**Sal Baca, Education Chair December 16, 2024**

**Latino Comp**

Regulation 10133.31 (k) as drafted will increase costs or result in VRTWC experts not providing services in California.  The regulation appears to require all services be provided by the VRTWC.  It should be amended to provides "Only services performed by the VRTWC **or staff [or persons supervised by the VRTWC] ...**

The VRTWC services are capped at $600.00. This would need to be increased if the VRTWC is required to provide all services for reimbursement. The services provided are more that 2-3 hours.

Services by VRTWC include contact with the client, adjuster and law firms.  The initial evaluation exploring the injured workers' past work history, disability and vocational interests takes at least one hour.  The process of finding and recommending appropriate vocational training providers or schools takes more time.  Injured workers are often encouraged to explore various training options and schools.  The submission for voucher services and follow up with the claim administrator takes additional time.  The submission to the approved training facility takes additional time.  The application for the RTW Fund takes more time.  Any problems with the reimbursement from the wc carrier or administrator or problems with the training facility fall back on the VRTWC.

Now you add an itemization requirement which will give the wc administrator the basis for delaying or denying reimbursement.

There is no mechanism for resolving the failure to pay for vocational services.  Will this fall on the WCAB?

Regulation 10133.59 (c) needs to be amended to be consistent with10133.31 (k).  "Only persons identified by the Administrative Director on the VRTWC list maintained pursuant to his section **or their employer** ...

The unintended consequences of the regulations will be no VRTWC experts to provide services for injured workers.

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**Andrea Guzman, Claims Regulatory Director December 16, 2024**

**State Compensation Insurance Fund (SCIF)**

State Fund respectfully submits the following comments for your consideration. Recommended revisions to the DWC’s proposed regulations are indicated by **bold** underscore for added language and **bold** ~~strikeout~~ for deleted language.

**Section 10133.31**

**Discussion:**

**Subsection (b)(1) provides:**

*(1) Upon receipt of the first Physician’s Return-to-Work & Voucher Report (Form DWC-AD 10133.36), the claims administrator shall forward the form to the employer.*

The DWC’s amendment appears to be the intended to provide clarity on *when* the claims administrator’s obligation to forward the form to the employer is triggered. However, the added language may be interpreted as suggesting that any type of physician may complete the form. To align with existing language in the Labor Code, make clear who is responsible for completion of this form (the primary treating physician, Agreed Medical Evaluator, or Qualified Medical Evaluator) and when the claims administrator’s duty to forward the form to the employer is triggered, additional clarity is recommended.

**Recommendation:**

For the reasons indicated above, State Fund suggests the following revision to specify which physician is responsible for completing the form.

*(1) Upon receipt of the first Physician’s* ***(primary treating physician, Agreed Medical Evaluator, or Qualified Medical Evaluator)*** *Return-to-Work & Voucher Report (Form DWC-AD 10133.36), the claims administrator shall forward the form to the employer.*

**Discussion:**

**Subsection (f)(1) provides:**

1. *The voucher may be applied to any of the following expenses at the choice of the injured worker:*
   1. *Payment for education-related training or skill enhancement, or both, at a California public school or with a provider that is ~~certified on the state’s Eligible Training Provider~~ ~~List at http://etpl.edd.ca.gov,~~approved and included on the list of approved training providers and schools maintained by EDD,* [*https://www.caljobs.ca.gov/vosnet/*](https://www.caljobs.ca.gov/vosnet/) *including payment of tuition, fees, books, and other expenses required by the school for retraining and skill enhancement*.

The DWC’s proposed update appears intended to improve accessibility to information and verification of approved providers and schools related to an injured worker’s use of the SJDB voucher. However, the amendment made creates inconsistency with existing law, a potential for different interpretations of what is proposed, and ambiguity with school verification.

Here, the amendment made to this provision conflicts with current language found under Labor Code 4658.7 (e)(1), where usage of the term “Eligible Training Provider List” still exists. We suggest consistency in terminology used in the statute and the corresponding regulations to avoid confusion and misapplication. The removal of the term “Eligible Training Provider List” and replacement with only the CalJOBS website address in (f)(1) also creates an additional burden for an injured worker to navigate the website without knowing what list to search for. Maintaining use of the term in the regulations will provide greater clarity when an injured worker navigates to the CalJOBS homepage maintained by the EDD.

