

**Commission on Health and Safety and Workers' Compensation (CHSWC)**

**MINUTES OF MEETING  
June 4, 2015  
Elihu M. Harris State Building  
Oakland, California**

In Attendance

2015 Chair, Sean McNally

Commissioners Martin Brady, Daniel Bagan, Doug Bloch, Christine Bouma, Shelley Kessler, Angie Wei

Absent

Kristen Schwenkmeyer

**At-a-Glance Summary of Voted Decisions from the CHSWC Meeting**

Approval of Minutes from the Last Meeting (March 26, 2015)	<b>Approved</b>
Electronic Reporting Project: convene an additional expanded Advisory Group on Electronic Reporting to explore options, increase stakeholder participation, and determine next steps.	<b>Approved</b>

**Approval of Minutes from the March 26, 2015, CHSWC Meeting**

*CHSWC Vote*

Commissioner Bouma moved to approve the Minutes of the March 26, 2015, meeting and Commissioner Bagan seconded the motion, which was then passed unanimously.

**Report on Department of Industrial Relations**

Christine Baker, Director, Department of Industrial Relations (DIR)

Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation (DWC)

Dr. Rupali Das, Executive Medical Director, DWC

**Comments by the Director**

Director Baker thanked the Commissioners and the Chair. She said that she also wanted to recognize Selma Meyerowitz from CHSWC, who was scheduled to retire on Friday. Ms. Meyerowitz has been with the Commission for 10 years, and Ms. Baker thanked her for her service and wished her well.

Important developments at the DIR:

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- Small working groups are now exploring the possibility for Electronic Medical Reports (EMRs) to bring DWC in line with other DIR systems (all electronic).
- Significant outreach effort to physicians is ramping up.
  - Need to create new standard format for educational modules.
- Return-to-Work-Supplemental Payment Program started April 13.
  - Program offers quick and efficient payments to workers.
  - 233 applicants, as of June 1 (37 rejected due to incomplete information or the date of injury prior to January 1, 2013).
  - Resources devoted to program: kiosks in all the DWC district offices, trained I&A Officers, and a DIR internal team.
- Juliann Sum, Chief of Cal/OSHA, unanimously confirmed June 3, 2015 (the day before the CHSWC meeting) by the Senate Rules Committee.
  - Ms. Sum's forte is outreach and education, with strong legal and enforcement background.
  - Current projects: updating regulations, procedures, policies, and communications; also developing materials for workers and employers on rights and responsibilities.
- Public Works developments.
  - New online program (live June 4) allows contractors to submit *electronic* certified payroll records to DIR on public works projects (no longer hard copy).
  - Advantages:
    - Better targeting and enforcement of public works projects:
      - System will reveal misclassification and absence of prevailing wage pay.
    - More sustainable financing of public works efforts, paid for by users of system (\$300 fee for public works contractor registration)

Ms. Baker said that the DIR is very excited about all the new work on infrastructure.

**Report on DWC Regulations by Destie Overpeck**

- Update on the SB 863 new regulations:
  - Home service fee regulations completed, which became effective July 1, 2015.
  - Benefit notice regulations in process: a second 15-day comment period likely, with expected completion by the end of July and an effective date of January 1, 2016.
    - Only two more fee schedules from SB 863 to complete: the home health care fee and the interpreter fee schedules.
      - Both finished pre-rulemaking phase (DWC Forum, opportunity for public comment) around May 18.
      - Notice of rulemaking expected to be issued soon for both.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- Strength-of-evidence updated regulations for the Medical Treatment Utilization Schedule (MTUS) went into effect on April 30, 2015.
- Opioid and chronic pain guidelines are close to completion, heading into formal rulemaking.
- Workers' Compensation Information System (WCIS) medical bill reporting update:
  - Filed with the Secretary of State on April 6, 2015.
  - Goes into effect April 6, 2016, in time for the reporting partner to make necessary system changes.
- Online QME panel request progressing:
  - Public hearing held May 22, with a 15-day revision and comment period no later than June 8.
  - Implementation plan:
    - September 3: last day for acceptance of paper Form 106 for represented parties.
    - October 1: online QME panel requests became mandatory (instantaneous panel production, provided the form is filled out correctly online).
    - Outreach is planned.
- Complying with the changeover to ICD-10:
  - Public hearing on conversion was scheduled for July 7, with the goal of an effective date of October 1, 2015, when Medicare transitions to ICD-10.
- Aligning DWC hospital outpatient and ASC fee schedules with those of Medicare:
  - Public hearing on June 17, coinciding with Medicare's Official Medical Fee Schedule changes to the hospital outpatient and ASC fee schedules.

