

CRISIS IN CALIFORNIA: REFORMING WORKERS' COMPENSATION

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Preface

This report was prepared as part of the Capstone Policy Seminar experience at the Pepperdine School of Public Policy. The Seminar, one of the integral parts of the preparation for students receiving the Master of Public Policy degree, provides students with the opportunity to explore a public policy program in depth and to prepare a set of specific recommendations to policy makers to solve the problem. These reports are prepared by a team of 6-8 students over the course of only twelve weeks, providing for an intensive and challenging experience.

The results of the team's analysis is then presented to a panel of experts in a public workshop setting where the student panelists are given the opportunity to interact directly with the policy professionals, not only presenting their findings but engaging in an exchange of ideas and views regarding the specifics of those recommendations. The policy expert panel for this report included Mark Bartosiak of the Employers' Group, prominent workers' compensation attorney Ron Feenberg, Joel Fox, President of the Small Business Action Committee, the group that spearheaded a successful initiative effort to reform workers' compensation in California, and Dr. Seth Seabury from the RAND Corporation.

The School of Public Policy would like to thank our students for their hard work and commitment in preparing this policy analysis. We are proud of your achievement.

Executive Summary

California's workers' compensation insurance system, developed in the early part of the 20th century, faces many challenges in an environment of statewide fiscal difficulties. The "no-fault" mandatory insurance and benefit system resulted from the passage of the Boynton Act in 1913. It struck a balance between protecting employees from work place injuries and shielding employers from the effects of costly litigation. Today, both parties express deep dissatisfaction with nearly all aspects of workers' compensation while the ill effects of a dysfunctional industry spill over into California's massive economy. For those reasons, Governor Schwarzenegger insists that the state implement sound reforms in the immediate future.

Three areas of analysis deserve concentrated attention in trying to understand the functional problems of the workers' compensation system: the insurance industry, medical services sector and claims resolution process. Each element provides opportunity for effective reform. The workers' compensation insurance industry faces nation-high premiums due to market instabilities and the poor pricing strategies of private insurers. In addition the market must deal with the effects of the overly active State Fund. Within the medical services sector, a lack of standardized fee schedules, the absence of monitors for over utilization of services and poor quality provide the foundation for stakeholder malaise. Finally, an inefficient and delay ridden adjudication process further magnifies the affects of excessive litigation costs in the claims resolution process.

The central question facing the state is what should California do? In order to develop an adequate response, this analysis outlines five essential goals: protect the employee and employer, ensure equity and fairness, pursue cost minimization, increase efficiency and effectiveness and balance the interests of stakeholders. Using the preceding goals as a measure for success, a number of approaches within each of the areas for analysis received attention and were either dismissed or incorporated into a final recommendation for reform.

Within the workers' compensation insurance industry, the final recommended approach focuses on increasing the incentives for businesses to self-insure. In pursuit of reform in the medical services sector the analysis proposes the creation of medical fee schedules indexed against Medi-Cal, imposition of tighter utilization controls, basing medical care on objective medical findings and moving away from the

“cure and relieve” standard. Finally, the approach to improving the claims resolution process includes an effort to increase the recruitment of law students for internships within the Workers’ Compensation Appeals Board throughout the district offices, the imposition of tighter limits on attorney fees and active promotion of efforts to pass the Workers’ Compensation Reform and Accountability Act.

The final portion of this policy analysis focuses on putting the recommended approaches into play within the public policy arena. The analysis breaks this process down into two main categories: legislative action and the initiative process. In regards to legislative action, it seems prudent and expeditious to direct efforts at including the recommended approaches in other politically viable reform packages such as the Governor’s plan or Insurance Commissioner Garamendi's reform plan. Should traction fail to develop with this strategy, the alternate course of action employs the initiative process to promote the recommended reforms.

In the case of workers’ compensation reform, little, if any, debate focuses on whether change is needed. Rather, the majority of dialogue surrounding the issue considers reform a given and concentrates on what the state should do.

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Introduction

In a world filled with risk and uncertainty, insurance functions to protect against the losses that inevitably arise in such environments. California's workers' compensation system mandates that employers purchase coverage for the work related injuries of employees. The system developed during the Progressive Era in the early part of the 20th Century during the process of increased industrialization. In this setting, workers' concerns grew over the increasingly high rate of workplace injuries in the absence of adequate compensation. At the same time, employers found it difficult to precisely measure the cost of financial remedies associated with such injuries.