Further, there is ambiguity in application for school verification purposes. For instance, it is not clear how this applies to a California public school utilizing a third-party training provider that is not on the list of approved training providers. It may allow for the third-party training provider to bypass its non-approval status under the public school. Clarity is needed.

**Recommendations:**

To further increase efficiencies in accessibility to and verification of approved schools and training providers, State Fund recommends the following:

* Consistency in terminology used with related statutes to avoid conflict, confusion, and misinterpretation
* Continued use of the term “Eligible Training Provider List” in the regulations for easier identification of the appropriate list to use for SJDB voucher purposes
* Clarity on the school verification process when a California public school utilizes a non-approved third-party training provider

**Discussion:**

**Subsection (k) provides:**

*(k) Any VRTWC who requests the payment of a fee under Labor Code section 4658.5(c) or 4658.7(e)(3) shall provide an itemization of the services provided to the injured worker and to the claims administrator. The itemization shall include the time spent providing each service to the injured worker specified in the itemization. Only services performed by the VRTWC selected by the injured employee from the list maintained by Administrative Director pursuant to Section 10133.59 shall be compensated from the SJDB Voucher. The VRTWC billing the claims administrator must be the VRTWC or the VRTWC’s employer.*

State Fund supports the DWC’s intent to improve the billing verification process related to the SJDB voucher by their proposed addition of subsection (k) to this regulation section. We suggest additional criteria be added to the billing invoice, guidance for when there is a lack of an itemization of services, and clarity for what services are payable. This will help to avoid ambiguity and ensure timely and appropriate payment.

**Recommendation:**

For the reasons indicated above, State Fund recommends the following:

* + Additional criteria added on the billing invoice: the Vocational & Return to Work Counselor’s (VRTWC) registered name; the VRTWC’s employer name
  + Guidance on whether a lack of an itemization of services is a reason for non-payment, as this impacts the payor’s responsibilities
  + Clarity on whether services provided by specialists working under a registered VRTWC are payable

**Section 10133.32**

**Discussion:**

Modifications were made to the SJDB voucher (Form DWC-AD 10133.32), intended to align with the DWC’s proposed changes in the related SJDB regulations. State Fund reiterates our comments provided in this letter under §10133.31(f)(1) as applicable to the changes proposed on this form. Additionally, we ask for clarity on the DWC’s proposed change to the form’s title.

Form Title:

**SUPPLEMENTAL JOB DISPLACEMENT NON-TRANSFERABLE VOUCHER FORM ~~FOR INJURIES OCCURRING ON OR AFTER 1/1/13~~**

It is not clear what the DWC’s intent is for striking the language “FOR INJURIES OCCURRING ON OR AFTER 1/1/13” from the form title. This may cause undue delay to know which form to use.

**Recommendations:**

We recommend keeping the proposed struck-out language in the form title. Additionally, State Fund reiterates its recommendations provided in this letter under §10133.31(f)(1) as applicable to the changes proposed on this form. These recommendations are:

* Consistency in terminology used with related statutes to avoid conflict, confusion, and misinterpretation
* Continued use of the term “Eligible Training Provider List” in the regulations for easier identification of the appropriate list to use for SJDB voucher purposes

**Section 10133.59**

**Discussion:**

**Subsection (c) provides**:

*c) The injured employee may select a Vocational & Return to Work Counselor whenever the assistance of a Vocational & Return to Work Counselor is needed to facilitate an employee's vocational training or return to work in connection with the Supplemental Job Displacement Benefit set forth in this Article. Only persons identified by the Administrative Director on the VRTWC list maintained pursuant to this section shall be entitled to receive payment from the Supplemental Job Displacement Benefits.*

State Fund supports the DWC’s intent for increased oversight on eligibility of payment from the SJDB voucher. However, it is noted that the proposed update to this subsection contradicts that the VRTWC’s employer can also bill for these services, as proposed under §10133.31(k). We ask for consistency in the proposed changes to these regulations.

**Recommendation:**

State Fund recommends consistency in proposed changes to avoid conflict and different interpretations.

**Application for Appointment as a Vocational Return to Work Counselor (VRTWC)**

**Discussion:**

The DWC proposed certain updates to the application. The proposed modifications are intended to align with the DWC’s proposed changes in the related SJDB regulations. We suggest language be added to the last paragraph of the application regarding the Applicant’s acknowledgement of information provided on the application that is consistent with §10133.59.1(a) and the reasons for removal from the VRTWC list.