*Comments by Commissioners*

Regarding the update to the MTUS on chronic pain guidelines, Commissioner Wei asked Ms. Overpeck whether she thought it would have an impact on the trajectory of opioids into the independent medical review (IMR) system. Ms. Overpeck replied that she thought it would, because the guidelines should help clarify appropriate opioid treatment when alternative methods are not working. She added that notice was just beginning, but they hope the guidelines would be adopted by the end of the year.

Director Baker stated that the guidelines also allow for a tapering off, but Dr. Das would speak in greater detail on that.

Commissioner Bagan stated that it sounded as if they were making good progress on QME for represented workers but asked about unrepresented workers and any plans to move those QME requests online. Ms. Overpeck stated that they are going to see how the represented worker system works first. It is easier to start with moving the QME panel requests online for the

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

represented workers, because DIR knows that they have access to computers, are online, and have the ability to use technology. It is obviously faster to send it in online versus mailing it. DWC will look into the possibility, but it is a little more complicated to have online QME panel requests for unrepresented workers. The new system will also free up the DWC Medical Unit staff tremendously, making it easier for staff to handle the paper ones that come in on unrepresented cases.

Director Baker said that when they stepped into the Administration, there were backlogs of 9–18 months in QME. They have reduced the backlog, and this new online system will reduce it even further. The staff dedicated to QME panel creation in the Medical Unit will be able to help unrepresented workers.

Ms. Overpeck stated that statutorily there is a 15-day timeframe for getting panels out to unrepresented workers, and they have always met that requirement.

Commissioner Bouma asked what ICD-10 was. Ms. Overpeck explained that ICD-10 describes diagnostic codes used in medical reports—a new group of codes that are much more expansive and give more detail than the ICD-9 does.

Commissioner Bloch thanked DWC for the copy service fee schedule and said that during his short time on the Commission it was the most controversial and contentious issue that had come before them. He stated that DWC did an excellent job and they have not heard anything from anybody on it, which makes him guess that DWC did a good job and people are happy with the schedule.

Commissioner Brady asked for a confirmation of the coding date change for ICD-10. Ms. Overpeck stated that the date was October 1.

**Providing Better Care to Workers: Independent Medical Review and Medical Treatment Utilization Schedule**

**Update on DWC Medical Unit by Dr. Rupali Das**

Rupali Das explained metrics used to evaluate the IMR program and provided a description of the MTUS.

Dr. Das stated:

- The total number of applications submitted for IMR has been stable, but there was a slight increase in March and April 2015.
- Of all the submitted applications, 63% are eligible for IMR.

The four main reasons for IMR ineligibility are:

- (1) No utilization review (UR) decision is submitted with the application.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- (2) Requests arrive more than 30 days after the UR decision has been issued.
- (3) UR denial was not based on medical necessity but because information was missing.
- (4) Lack of signature (a less common reason).

Dr. Das discussed the value of metrics. They do the following:

- Provide an objective measure of practices.
- Measure the effectiveness of reforms.
- Allow for targeted outreach/education.
- Identify trends in appropriate and inappropriate practices.

She cautioned, however, that statistics should not substitute for individual stories of workers.

Dr. Das stated that at the previous Commission meeting, Commissioner Bloch asked how treatments were categorized:

- This led DWC to refine its categories.
- The four most common IMR medical treatment categories were: pharmaceuticals, therapies, equipment, and diagnostic tests.
- Other IMR treatment categories include evaluation and management, home health care, treatment programs, and surgery.

Regarding pharmaceuticals, Dr. Das stated:

- This was the largest category of IMR decisions (42% of all IMR treatment decisions).
- Narcotics were the most common IMR treatment decision (26% of all pharmaceutical treatment decisions).
- Pharmaceuticals were classified into injection and non-injection categories.

Dr. Das noted:

- The majority of IMR decisions uphold the UR denials.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- In 2014, IMR upheld 88% of UR decisions and overturned 12% of UR decisions.
- A single IMR decision letter may contain multiple treatment letters, and one treatment request may be denied while others are approved.
- IMR upholding UR denial does not mean that care was not delivered, as some treatments may cause harm. More care does not mean better care.

Dr. Das said DWC:

- Assists workers find the best treatments through the MTUS.
- In April 2015, DWC updated MTUS regulations to follow evidence-based medicine (EBM).
- EBM involves
  - An experienced clinician applying the best scientific evidence that is tailored to the individual patient.
  - It is important to educate patients regarding treatment options and the associated risks and benefits.