Prior to 1910, little legislation existed to provide for employee redress or to protect companies from costly lawsuits. In an effort to remedy the situation, the California legislature passed the Compensation Act of 1911, followed by the Workers' Compensation, Insurance and Safety Act of 1913 (Boynnton Act), which made employer participation mandatory.¹ The Boynnton Act also called for the establishment of a competitive state insurance fund, which exists today as the State Compensation Insurance Fund or State Fund.² Essentially, the legislation struck a compromise between the interests of employers and employees that represents a social contract both actors believed would leave them at least equally well off or neither solely worse off.

Unfortunately, the Boynnton Act's achievements in employer/employee relations bear little fruit today. Amid soaring energy costs, record budget deficits and poor economic growth, increased dissatisfaction and frustration with the state's workers' compensation system ranks high on the public's list of major policy priorities with many calling the situation a "crisis". The system confronts a multitude of problems that threaten both the system's viability and the economic recovery of the state. In a survey conducted by the Workers' Compensation Action Network sixty-eight percent of those surveyed described the system as having "major" problems. Only three percent said there were "no" problems. Further, among taxes, energy costs and government regulation 36% percent of those surveyed (the greatest share of all the categories), feel workers' compensation is the biggest challenge faced by California today.³ Such perceptions propelled workers' compensation reform to the forefront of the debate during the historic recall of former Governor Gray Davis. Currently, Governor Schwarzenegger and his administration view

¹ See Appendix 3 further legislation related to workers' compensation.

² Workers' Compensation in California. www.igs.berkeley.edu/library/htworkerscompensation.htm

³ Workers' Compensation Survey. www.fixworkerscompnow.org

workers' compensation reform as a crucial item on the state's immediate agenda, insisting on reform even if accomplished through the initiative process.

SYMPTOMS OF AN AILING SYSTEM

Ninety-one years since the passage of the Boynton Act Californians generally view the \$29 billion a year mandatory insurance system as something less than a success.⁴ Injured workers' complain of an overly complicated and inefficient "no-fault" system that fails to ensure needed medical care and reduced conflict with employers and insurers. In 2003, businesses watched the costs of insurance per \$100 of payroll reach \$5.85⁵, leaving California's premiums the highest in the nation.⁶ The excessive rates prompt many companies to take advantage of more attractive premiums in states like Washington, Arizona and Texas in an effort to improve their bottom line. Such actions result in the loss of needed tax revenues and jobs to Californians.

Further, medical costs within the workers' compensation system ascended to about \$13 billion, while projections indicate increases into 2005.⁷ Yet, despite upward pressure on medical costs California ranks below the national average in terms of benefits afforded injured workers. High litigation rates and the associated costs further complicate matters. In 2000-2001 total legal fees amounted to over \$500 million in about twenty-percent of the one million claims filed in each year⁸. Finally, figure in the economic losses due to fraud, more than \$54 million in 2002-2003, and a clearer picture forms of why and how such widespread dissatisfaction with the system developed.⁹ Stated simply, employers and employees find little value in the "no-fault" workers' compensation system designed to protect their interests.

⁴ Chan, Gilbert. Engines revving on workers' comp. Feb. 6, 2004. www.sacbee.com

⁵ See Appendix 6 for a cost comparison with other states.

⁶ Oregon Department of Business and Consumer Services.

⁷ www.thedesertsun.com/topics/workers_comp/graphics/index.shtml# "Commission on Health and Safety and Workers' Compensation". Graph on medical costs

⁸ Rand – Institute for Civil Justice. Improving Dispute Resolution for California's Injured Workers. Rand 2003.

⁹ www.ca.gov/prs/prs2003/fs036-03.htm. California Department of Insurance. Workers' Compensation Fraud Facts.

What's the Problem with California's Workers' Compensation System?

Workers' compensation insurance not only plays an important role in the employer/employee relationship but also impacts the state's business environment and overall economy. As a result, it necessarily attracts the attention of reform minded Californians in such times of systemic dysfunction. In pursuit of developing a sound policy solution, this analysis identifies three critical areas that provide potential for long lasting improvements: the workers' compensation insurance industry, the medical services sector and the claims resolution process. The selection of these specific topics by no means exhausts the list of potential areas worthy of examination. Nonetheless, they provide an effective and poignant framework for the ensuing discussion and analysis.

WORKERS' COMPENSATION INSURANCE INDUSTRY

California's workers' compensation insurance extends five benefits to injured workers; medical treatment, temporary disability benefits, permanent disability, vocational rehabilitation and death benefits.

Employers pay the costs of these benefits through a financing system that includes three methods. First, large, financially stable or government employers can pay for benefits directly through self-insurance if they have adequate capital resources to cover the in-house claims. Second, employers may purchase insurance from a Department of Insurance licensed company, essentially the private commercial market.¹⁰ Third, firms may purchase workers' compensation insurance through the State Compensation Insurance Fund (SCIF), a state-owned, quasi-governmental insurance provider operating on a non-profit basis.