**Recommendations:**

State Fund recommends a section be added to the application stating the reasons for removal of a VRTWC from the list. In addition, the Applicant is to disclose any disciplinary actions as related to their work as a VRTWC, fraud convictions or judgments, and/or criminal convictions.

**Instructions for Application for Appointment as a Vocational Return to Work Counselor (VRTWC**)

**Discussion:**

We request that any changes to the questions and answers on this instruction form aligns with the changes proposed in the regulations and the Application for Appointment as a VRTWC.

**Recommendation:**

State Fund’s recommends that any changes to the instructions form conforms with the related regulations and the Application for Appointment as a VRTWC.

State Fund supports the DWC’s intent to implement regulatory changes to the SJDB and Return to Work regulations as part of their ongoing effort to strengthen the enforcement of these rules and reduce the potential opportunities for fraud and abuse.

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**Christian Cooper, Corporate Counsel December 16, 2024**

**Gemini Legal**

**§10116.9. Definitions for Articles 6.5 and 7.5**

Subsection (s): What is the intent of striking “entity” from the current regulation? Existing businesses employ counselors and bill for their services under the entity tax identification number. Further, it is requested “and” be replaced with “or” in “duties involve the evaluation, counseling, **and** placement.” (emphasis added). As currently proposed, this establishes that enrollment is a not a prerequisite for payment and the injured worker may opt not to be ultimately enrolled in training. This would preclude a counselor for payment of their services. This would lead to drastic unintended consequences such as a counselor being stuck in limbo attempting to receive payment for their services due to an injured worker never selecting placement.

Suggest Proposed Language: "*Vocational & return to work counselor (VRTWC)" means a person ~~or entity~~ capable of assisting a person with a disability with development of a return to work strategy and whose regular duties involve the evaluation, counseling ~~and~~ or placement of disabled persons. A VRTWC must have at least an undergraduate degree in any field and three or more years full time experience in conducting vocational evaluations, counseling and placement of disabled adults.*”

**§10133.31. Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013**

Subsection (k): The lack of clarity on what functions administrative support staff can provide is lacking. It is suggested the following administrative support staff duties are to be outlined and supported in these proposed regulations:

* Initial intake;
* Setting appointments for counselor and injured worker;
* Researching potential training programs/schools;
* Prepare files for VRTWC;
* Follow up correspondence;
* Invoicing; and
* Collections.

Suggest Proposed Language: “Any VRTWC who requests the payment of a fee under Labor Code section 4658.5(c) or 4658.7(e)(3) shall provide an itemization of the services provided to the injured worker and to the claims administrator. The itemization shall include the time spent providing each service to the injured worker specified in the itemization. Only services performed by the VRTWC selected by the injured employee from the list maintained by Administrative Director pursuant to Section 10133.59 shall be compensated from the SJDB Voucher.  However, it shall be known that VRTWC’s may employ administrative staff to assist in the work, work which includes, but is not limited to, initial intake, setting appointments for VRTWC and injured worker, researching potential training programs and schools, prepare files for VRTWC, send out follow up correspondence, invoicing, and collections. The VRTWC billing the claims administrator must be the VRTWC or the VRTWC’s employer.”

**§10133.59.1 Removal from the Administrative Director’s List of Vocational Return to Work Counselors**

Subsections (c) – (f): What are the policies and procedures under which this hearing will be held? Additionally, VRTWC’s must be afforded their right to basic proper due process in these proposed hearings. Thus, it is highly requested rules surrounding evidence and witness must be established. Furthermore, an appeal process needs to be established for the benefit and protection of VRTWC’s due process rights.

**General Comments**

* Current and proposed regulations are lacking a specific prescribed forms for invoices. What are the legal requirements to have a complaint invoice? Will there be a billings code?
* Missing dispute resolution process for non-payment (or short payment) for counseling services.

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**Sara Widener-Brightwell December 16, 2024**

**SVP Claims and General Counsel**

**California Workers’ Compensation Institute (CWCI)**

The Institute offers the following comments:

**Section 10133.31(f)(1):**

The Institute recommends a requirement that training at California public schools be provided directly by that school or through a third party that is approved and included on the list of approved training providers and schools only.