Dr. Das stated:

- EBM is not cookbook medicine, nor is it meant to cut costs or withhold treatments from patients; unfortunately, EBM has acquired an unfair reputation for being academic or too labor intensive.
- MTUS cannot provide guidance all the time. Sometimes better evidence emerges after the MTUS is published.
- Treating physicians should follow the guidelines at all times. The recent MTUS updates and provides guidance to physicians on what to do when treatments fall outside the MTUS or rebut the MTUS.
- To rebut the MTUS successfully, a physician should follow the strength-of-evidence (SOE) guidelines and base treatment on high-quality studies. The physician needs to follow the search sequence described in SOE and find good quality studies and studies that are high on the hierarchy of evidence. If the hierarchy of evidence is higher than it is in the MTUS, then care should be provided even though it is not in the MTUS.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

Dr. Das explained the sequence for applying guidelines and MTUS:

- Physicians should first apply MTUS, if relevant.
- If the MTUS is not relevant, the treating physician needs to follow the search sequence outside the MTUS.
- The physician should look for relevant recommendations in two guidelines: American College of Occupational and Environmental Medicine (ACOEM) or Official Disability Guidelines (ODG). If these are not relevant, physicians should follow other recent evidence-based guidelines, such as those found on [guidelines.gov](http://guidelines.gov).
- Lastly, they should look to scientifically based peer-reviewed literature. In this case, studies are evaluated in the following manner: at the top are systematic reviews of randomized control trials with a low risk of bias and at the bottom is published expert opinion. Unpublished opinions are nowhere to be found in the hierarchy. DWC expects this type of documentation in the IMR decision.

Dr. Das said that the other parts of the MTUS to enter the formal rulemaking phase are two interrelated guidelines:

- Opioid guidelines and chronic pain guidelines.
- Chronic pain guidelines will be based on ODG, and opioid guidelines will be separately developed by DWC.

Dr. Das noted:

- All the MTUS guideline chapters will be updated.
- Guidelines help to return the worker to work faster.
- Opioid guidelines are consistent across the State of California, for patients both inside and outside the workers' compensation system. DWC guidelines are in harmony with similar guidelines developed for all patients by the Medical Board of California.

*Comments by Commissioners*

Commissioner Bloch asked how many cases are in the workers' compensation system annually. Destie Overpeck responded that there are 550,000 to 650,000 medical claims cases annually.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

Commissioner Bloch asked whether minor injury cases become part of UR and IMR. Dr. Das responded that she did not know whether these cases included minor injuries, but if the treatment was not disputed, then it would not go to IMR or UR. Commissioner Bloch asked which classes of injured worker were not getting treatment. Dr. Das stated that she would review the data to answer his question.

Commissioner Bloch asked whether 80% of the doctors are in the Medical Provider Networks (MPNs) and who trains the doctors about the guidelines. Dr. Das responded that there is currently no systematic training but that she would like to implement more consistent, statewide training on the guidelines. Commissioner Brady later corrected the above statistic by stating that 80% of the *claims* are within an MPN, not 80% of the doctors.

Director Baker stated that she has met with the California Medical Association (CMA) and she could partner with them to engage in educational outreach.

Commissioner Bloch asked how the guidelines differ between the workers' compensation system and the group health system. Dr. Das replied that the treatment and its benefits, risks, and recommendations for treatment in the two systems are not different. However, the goal for workers' compensation is to "cure and relieve" and to return an injured worker to work, whereas group health does not include these explicit goals. The two systems are conceptually different but, in terms of the treatment that is considered beneficial, are not different.

Commissioner Bloch asked whether there is more flexibility in the guidelines in the group health system. Dr. Das responded that there are different guidelines in the group health system than the workers' compensation system because each insurer may have a different guideline. In terms of flexibility, she was not familiar with whether the guidelines in group health have flexibility or how they are implemented.

Commissioner Bloch asked who is responsible for the lack of complete documentation or the tardiness of the application. Director Baker stated that at the start of the IMR process, when a UR decision or IMR application was missing, DWC would try to find the injured worker. The backlog occurred largely because DWC was trying to track down the UR denial, but after the six-month period, it was decided that the petitioner had to attach the UR. Ms. Overpeck added that the current rule requires the claims administrator to send the completed documents with the UR denial to the injured worker, who has to sign the application, attach the UR denial, and send it to IMR. Thus, the requirements need to be met by injured workers or their representative.

Commissioner Kessler asked whether it was possible to locate the file for an IMR case that had been rejected because it did not meet the timeliness requirement. She wanted to know where the delays are to better address the timeliness issue. She also asked whether having an EMR will help determine where the delays are occurring and whether the file is incomplete. Director Baker replied that, as they start to have electronic files it can take action on incomplete files. Using paper files makes it difficult to determine where the delays are happening; and they will be easier to find with EMR.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

Commissioner Bouma asked whether a physician can make a decision about a medical treatment without presenting a study as supporting evidence. Dr. Das answered that published information must be presented to support the physician's recommendation and that a physician's personal opinion does not count as evidence-based medicine. The published literature has to be of high quality and reproducible. A guideline is an assessment of many studies, not just one study, but an individual study that is high quality is considered evidence. Even if nothing relevant has been published, a personal opinion is still insufficient evidence, in both group health and workers' compensation. Commissioner Bouma asked whether a study is required to demonstrate that the treatment is clinically effective. Dr. Das replied that it is important to provide an explanation for why a patient warrants a particular treatment and the reasons the patient qualifies for the treatment. The logic behind the treatment should be documented and explained.