The SCIF covers those employers unable to obtain insurance in the private market fulfilling their role of insurer of last resort. However, SCIF also actively competes in the market in which it netted roughly 60% of all policies written in California.¹¹ In addition to writing policies, the SCIF oversees the Uninsured Employers' Fund, which compensates injured workers if their employer has failed to purchase insurance and the Subsequent Injuries Fund, which compensates workers for injuries obtained in a previous accident

¹⁰ California Department of Insurance "Commissioner John Garamendi Announces Substantial Reductions in Workers' Compensation Rate Filings of 95 insurers, "Highlighting Significant Impact" of Reform Legislation

¹¹ Roberts, Timothy *Insurance Vet Tackles Workers' Comp* Silicon Valley/San Jose Business Journal San Jose: October 31, 2003 Vol. 21, Iss. 26, pg. 3

in the event that a new injury occurs. A sizable portion of the Uninsured Employers' Fund and the Subsequent Injuries Fund is funded through allocations from the General Fund.¹²

From 1915 to 1995, the California workers' compensation market operated under a minimum rate law enforced by the Insurance Commissioner. The law required insurers to charge a premium that at least matched the mandated minimum and intended to guarantee that insurers maintained adequate reserves to cover claims. In addition, the same regulations meant to prevent price undercutting that results from competition. Many believed such undercutting added to insurer losses since employers paid much lower premium rates.¹³

In the 1990s, a deregulation movement swept through California and in 1995 the legislature repealed the minimum rate to allow for an open rating system. As a result, the Insurance Commissioner set advisory rates or rates the Department of Insurance felt necessary to cover all claims losses and company expenses. The open market led to a competitive price war in which premiums tumbled due to aggressive pricing strategies on the part of insurers. By 1998 rates dropped 26.8 % lower for 15 classifications than in 1995.¹⁴ Many deemed the reform a success, especially employers who reaped the benefits of cheap insurance. However, numerous insurers wrote inadequate policies and granted sizable discounts eventually causing enough insolvencies to destabilize the market. By 2003, twenty-seven insurers, folded, exited the market or slipped into insolvency.¹⁵ The California Insurance Guarantee Association ultimately absorbed the claims of failed companies while the remaining solvent insurers raised premiums to balance their books.

Competition decreased in the thinned out market, causing rates to rise even further. Between the years 2000 to 2003, the market experienced a double-digit increase in the advisory rates each year. Figure 1 illustrates the increase in both the premiums and insurer losses over the last few years.¹⁶

¹² See Appendix I for further explanation and funding of the Uninsured Employer's Fund and the Subsequent Injuries Fund.

¹³ Thomason, Terry, Timothy P. Schmidle, and John F. Burton Jr. *Workers' Compensation: Benefits, Costs, and Safety under Alternative Insurance Arrangements* W.E. Upjohn Institute for Employment Research: Kalamazoo, Michigan 2001

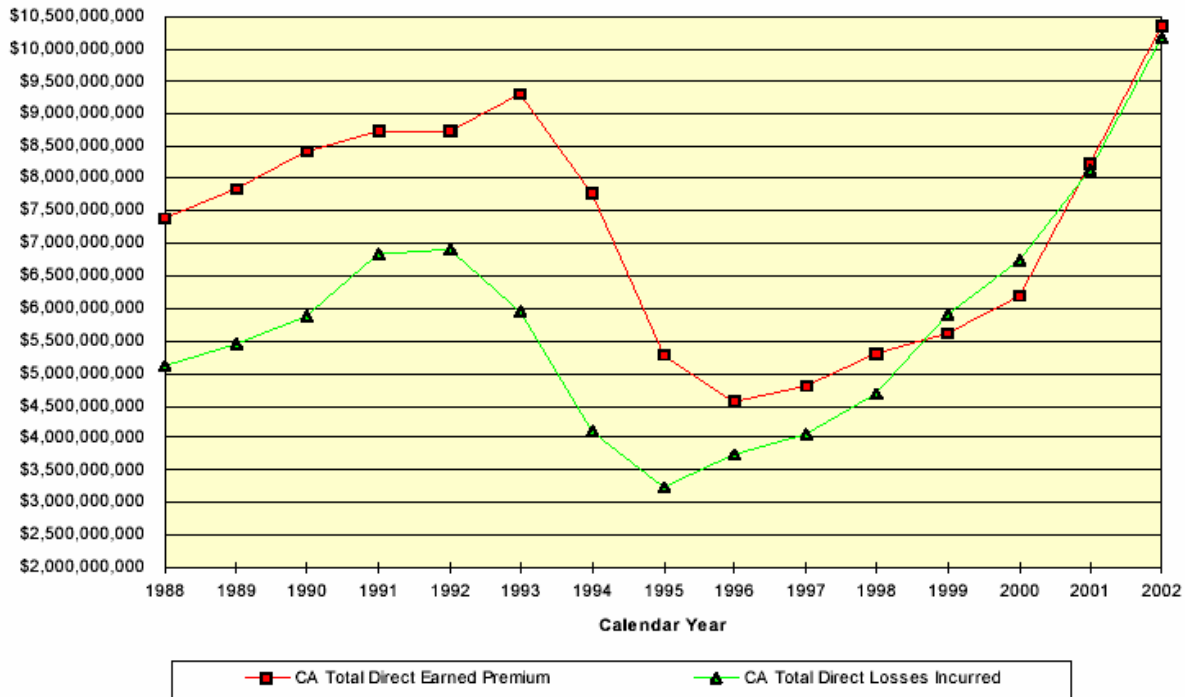
¹⁴ Kilgour, John G. *A Success Story: Workers' Compensation Reform in California* Compensation and Benefits Review March/April 1998