The reference to the Eligible Training Provider List has been deleted. Labor Code 4658.7(e)((1) limits the use of the voucher to public schools and providers that are certified and on the Eligible Training Provider List. The Institute recommends that the reference to the Eligible Training Provider List be retained.

**Section 10133.31 (f)(3):**

The Institute recommends adding language that an itemized invoice is required for payment as outlined in 10133.31(k).

**Section 10133.31(f)(6):**

We recommend that “claims examiner” be amended to “claims administrator,” which is defined in section 10116.9(c).

**Section 10133.31(k):**

The Institute supports the addition of this section. We recommend providing more clarity to VRTWCs regarding “itemization” to avoid payment disputes. Invoices should include 1) the date(s) of service, 2) the specific services provided, 3) the time spent for each service, 4) the VRTWC’s hourly rate, 5) the name of the VRTWC providing the service and 6) a statement under penalty of perjury that all services were provided directly by the VRTWC and not by others. A copy of the voucher signed by the injured worker should be submitted with the invoice.

**Section 10133.58(c):**

We recommend that the reference to the Eligible Training Provider List be retained. As currently amended this section does not include a mandate that private providers or third-party providers referred to through public schools be approved and included on the list of approved training providers and schools.

The reference to the “Bureau of Private Post Graduate Education” should be corrected to “Bureau for Private Postsecondary Education.”

**Section 10133.59(c):**

The Institute supports the requirement that only persons on the VRTWC list may receive payment from the SJDB. We recommend clarification in this section that only those persons on the VRTWC list may provide counseling services to injured workers.

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**Mark Gearheart, Regulations Committee Chair December 16, 2024**

**California Applicants’ Attorneys Association (CAAA)**

The California Applicants’ Attorneys Association appreciates this opportunity to comment on the proposed changes to the Retraining & Return to Work and Supplemental Job Displacement Benefit regulations.

The proposal includes a proposed Section 10133.59.1 regarding removal of Vocational Return to Work counselors (herein after VRTWCs) from the program. We are very concerned that the proposed methodology to remove a VRTWC lacks any due process protections or standards.

The proposed regulation authorizes the Administrative Director to designate a hearing officer to preside over a hearing if the VRTWC timely objects to removal. However, there is no explanation of what qualifications are required of the hearing officer or what training they have. What are the qualifications to be a hearing officer?

The regulation also states that the hearing need not be conducted according to technical rules related to evidence and witnesses. The rules that would apply are vague. The proposal would allow dubious evidence to be admitted that would never be allowed in a court proceeding. It rejects application of any common law or statutory rules. Furthermore, no procedural rules are included in this proposal so the VRTWC may not be able to determine what evidence is relevant, what the procedure is for producing the evidence, what the procedure is for objecting to evidence, what rules will apply, etcetera. There is no provision for mutual disclosure of evidence by both sides in advance of the hearing or disclosure of the identity of witnesses prior to the hearing. There is no provision for pre-hearing discovery.

The complete absence of rules of practice and procedure for these hearings creates a “Kangaroo court” situation with a potentially unqualified hearing officer presiding. CAAA believes that in order to comply with due process and basic fairness requirements and make sure that hearings like these do not turn into a circus, it is important that there are specific procedural rules and evidentiary rules rather than a vague standard of “any relevant evidence”.

Furthermore, the time limit for the Administrative Director to act in reviewing the hearing officer’s recommendation is very short, allowing little time for deliberation and providing for automatic adoption of the hearing officers conclusion after 10 days if the AD fails to act.

The proposed regulation also provides that any appeals from the DWC determination and order regarding removal must be made to the Superior Court by writ. This seems inappropriate and unnecessarily expensive for the party appealing. It would make much more sense to have any appeal go to the Workers’ Compensation Appeals Board to be assigned to a trial Judge there. Given the provisions of California Constitution Article XIV Section 4, the WCAB may well be the only tribunal with subject matter jurisdiction.

Given the lack of structure, non-existent evidentiary and procedural rules, potential for unqualified hearing officers, and extremely short timelines we believe this entire regulation needs to be rewritten.

Another concern is that proposed Section 10133.31 (k) requires the VRTWC when requesting payment to itemize the services provided. Given that the payment is currently set at $600.00 per case this seems unreasonable and likely to simply confuse things. The $600.00 VRTWC fee is extremely modest and any VRTWC who provides services under this provision should be able to receive a flat fee of $600.00 to cover their work. Itemizations only create an opportunity for objections, delay, and non-payment.