Commissioner Bouma asked whether the pyramid and structure of hierarchy is different from that of group health. Dr. Das answered that they are not different from what one finds in group health.

Commissioner Brady stated that the opioid problem is a crisis and thanked the group for its good work on opioids.

Commissioner Daniel Bagan asked whether an injection would be part of the pharmaceutical category in the IMR medical treatment category, and the answer was yes. He stated that provider education is the key, and he thinks it is appropriate to attempt to partner with the CMA.

Commissioner Wei asked whether there is a work plan to establish an education requirement for MPN doctors. If so, there is concern that doctors might want to leave the workers' compensation system. Dr. Das answered that some groups already have such a requirement, so there is precedent for it, and a requirement is under consideration.

Commissioner Brady stated that in the public schools program, they do not provide an MPN, but they are constantly trying to see what is best for injured workers, by tracking internal data and evaluating their experience by working with the physicians.

Commissioner Kessler wanted to find out how thoroughly the reviewing physician reviews all the IMR documents. Moreover, she stated that having a physician remain anonymous as a reviewer in IMR cases should be discussed. Dr. Das replied that it is easy to find the documents that are reviewed and that it is a transparent process. The documents do not appear on the publicly posted copy, but the individual injured worker can review them.

Commissioner Wei asked staff to prepare a paper on provider training and education with respect to the MTUS and evidence-based guidelines.

Commissioner Bloch stated that Assembly Bill 1124 had passed and that he would like a report from the staff on drug formularies.

**Update on Electronic Medical Records Project by Destie Overpeck**

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

In response to Commissioner Wei's request regarding how to improve timeliness and efficiency throughout the medical workers' compensation system and IMR, Destie Overpeck presented a draft interim report on EMRs and reporting.

Ms. Overpeck stated:

- After meetings with representatives from the claims administrators' groups, provider groups, and Utilization Review Organizations (UROs), DWC developed long-term and short-term recommendations and goals.
- The recommendations were:
  1. The presentation should be extended to a larger group of stakeholders at a public meeting to get input from anyone involved with medical records.
  2. An electronic IMR application with a unique identifier should be created to help make the IMR process work more efficiently and prevent mismatched medical records.
  3. Electronic reports that physicians use at the beginning of workers' compensation injury process should be developed, and to do that Ms. Overpeck will start a pilot program that focuses on doctors' first report (DFR) of occupational injury or illness. Ms. Overpeck is working with the Information Technology (IT) unit to develop an online DFR for this information.
  4. DWC is also discussing mandating electronic reporting and the servicing of medical records electronically. An incentive would be increased fees paid to physician for these services.

Ms. Overpeck stated:

- Current electronic billing is an option for physicians and is mandatory for claims administrators;
- Electronic payment service is not currently available, so it will be an improvement for those providers who electronically e-bill.
- A long-term solution would be to develop a highly structured centralized electronic health record system in which records can be shared among the various parties. Statutory changes will be necessary for electronic health records and electronic payments. By requiring claims administrators and UROs to file medical records with Maximus or another company using its electronic records, DWC would have better matching capabilities and faster electronic submission records.

Ms. Overpeck stated:

- Requiring electronic IMR applications also creates an opportunity to get the UR data upfront.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- Electronic applications can be filled out automatically with capture of the UR data.
- The issues to overcome are: (1) the claims administrators and UROs have used different software programs that are incompatible, (2) the required initial investment by organizations and physicians, (3) privacy and security concerns.
- The attachment to the interim draft report has a list of all the workers' compensation reports, ideas on DFRs, and statistics on the number of physicians already using EMRs.

*Comments by Commissioners*

Commissioner Kessler asked how the software for EMRs would be developed. Ms. Overpeck responded that DWC is already using an electronic medical software program. However, if DWC were to use a platform, it would request a bid, and changing medical records will be accomplished in stages.

Commissioner Bouma asked whether the medical records exchange would make the EMRs available for the life of the claim. Ms. Overpeck answered that they should be able to create such a system. Currently, medical records have to be resubmitted every time there is another claim.

Commissioner Kessler asked whether Maximus will be interested in developing software for EMRs and whether Maximus would need another contract. Ms. Overpeck responded that it would depend on the approach that it takes.

