been trained so far, and there are plans to train the other half this coming year. These inmate workers/WOSH Specialists have learned valuable skills that not only help protect them on the job while in prison but give them marketable skills for when they are released. This type of inmate health and safety training does not seem to be happening in other states.

Ms. Dewey stated that over the past couple of years with Awareness Sessions, special effort to collaborate with community-based organizations has been made in order to better reach underserved working populations such as those with limited English and low pay, as mandated by the legislation establishing WOSHTEP. This coming year, as part of this effort, LOHP will be working with a local Day Laborers Center to plan and conduct a series of occupational safety and health classes in Spanish for day laborers. This project will include developing some new low-literacy handouts. After piloting this project locally, collaboration efforts with the National Day Labor Organizing Network (NDLON) to promote the modules and materials to their member organizations statewide and eventually, nationally will be made. In addition, LOSH and UC

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Davis have conducted a number of presentations to consulates, and LOSH and LOHP have also participated in local Workers' Memorial Day events, including the event in Los Angeles this year where Commissioner Culbreath attended to lend support.

Ms. Dewey stated that the WOSHTEP Small Business Resources program provides small business owners and managers with materials and training that can help them involve their employees in illness and injury prevention efforts. To date, materials and a training program for general industry as well as industry-specific materials and training for restaurants, dairies and janitorial companies, all in Spanish and English, are available. The restaurant materials have also been translated into Chinese. In addition, a national version of the general industry training guide was developed.

Ms. Dewey stated that in the past year, a new project that specifically helps small businesses develop and implement an Injury and Illness Prevention Program (IIPP) and come into compliance with Cal/OSHA's IIPP standard has been developed. The program for small businesses has a half-day training program and materials, including a fill-in-the blank IIPP template as well as a guide to help complete and implement an IIPP, factsheets, tools like checklists and forms, and a resource list. This project has been very exciting in part because of the unique partnership that has been formed to help plan and implement the project. The partnership includes Cal/OSHA Consultation, DIR, State Compensation Insurance Fund, the Department of Public Health's Occupational Health Branch, and two small business associations, Small Business California and California Small Business Association. Each partner is helping to shape the project and to promote the trainings to their constituents. In addition to this program for small businesses, a day-long training for larger businesses which also focuses on how to develop and implement an effective IIPP is being offered. Still another new small business IIPP project this year is being developed by the WOSHTEP Central Valley Resource Center at UC Davis. This program includes a resource packet of materials and a training program on writing and implementing an IIPP specifically for the agricultural industry.

Ms. Dewey stated that WOSHTEP continues to offer the popular Young Worker Leadership Academy. The three-day program is held at UC Berkeley but it is a statewide program. LOSH helps LOHP run the Academy and a number of youth teams come from Southern California. In 2013, six teams of youth attended the Academy, and these teams worked after the Academy to develop and run activities that promote young worker health and safety during Safe Jobs for Youth Month in May.

Ms. Dewey stated that the three Resource Centers provide ongoing occupational safety and health technical assistance and other resources to WOSH Specialists, small business owners and managers, and others.

Ms. Dewey stated that WOSHTEP has produced a number of other materials and training programs which are all online; these include:

- A Construction Case Study Guide for use by apprenticeship trainers and others to teach about key hazards in construction. A number of trainings for apprentice instructors have been presented in collaboration with State Building and Construction Trades Council.

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- The “Whole Worker” wellness booklet which is an educational piece on how to integrate occupational safety and health into workplace wellness programs.
- A new factsheet on the hazards of working with Spray Polyurethane Foam (SPF) insulation which is used a lot because of the push for energy efficiency.
- A factsheet on motor vehicle safety because of the huge number of injuries and fatalities related to work-related driving.
- A booklet to aid in conducting awareness sessions on occupational safety and health with underserved workers.
- A booklet for teaching restaurant workers about health and safety on the job.
- Training and materials on indoor heat illness prevention.