Furthermore, the provision that only services performed by the VRTWC themselves can be billed seems extremely restrictive. There are not very many VRTWCs in California: to qualify you have to either have a masters degree in vocational rehabilitation or a bachelor’s degree and three years of experience working with injured workers. This provides a very small pool of qualified individuals to provide these services. If the VRTWC cannot hire staff and supervise them to help provide services, and bill for it, the number of injured workers that can be served by the program will likely be radically diminished. This will further constrict access and further reduce the return to work benefits available to seriously injured workers. We suggest that Section (k) be completely deleted.

We understand that part of the division’s rationale for this proposal is to address alleged fraud. We agree that is an important goal. We support proposed Rule 10133.59 (f) prohibiting VRTWCs from having a financial interest in any entitiy that can receive the proceeds of a Supplemental Job Displacement Voucher. However, the other provisions noted above appear likely to radically restrict the number of providers available to assist seriously injured workers who are struggling to return to the work force after a work injury has precluded them from doing their regular and customary occupation. If these rules are adopted as drafted, they will further undermine California’s commitment to assist those injured in the course of their employment in getting back to work.

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**Paul Steve Ramirez, M.S., CRC, IPEC December 16, 2024**

It is evident that changes are needed in the Retraining & Return to Work and Supplement Job Displacement Benefit Regulations, to curb the abuse by all involved parties that provide these services, which includes taking advantage of the injured worker.

It is unclear how the present proposal recommendations have come about, but it is one that needs more time looking into before finalizing.

Recommendation would be to develop a committee to thoroughly go through the restructuring of the proposed changes. The committee should include representatives from DIR, The Administrative Director, workers’ comp Insurance company, vocational rehabilitation counselor, and BPPE.

For example, under § 10116.9. Definitions for Articles 6.5 and 7.5.

(s) "Vocational & return to work counselor (VRTWC)" means a person or entity capable of assisting a person with a disability with development of a return-to-work strategy and whose regular duties involve the evaluation, counseling and placement of disabled persons. A VRTWC must have at least an undergraduate degree in any field and three or more years full time experience in conducting vocational evaluations, counseling and placement of disabled adults.

Recommendations- Instructions for APPLICATION for Appointment as a VRTWC

A more thorough process on who is accepted to be a VRTWC is needed:

A VRTWC must have at least a Master’s degree in vocational rehabilitation counseling and CRC certification, and three or more years full time experience in conducting vocational evaluations, counseling and placement of disabled adults. (This qualification alone would eliminate the numbers of applicants who can apply to be on the VRTWC list).

By having these qualifications, the vocational counselor truly has experience in working with individuals that have an impairment, assisting them to return to work with these new impairments, and counseling skills to help the injured worker (IW) overcome the emotional state they experience with how they are going to return to work with these new impairments.

For example, an injured worker has worked as a construction worker for over 20 years, suffered from a fall of two stories damaging both of his knees, and feet. As a result of the injury, the worker hasn’t worked for 5 years. Which leads to the injured worker struggling to maintain their financial obligations.

Now the IW is being told that they have been cleared to go back to work by the doctor and is entitled to use a $6000.00 voucher to assist them.

Emotionally this person will wonder: I’ve only worked in construction, physical work, what will I do, what can I do? What can I do to earn the money I did as a construction worker? Who will hire me in this condition?

Working with this person (IW) requires a qualified vocational rehabilitation counselor who has the proposed qualifications.

Also, the VRTWC, being CRC certified has a code of ethics they must adhere to governed by the CRCC <https://crccertification.com/about-crcc/>. This means that this VRTWC will be monitored by CRCC, has the possibility of losing their CRC certification should they not adhere to this code of ethics and the policies per forth by DIR, and assist the AD in monitoring the VRTWC.

There are many requirements and regulations that a vocational counselor must adhere to in order to obtain and maintain their CRC certification. “They have much to lose”

This would help in having a true qualified vocational counselor working with an injured worker, curtailing non-qualified counselors/organizations working with the injured worker, and who or what organizations are actually qualified to be a VRTWC and provide these counseling services to injured workers.