**High-Hazard Industry Targeting Update**

Glenn Shor, Research and Policy Advisor, DIR  
Wende Carleson, Regional Manager, DOSH High Hazard Unit  
Meitong Jin, Research Program Specialist, DIR

Mr. Shor stated that Cal/OSHA has been discussing the targeted enforcement inspections. Choosing which workplaces to inspect each year is an important and sensitive question for any agency doing this type of enforcement.

- Goals of the California Occupational Safety and Health Act of 1973:
  - Ensure safe and healthful working conditions for all California workers through:
    - Enforcement of effective standards, and assisting and encouraging employers to maintain safe and healthful working conditions.
    - Research, information, education, and training.
- Specific provisions of the Labor Code, section 6314.1, on the targeting of inspections:
  - All targeted inspections shall be conducted on a priority basis, targeting the worst employers first.
  - Specific neutral criteria contained in the Division's enforcement plan must determine selection of workplace inspections.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- Mr. Shor said that his presentation would be an overview and preliminary evaluation of the recent targeted enforcement inspections. The results may assist DOSH in its response to the Federal Annual Monitoring Evaluation (FAME) Report of Cal/OSHA, published by the Federal OSHA for Federal fiscal year 2013:
  - Report found that “the targeting program data was not evaluated for effectiveness in reducing injuries, illnesses and deaths, on a consistent basis.”
  - Report sought more information on the methods used in the state plan.

Overview of the presentation’s three parts:

- First, how Cal/OSHA High Hazard Unit targets inspections.
- Second, Wende Carleson, Regional Manager of the DOSH High Hazard Unit (assisted by Gene Murphy, Senior Safety Engineer for the division), will discuss the data used to select high-hazard employers and the variety of methods used for targeting in the past.
- Third, Meitong Jin, a DIR Research Specialist, will present results of ongoing research to evaluate the impact of targeted inspections and the use of existing DOSH and other DIR data, such as an integrated data management system (IMIS) and the workers’ compensation information system (WCIS), to refine those methods.

Goal of presentation: present various methodologies for choosing enforcement targets and what outcomes constitute an effective targeting program.

Mr. Shor explained Cal/OSHA’s two faces: voluntary consultation and enforcement.

- Enforcement responsibilities of California, an approved state plan under the Federal OSHA Act and Labor Code requirements:
  - Investigation of complaints about job-related hazards and serious injury-related incidents.
    - Programmed inspections based on specific criteria, the focus of the presentation.
      - When violations of standards are found, inspectors can issue citations, special orders, and orders prohibiting use (OPUs) of certain equipment or processes.
    - The Division also issues various permits, certifications, licenses, and approvals for especially hazardous work.
  - Program for targeting high-hazard employers (see LC section 6314.1, AB 110, from 1993) intended to ensure
    - Highest-hazard employers in the most hazardous industries are inspected on a priority basis.
    - Resources used wisely and hazards corrected.
  - Findings of a widely noted 2012 article in *Science*, researchers at UC Berkeley, and the Harvard Business School:

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- A 9.4% reduction in the number of injuries and a 26% reduction in medical and indemnity costs after programmed inspections under Cal OSHA's High Hazard Program.
- "No evidence that these improvements came at the expense of employment, sales, credit ratings, or firm survival."

Ms. Carleson thanked the Director and Mr. Shor for conducting the study and for helping them continually improve targeting.

- Accurate targeting is important because a small group of 16 field inspectors statewide conducts the targeted inspections: it is important that they target the worst offenders.
- New budget will allow the creation of more positions.

Two-pronged approach to selecting inspection targets:

- Identify the high-hazard industries first.
- Select for specific establishments.

Identifying industry groups:

- Industries (grouped by the North American Industry Classification System [NAICS] code) that have Days Away, Restricted, and Transfer (DART) rates of more than 200% of the California private sector average DART rate.
- Prioritize industries based on the following factors:
  - Cal/OSHA Special Emphasis Programs (SEPs).
  - Federal National Emphasis Programs (NEPs).
  - Whether California has a standard to cover the hazard or adopts a new Federal Standard.
  - The hazard creates a significant number of serious injuries, illnesses, or fatalities.
  - Evaluation of past and current selections.
- Industry groups currently on the high-hazard list:
  - Agriculture.
  - Construction.
  - Manufacturing.
    - Focus on manufacturing due to high number of serious violations.
  - Retail trade.
  - Transportation and warehousing.
  - Waste management
  - Accommodation and food services.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- List of targeted industries posted on the DIR website each (Federal) fiscal year.