Ms. Dewey stated that all the trainings are free and all the materials online on the Commission’s website can be downloaded for free. She stated that they would be pleased to talk with anyone interested in WOSHTEP trainings or materials.

Questions from Commissioners

Commissioner Culbreath stated that it was an honor to participate in the Workers’ Memorial Day event in Southern California. She stated that the work WOSHTEP does is so important, particularly because low-wage workers tend to be undocumented and ignored by the state. Ms. Dewey responded that it is so important that the legislation supports the underserved as a target population and allows WOSHTEP to reach that audience that needs training and information the most.

Chair Brady stated that the emphasis on prevention is very important; a lot of time is spent with the pain of injury and illness, but the best way forward is through prevention strategies.

Commissioner Bloch stated that a lot of work is being done with warehouse workers and with participating in Workers’ Memorial Day events, and that WOSHTEP is an important program. He stated that he would be contacting Ms. Dewey about training for low-wage immigrant workers in the Central Valley involved with food processing and dairy processing. Ms. Dewey responded that there is a WOSHTEP program for the dairy industry, and Commissioner Bloch stated that he was aware of that program.

Acting Executive Officer Report
D. Lachlan Taylor, CHSWC

Implementation of SB 863

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Lachlan Taylor stated that since the reform, Commission staff has been extremely busy supporting the implementation of SB 863. The reform required consultation with the DIR director on the return-to-work program. The final study is due July and is expected to be on time; it will go on the Commission's website. The Commission is also involved in the ongoing wage-loss study and is also required to be in consultation for the study of the copy service fee schedule. The draft of the copy service study is expected this month, which will allow the DWC to do regulations on copy services by January 1, 2014. Mr. Taylor stated that the Commission is also assisting with the interpreter fee schedule, the vocational expert fee schedule, and the home-care services fee schedule studies. The Request for Proposal (RFP) for the public sector self-insurance study is being finalized and funds to do that will be available this July with the next budget year.

Evaluation of the Effect of the Medical Reforms

Mr. Taylor stated that Commission staff would like to begin the process of evaluating the effect of the medical reforms by beginning to develop the RFP process and getting some public input.

CHSWC Vote

Commissioner Bouma moved to approve that an RFP be developed to study the effect of the medical reforms, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Study of the Mix of Liens

Mr. Taylor asked for approval as guidance to determine the resources needed to examine how the mix of liens is changing. Commissioner Culbreath asked that if there is a cost associated with the analysis, and if so, whether Mr. Taylor will come back to the Commission, and Mr. Taylor responded that he would do that. Approval was granted.

Posting of Reports

Mr. Taylor stated that the Commission will be posting Mark Priven's report for public comment when it is available, as well as the RAND report on the Special Earnings Loss Supplement program. Commissioners will have an opportunity to hear public comment on both of those before the next meeting, which is scheduled for Thursday, October 17, 2013 in the Auditorium of this building.

Question from Commissioners

Commissioner Bouma asked about what data are available for a study of the public self-insureds, and Mr. Taylor responded that there was no response to an RFP issued on this subject and the Commission is planning to revise it so that it is less broad and then reissue the RFP.

Chair Brady stated that he appreciates the extra efforts in issuing the RFP about the public self-insureds so that the study can be based on data.

Chair Brady stated that he would like to acknowledge the amount of work that goes on in preparing for the Commission meeting from Commission staff and staff in other departments.

Public Comment

MINUTES OF CHSWC MEETING
June 13, 2013 Oakland, California

Ruth Morentz, with the City and County of San Francisco, stated that the issue of the proliferation of opioids is a major concern and this will be a challenging area for IMR.

Other Business

None.

Adjournment

CHSWC Vote

Commissioner Culbreath moved to adjourn, and Commissioner Bloch seconded. The motion passed unanimously.

The meeting was adjourned at 12:20 p.m.

Approved:

Martin Brady, Chair

Date

Respectfully submitted:

D. Lachlan Taylor, Acting Executive Officer

Date