Additionally

(k) Any VRTWC who requests the payment of a fee under Labor Code section 4658.5(c) or 4658.7(e)(3) shall provide an itemization of the services provided to the injured worker and to the claims administrator. The itemization shall include the time spent providing each service to the injured worker specified in the itemization. Only services performed by the VRTWC selected by the injured employee from the list maintained by Administrative Director pursuant to Section 10133.59 shall be compensated from the SJDB Voucher. The VRTWC billing the claims administrator must be the VRTWC or the VRTWC’s employer.

(3) Payment for services of licensed placement agencies, vocational or return-to-work counseling, and resume preparation, all up to a combined limit of six hundred dollars ($600).

Recommendations- Instructions for payments of the $600

The invoice should be an itemized invoice with a title of the service completed.

Example:

Date: Services Provided: Time: Total

In the services section it should indicate what was completed: Intake meeting with client; submitted 5k application; explored schools, identified goal, contacted training facility, completed resume, etc.,

Again, being a CRC certified counselor comes into play here as far as adhering to the code of ethics.

Under § 10133.58. State Approved or Accredited Schools.

(f) No VRTWC shall have a financial interest, as defined in Labor Code section 139.32(a)(1), in any entity that is capable of receiving the proceeds of a supplemental job displacement voucher as defined in Labor Code sections 4658.5, 4658.7 (e)(1) and (e)(2).

This VRTWC again would have the experience to assist the injured worker in pursuing the best avenue to return them back to the work industry that has a positive labor market and is within their medical impairments. For example, a form can be completed and reviewed and signed both by the injured worker and VRTWC (from the training facility) that explains that all vocational interest, options, and training programs were explored. Who better to assist an individual (Injured workers) that has the educational and certification background of the proposed VRTWC.

If choosing another training facility then the VRTWC’s itemized invoice again would verify and show the services provided.

If the IW chooses the training facility that the VRTWC is associated with, then there should be two separate invoices one for counseling itemized $600.00 VTWC fees, and a separate one for the schooling which would be a max of $3900.00. This equals $4500.00 so there is no financial gain here.

It is understandable the purpose of this change is to curtail financial gain and abuse; however, again if the VRTWC had the qualifications as mentioned earlier (Master’s degree in vocational rehabilitation counseling and CRC certification), being CRC certified has a code of ethics they must adhere to governed by the CRCC <https://crccertification.com/about-crcc/>.

DIR – Proposal for 2-3 positions- VRTWC – Officials

These officials would randomly go onsite to the VRTWC’s/Training facilities place of business and go through individual files of injured workers to ensure that the services were properly administered. They can call the injured worker or meet with them to discuss and verify the services provided. This would help ensure that ALL services by all parties were provided as outlined under the CALIFORNIA CODE OF REGULATIONS.

The question may come up as the cost of these VRTWC officials: Here is a breakdown of savings when an injured worker returns back to work through the utilization of the Supplement Job Displacement Benefit

Cost of Unemployment

Listed are statistical averages of unemployment costs in California:

* Unemployment Insurance: Average cost in CA is $325 per week, per person.
* Medi-Cal: Average cost in CA is $575 per month, per person; that is $132.69 per week, per person.
* Food Stamps: Average cost in CA is $192 per month, per person; that is $44.30 per week, per person.

Average total unemployment cost, per person, per week breakdown is as follows:

* $325.00+$132.69+$44.30= $501.99 per week, per person. $501.99 x 1 year = $26,103.48 per year

Example of savings from using the SJDB Voucher of 50 Injured workers who successfully obtained employment: [Based on this statistic, savings for the State of California would result as follows]:

* $501.99 x 50 (Employed)= $25,099.50 Per week saved;
* $25,099.50 x 1 yr. = $1,305,174.00 saved per year

*Now this is with just 50 injured workers returning to work. The numbers show that to have three new positions at the DIR would be financially feasible.*

These are only a few areas that have been briefly discussed and I’m sure that there are other areas that need more discussion which would include all of the members of the proposed committee. It is hopeful that The DIR would be willing to invest more time into developing the proposed changes to the Retraining & Return to Work and Supplement Job Displacement Benefit Regulations.