Four methods for selecting specific establishments within an industry:

- *Method A, Randomization*: their primary method of targeting.
  - Use available databases (Dun and Bradstreet and American Business Disc).
- *Method B, Experience Modification*: another primary method over the years.
  - X-mods expressed as a percentage is a term used in worker's compensation that compares the claim history of the loss of one company to all other companies in the same industry that are similar in size.
    - Shortcoming: list may not have always been consistently randomized.
    - Not always a good predictor of a bad employer.
      - You could have one employer with one severe claim (= high loss), but find no violations or serious violations at that site.
- *Method C, Specific Injury*: A pilot study in 2012 selected from the WCIS, by specific injury type, such as amputation or loss of limb.
  - History has shown that when there is an amputation, it is typically the result of a machine guarding issue, training, or other related factor. They cross-reference the injury reports with their reporting system, and if there was no report to Cal/OSHA, then they go out and investigate those sites.
    - Over 50% of inspections yielded a very high percentage of serious violations.
    - It was determined that many reportable accidents had never been reported to the Division.
- *Method D, Workers' Compensation Claims*: Selection criteria used are claim rates. If no programmed inspections have been conducted in the previous three years, the establishment was added to the list for inspection. This method was developed based on the study of inspection data from the past several years, using Cal/OSHA and DIR data.

Mr. Shor explained the three different ways Cal/OSHA can use to measure effectiveness, depending on the workplace:

1. Decrease in injuries and illnesses.
2. Decrease in cost of workers' compensation.
3. Improvement in direct inspection results for workplaces with an unusually high number of violations or penalty assessments.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

Ms. Jin stated that a different method of analysis is used for each of these methods to measure effectiveness. Injury frequency (number of injuries over a given time period) and injury rate (number of injuries per 100 workers) are very easy to measure before and after an inspection. Ms. Jin separated employers into different groups and examined each group pre- and post-inspection to see whether there was any change over a three-year period:

- Low claim groups: no significant change.
- Medium-low claim groups: reduction of 1.4 claims.
- Medium-high and high-claim groups (i.e., over 50 claims in three years): 35% drop in claim frequency (145 down to 93).
- After three years, the effect of inspections declined.

DIR researchers found that inspections have the most significant effect on high-claim groups, so they decided inspections should prioritize those groups:

Ms. Jin also reviewed claim rate groups (number of claims per 100 workers). Findings showed that they should concentrate resources on employers with a high claim rate (as opposed to the *extremely* high claim rate group) and that the effect of inspections on claim rates lasts only three years:

- High claim rate group: 50% reduction in claim rates.
- Extremely high claim rate group: 31% reduction.
- Medium-high group: 28% reduction.
- Lower claim rate groups (fewer than 6.5 claims per 100 workers): no significant decrease.

Ms. Jin explained that although one might expect an employer with higher claim rates to have a higher number of violations, no evidence shows such a correlation. Analysis shows that claim rates and violations are like apples and oranges and should not be treated as interchangeable. The focus of inspections depends on the desired goals :

- If the goal is to reduce claims, one should inspect employers with a high injury rate.
- If the goal is to find more violations, one should go to employers with a higher number of violations.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

- If the goal is to meet all three criteria— (1) reduce injuries, (2) reduce violations, and (3) reduce costs—then one should use three different, separate types of employers and three different targeting methods.

Mr. Shor presented the key research questions:

- Do similarly sized employer groups have similar numbers of violations?
- Does inspection length (time in hours) correlate with the number of violations found?
- Do inspection types correlate with numbers of violations found?
- Are there industry differences in terms of violations or penalties?

Lastly, Mr. Shor displayed a table of industry codes with DART rates more than double the average private sector rate for California for 2014–2015 that would be in the pool for targeting in the coming year.

*Comments by Commissioners*

Commissioner Kessler asked what types of injuries were reported in air transportation. Mr. Shor replied that the table displays the overall rate of injuries per 100 workers. Gene Murphy of Cal/OSHA clarified that the employees with injuries were generally individuals (such as agents) in commercial air, working in the terminals, rather than loaders or the flight crew.

Commissioner Bouma asked whether they looked at public employers or it only the private sector. Mr. Murphy stated that the targeting is based on private-sector averages. The private-sector DART average was 2.1, so a high-hazard industry is defined as anything greater than 200% of that, or 4.2. Targeting is based on NAICS codes greater than 200% in the private sectors.

Commissioner Bloch stated that the more that can be done on the front end to prevent accidents in the workplace the better. He said that Cal/OSHA plays a big role on the prevention side. The list of industries on the target list suggests a “who’s who” of Teamster employers--whether solid waste and recycling, warehousing, or fluid milk manufacturing—and he wondered under what category food processing, such as canneries, fell. He had recently gone through a Cal/OSHA inspection with an employer in food processing that was having difficulties, and ultimately Cal/OSHA did find a significant amount of violations, some very serious. He stated that his organization was very happy when Ms. Sum was appointed permanent Director of Cal/OSHA. In order to make inspections more effective, he recommended that Cal/OSHA follow the DLSE method for doing Wage and Hour inspections—specifically, that it conduct surprise inspections. In the Cal/OSHA inspection that he witnessed, Cal/OSHA notified the employer before coming for each inspection. One day, the employer shut down the plant early and sent everybody home, thus no workers were on hand to be interviewed, making it harder to find violations. The employer kept people on crew there to clean things up to basically make things look better. In addition to surprise inspections, Commissioner Bloch recommended the ability to arrange confidential and off-site meetings with workers. In the case of Cal/OSHA inspections, workers who they knew had complaints were called in to be interviewed by Cal/OSHA inspectors in front of management—and, of course, the workers didn’t say a word. They then heard from

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

Cal/OSHA that the inspectors had seen some things on the visual inspections, but hadn't really heard of any issues from the workers. However, when they later set up a meeting off-site between Cal/OSHA and a few dozen workers, they talked at great length.

Commissioner Bagan asked on average how many inspections 16 field inspectors could do annually. Ms. Carleson answered that they conduct approximately 350–400 inspections. Mr. Bagan then asked about the types of violations found. Ms. Carleson said that they find a lot of machine-guarding violations, but the most common violation was the lack of an Injury and Illness Prevention Program or lack of effective implementation of the program. She also said that, depending on the industry, the top 10 frequently cited hazards are listed and publicly available. She added that frequent violations are usually programmatic issues, lack of guarding, lock-out/block-out, and hazard communication.

Commissioner Brady stated that everyone indicated the importance of education; inspection materials can help educate employers about what they need to have. Ms. Carleson added that they do have a Consultation Unit that small high-hazard employers can take advantage of. For clarification, she added that Cal/OSHA is not supposed to give advance notice; it is part of its policy and procedures, and it is in the Labor Code; it can only give advance notice in unique circumstances. Initial inspections are always surprise inspections; after that, it makes scheduled appointments because it has already conducted the opening conference.

Commissioner Kessler stated that they recently received the publication called *Health and Safety Rights: Facts for California Workers*. She praised it and thanked DIR for printing it. She asked whether penalties increased for repeat violators. Ms. Carleson stated that the Labor Code allows for citations of repeat violations and that the penalties do increase substantially for them. She said that some employers pay penalties as a cost of doing business and that the employers find that the penalties are not that injurious to their operations. The High Hazard Unit may be conducting comprehensive inspections of repeat offenders as warranted. She also said that the Division does get referrals from the Feds.

Commissioner Bloch observed that he finds it ironic that the Cal/OSHA reports list more violations and more records in a unionized workplace than a non-union one. He said that this may confuse some people, but that in his experience, unionized workers are not afraid to call in a potential violation because they cannot be retaliated against. They have representation, in other words; they are not at-will employees, and if they are retaliated against they have a grievance procedure. In his experience, workers in non-union workplaces are very scared. Industries like food processing or construction have a large number of undocumented workers, which triples the fear of retaliation. They worked with the California Labor Federation, and Assembly member Roger Hernandez passed legislation a few years ago that gives immigrant workers protection against threats of retaliation surrounding their immigration status if they report a violation. He stated that he could not emphasize enough the role of intimidation and retaliation from employers against workers in discouraging them from reporting violations and cooperating with Cal/OSHA when its representatives visit a work site.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

Commission Brady announced the cancellation of the next scheduled agenda item : the Report on the Medical Access Study. Because of a personal family matter, the speaker was unable to be present. Therefore, they would move directly to the CHSWC Report.

**CHSWC Report by Eduardo Enz**

Mr. Enz stated that since the previous public meeting, on March 26, CHSWC staff members had been working diligently to implement action items approved by commissioners and continued to work on new proposals requested by commissioners and to monitor ongoing projects and studies.

*Action Items from the March 26 Meeting:*

- Posted draft report “Infection Risk from ‘Sharps’ Injuries for Non-healthcare Workers” (by Frank Neuhauser at UC Berkeley) on the CHSWC website.
- Submitted the Infection Risk study to Assembly members Mark Stone and Susan Eggman.
- Posted draft report “Patterns of Work-Related Injury and Common Injury Experiences of Workers in the Low-Wage Labor Market” (by Kevin Riley and Doug Morier at UCLA) on the CHSWC website.
- Staff began efforts to assemble and analyze data to assist the Labor Occupational Health Program (LOHP) to conduct a project addressing the occupational safety and health needs of the aging workforce.

*Update on Aging Workforce Project:*

CHSWC staff identified, collected, and analyzed data for the Aging Workforce Project, as well as conducting a literature review.

Next steps of the project, for LOHP:

- Include data from CHSWC in the overall needs assessment, which includes identifying stakeholders from around the country already addressing this important topic.
- Conduct interviews with selected stakeholders, such as AARP, re-entry employment agencies, representatives of DLSE and Cal/OSHA, labor unions, employers, and older workers.
- Collect information on employment and injury rates, occupational safety and health issues and needs, and other issues related to the employment-related rights of older workers and the responsibilities of their employers.