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**Debbie Freeman December 16, 2024**

**Freeman Rehabilitation Services**

I work with several Insurance Companies to review voucher reimbursement requests from various parties involved. I help determine whether or not the voucher should be reimbursed to the various parties and/or if an objection letter should be sent out requesting additional information or documentation. Here are my comments regarding the proposed revisions to the Supplemental Job Displacement Non-Transferable Form (DWC AD 10133.32)

Page 1:

I do not feel that “for injuries occurring on or after 1/1/13” should be removed. (top of the form). This form **only** applies to DOI’s on/after 1/1/13. The DWC AD 10133.53 form is still be used for DOI’s prior to 1/1/13 and has an entirely different set of rules and regulations and reimbursements.

Education-related training (1) etc… I recommend adding to this paragraph, last sentence, Pursuant to Rule and Regulation 10133.58 as well as (page 2 of 6)

Occupational Licensing (2) etc…Training providers fill out the page 2 on the current form trying to allege that their “training of 20 weeks is “examination preparation course fees” simply because they are not on the EPTL/Cal Jobs website. Injured workers very seldom fill out page 5 for reimbursement for this benefit. I would like the DWC to add additional language listed under #2 regarding this situation as RR 10133.31 does not clearly outline this. Training providers are relentless with claims examiners alleging their training is examination prep course when they are not. I am not sure what recommended language should be added.

Page 2: This page needs to be signed and dated by the injured worker before a VRTWC AND/ OR a training provider is reimbursed. The training provider info was left off at the bottom of the form. Only the VRTWC was listed. I recommend that you add on “and Training Provider or School services” as well.

Page 3: I recommend adding to the first paragraph, first sentence, after complete: and sign and date. This is because injured workers will quite often just check the box and submit for reimbursement.

Page 4: I recommend adding to the first paragraph, add one sentence: Please complete, sign and date this form and submit to the claims adjuster. This is to be consistent and for the reason noted with #3 above.

Page 5: I recommend adding to the first paragraph, add one sentence: Please complete, sign and date this form and submit to the claims adjuster. This is to be consistent and for the reason noted with #3 above.

Lastly at the bottom of every single page “Page 5 of 7 or Page 5 of 6” is listed. Once the revisions are made the document will be either be 7 pages or 6 pages. Once the document is finalized each page needs to be changed to reflect the correct page numbers. If the document does end up being 7 pages then the page numbers throughout the individual paragraphs on page 1 also be changed.

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**Steven A. Bennett, Vice President WC Programs December 13, 2024**

**American Property Casualty Insurance Assn (APCIA)**

**Section 10133.31(f)(1)**:The reference to the Eligible Training Provider List has been deleted. Labor Code 4658.7(e)(1) limits the use of the voucher to public schools or a provider that is certified and on the Eligible Training Provider List.

**Section 10133.31(f)(6)**: We recommend that “claims examiner” be changed to “claims administrator,” which is a defined term.

**Section 10133.31(k)**: This section requires the VRTWC billings to provide an itemization of the services provided. The proposed language, however, does not specifically set forth what information must be provided. It would be worthwhile to identify the following as required information to be provided, as applicable: 1) Date of service, location and address where the meeting took place; 2) Name of VRTWC providing the services; 3) Hourly rates for services; 4) Time spent with the injured worker in face-to-face or meetings; and 5) A description of all services provided. Provision of this information will reduce delays and disputes and create overall efficiency in the billing and reimbursement process.

We also recommend deleting the reference to Laor Code 4658.5(c). Section 10133.31 applies to injuries occurring after January 1, 2013. Labor Code 4658.5 applies to injuries occurring before January 1, 2013. The reference to Laor Code 4658.5(c), and the accompanying text, should be added to Section 10133.56, which applies to injuries occurring before January 1, 2013.

**Section 10133.58(c)**: The name “Bureau of Private Post Graduate Education” should be corrected to “Bureau for Private Postsecondary Education.”

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**Matt Wuest, Farmers Insurance December 12, 2024**

Regarding Proposed Changes to 10133.31, 10133.32, 10133.58, 10133.59, 10133.59.1, 10133.59.2,

- The Eligible Training Provider List with a corresponding list of approved courses for each school is a form oversight to prevent schools from offering programs that offer no actual vocational rehabilitation benefit, by making sure that courses/programs offered by approved schools are also approved, it will ensure that the enrolled course/program offers a viable job skill. Also, listing approved courses/programs with pricing will confirm consistency in invoices submitted by the schools for voucher payments.