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

*Update on Electronic Reporting Project:*

In early May, DIR/DWC and Mr. Enz met with a variety of stakeholders, including Medical, Insurance and Utilization Review providers, to discuss and develop recommendations to increase the use of EMRs and electronic medical reporting in the workers' compensation system.

As a result of these meetings, proposed next steps regarding Mandates and Electronic Reporting include the following:

- Convene an additional expanded Advisory Group to explore options.
- Labor Code analysis of form mandates and electronic reporting.
- Document and information flow analysis of system.
- Incorporate Dr. Das's Medical Unit report on Doctors' Reports.

*Update on Ongoing RAND Studies*

CHSWC continues to monitor the progress of ongoing RAND studies on the effects of SB 863. RAND's study, "Evaluation of the SB 863 Medical Care Reforms," will analyze how SB 863 reforms have affected workers and employers, focusing on the issues of medical delivery, dispute resolution, and payments in California's workers' compensation system. Another ongoing study, the Wage Loss study, evaluates earnings losses and disability ratings post-SB 863 and will determine whether benefits compare more favorably with losses under the current system or with losses pre-SB 863.

*Update on Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Contracts*

In May, CHSWC finalized the contract for Fiscal Year 2015–2016 for WOSHTEP, so that it can continue to fulfill its mission to reduce job-related injuries and illnesses among California workers. Under WOSHTEP, three groups work together to promote health and safety on the job, helping to lower workers' compensation costs for employers while reducing job-related injuries and illnesses among workers:

- LOHP at UC Berkeley, serving Northern California.
- The Western Center for Agricultural Health and Safety (WCAHS) at UC Davis, serving the Central Valley.
- The Labor Occupational Safety and Health Program (LOSH) at UCLA, serving Southern California.

**Action Item**

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

*Electronic Reporting Project*

Mr. Enz asked whether the Commission wished to convene an additional expanded Advisory Group on Electronic Reporting to explore options, increase stakeholder participation, and determine next steps.

Staff Recommendation: Yes.

*CHSWC Vote*

Commissioner Bouma moved the motion for a vote, and Commissioner Kessler seconded the motion.

*Comments by Commissioners*

Commissioner Bouma asked for the stakeholder process [regarding electronic reporting of the action item just voted on] to include discussion of adequate medical records and of potential solutions to the problem of medical treatment requests denied in IMR due to lack of appropriate records. Commissioner Kessler asked that, as they assemble the stakeholder list, the list be sent to the Commissioners for review prior to invitation, so that they can backfill any spaces that they may find. Commissioner Bloch asked that a cost-benefit analysis be done by the current provider, Maximus, to implement this new online system, versus looking elsewhere and putting it out to bid. Commissioner Brady stated that the software security issue has been in the marketplace; it has been a hot topic for well over a year, and many of the general liability policies in place for excess right now are excluding coverage for employers for cyber liability. Instead, the insurance providers require employers to have separate and distinct policies. This is a rather current trend. Commissioner Brady wanted to make note of it so that CHSWC would be aware of the issue.

*CHSWC Vote*

The motion passed unanimously.

**Public Comment**

Ms. Trimmer stated that, for more than a year, she had been trying to set up a meeting with Ms. Baker to discuss the operational issues mentioned in her opening remarks. She has a history of 35 years of establishing paperless work environments for far more complex operations than this. As an analyst, she had the job of identifying the root cause, finding a way to make it work within regulations and laws. She said she hoped Ms. Overpeck could facilitate some sort of meeting to get that going. She stated that there were problems with Dr. Das's wording: "cure and relieve." That phrase is found in only one place, and it is a mistake. Labor Code 4600 says "cure *or* relieve." She said the error was fixed in regulations but not in the Labor Code. It has disenfranchised everybody who cannot return to work as a result of a catastrophic injury, the

**MINUTES OF CHSWC MEETING**  
**June 4, 2015 Oakland, California**

treatment or nontreatment thereof, or the lack of accommodations. She said for a lot of these UR denials, the injured worker is already guaranteed continuity of care under the Labor Code via the Health and Safety Code 1367.22.

**Other Business**

None.

**Adjournment**

As Chair McNally had to leave early, Mr. Brady thanked attendees for their attendance and asked for a motion to conclude the meeting. Ms. Kessler raised the motion, and Ms. Bouma seconded the motion. The motion was approved unanimously. The meeting was adjourned at 12:15 p.m.

**Approved:**

\_\_\_\_\_  
Sean McNally, 2015 Chair \_\_\_\_\_  
Date

Respectfully submitted:

\_\_\_\_\_  
Eduardo Enz, Executive Officer, CHSWC \_\_\_\_\_  
Date