- Payment for vocational fees associated with training and/or test fees as part of professional certification/licensing should have a specified limit and should only be provided by schools/institutions that are approved on the Eligible Training Provider List or approved California Public Schools. Fees should not be covered by a blanket exemption that allows for non-approved entities to charge for exam preparation materials that have not been verified.

- Payments for counselor fees should only be to counselors that are approved on the VRTWC list. Counselor services should not be provided by any unauthorized associates and/or subordinates. Invoices should be itemized and reasonable based on actual services provided, not automatically set to $600.00.

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**Karen Johnson December 11, 2024**

**Senior Investigator – ICW Group Insurance Companies**

**10133.31 and 10133.58, and SJDB Form Packet**

* These sections do not address **state and public institutions** that utilize third-party training programs.  The educational programs offered by the third-party entities are not reviewed by the institutions’ accrediting oversite agencies and are not approved by the Bureau for Private Postsecondary Education.  Therefore, there is no protection or recourse for injured employees that enroll in the third-party educational programs.
* By removing the Eligible Training Provider Language (ETPL) it would allow the training institutions to offer ANY programs that do not necessarily lead to employment.  Maintain/adding language that the school **AND programs** are ETPL/WIOA approved ensures the injured employees can enroll in a program that is likely to lead to employment due to the local ETPL coordinator approving the programs for WIOA funding.
* Current language regarding payments for Occupational Licensing allows entities to charge up to $2,500.00 for occupational licensure examination courses that are not reviewed or approved by Bureau for Private Postsecondary Education entities.  This results in no oversite or protection for the injured employees enrolling in those types of programs.

**10133.59**

* Will there be a routine renewal process for the VRTWC to maintain their list approval status?
* Language states that the VRTWC shall inform the AD within 20 days of any changes.  What is classified as a change?
* Can a person convicted for fraud own, operate or be employed by a counseling company/entity?
* Can a VRTWC be employed by a law office, copier service and/or interpreter service?

**Instructions for APPLICATION for Appointment as a VRTWC**

* Instructions state that Applications for appointment are only accepted from individuals.
* Will vocational counseling companies and/or entities be identified on the DIR Approved VRWTC list?  If so, will DIR be verifying the business structure such as the owners, officers, and secretaries for those entities?
* Can a person charged with fraud be an owner, officer or secretary for a counseling company and/or entity?

**VRTWC Application Form**

* The form does not ask if the Applicant has been charged or found guilty of a crime or fraud consistent with Labor Code 4615 or Labor Code 139.31.

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## **Professor David J. Chetcuti** December 2, 2024

Two proposed regulations are in conflict with each other.

§10133.59(f) forbids a VRTWC from having a financial interest when issuing a referral, while §10133.59.1(a)(3) implies that having a financial interest when issuing a referral is allowed, as long as it is disclosed.  Both statements can't be true.

I am suggesting that §10133.59(f) remain unchanged, while §10133.59.1(a)(3) be rewritten to remove the first three words so that it no longer reads *"Failure to disclose having a financial interest as defined in Labor Code section 139.32."*  Remove the words, *"Failure to disclose."*

Also, please note that on 12/23/23 the Court of Appeals, Fourth District, Division 3 struck down subsection (b) of LC §139.32 on the grounds of vagueness in People v. Moses, Luna, G062297.  However, the court allowed all other provisions of LC §139.32 to remain in force.  Therefore, it can still be referenced if changes are made per my recommendation above.  On the other hand, if no changes are made then referencing Labor Code §139.32 would be inappropriate since subsection (b) of LC §139.32 was declared unconstitutional.

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**Jennifer Friedi December 2, 2024**

I am writing to point out a potential deficiency in section (s) of the proposed regulations found in § 10116.9. Definitions for Articles 6.5 and 7.5.VRTWCs often hire persons who are not VRTWCs and then allow these persons to provide claimants with evaluation, counseling, and placement to claimants referred to the VRTWC for service. Then the VRTWC will bill the insurance carrier for evaluation, counseling, and placement services and not disclose that the services were actually provided by their non-VRTWC employees and not them.

The proposed regulations do not explicitly prohibit VRTWCs from using non-VRTWC employees to provide vocational services to claimants and then billing the insurance carrier as if the services were provided by the VRTWC instead of the non-VRTWC. These regulations should clearly state VRTWCs cannot use non-VRTWC employees to provide claimants with evaluation, counseling and placement services.