¹⁵ Kilgour, John G. *Workers' Compensation Reform in California: AB749 of 2002 and AB227 of 2003* Compensation and Benefits Review 2003

¹⁶ California Department of Insurance "California Workers' Compensation Insurance Market Overview" 2003 www.insurance.ca.gov/RRD/RSU/Workers'CompOverviewJune2003.pdf

Figure1

**Comparison of California Workers' Compensation Insurance Premiums & Losses
All California Licensed Insurers: 15-Year History (1988 to 2002)**



Source: California Department of Insurance

In this atmosphere the SCIF developed into the most stable insurer attracting a greater share of the market. In 2000, SCIF held an 18% share of the market and by 2003 that number reached 55%,¹⁷ which effectively removed incentives for competitive firms to enter the market.

Currently, it appears the pace of rate increases has slowed. In late 2003, Insurance Commissioner John Garamendi ruled to lower advisory rates by 14.9%, which, according to his estimates led to just over a \$5 billion annual reduction in cost and a one time savings of at least \$5 billion.¹⁸ In December 2003, Garamendi announced that for 2004 insurers will have reduced their rates by an average of 3.6%. The SCIF itself announced a 2.9% rate reduction.¹⁹ Unfortunately, this represents a minimal decrease when compared to the dramatic increases several years prior. The industry needs something more substantial to

¹⁷ Kilgour, John G. *Workers' Compensation Reform in California: AB749 of 2002 and AB227 of 2003* Compensation and Benefits Review 2003

¹⁸ McDonald, Caroline *Garamendi defends rate reduction* National Underwriter. Erlanger: Nov. 17, 2003. Vol. 107, Iss. 46, pg. 10

¹⁹ www.scif.com/news_info/press?pr0_120303.html. State Compensation Insurance Fund Press Release "State Fund Files For Rate Decrease" December 3, 2003

alleviate the still high rates in California. Employers will pay out about \$30 billion in premiums in 2004, compared to only \$9 billion in 1995.²⁰

MEDICAL CARE SERVICES

One of the most important benefits of workers' compensation insurance provides for medical treatment necessary to reasonably "cure and relieve" workplace injury.²¹ Playing a vital role, medical practitioners determine the type and extent of medical care given for an injury and recommend when the harmed worker may return to work and the types of work they can perform.²² Though the target of recent reform, dissatisfaction with medical care and the delivery of such services remains high. Criticisms of workers' compensation related medical care predominantly focuses on rising medical costs, over-utilization of specific treatment options and limited access to quality care.

Workers' compensation medical expenditures skyrocketed from \$2.6 billion to \$5.3 billion between 1995 and 2002. Further estimates show that medical payments will account for two-thirds of all workers' compensation benefit costs this year.²³ While attributable to a host of factors: rising medical costs result largely from inefficiencies and ineffectiveness within the workers' compensation system. Many critics of the system identify the lack of standardized medical guidelines for physicians to apply in the diagnosis and treatment of work related injuries as a severe deficiency. Poorly trained doctors contribute to greater delays and inefficiencies by writing reports insurance raters find difficult to comprehend. Additionally, physicians frequently complain of untimely payments from insurance carriers, we may guess that to compensate for outstanding revenues, practitioners charge higher rates for workers' compensation cases. The California Insurance Commissioner reports that prices paid for medical services under workers' compensation remain consistently higher than those paid by other plans for identical services.

Over-utilization of medical treatments results from limited oversight and also contributes to escalating medical costs. Reform efforts in the last year capped chiropractic and physical therapy visits at twenty-four per claim. Still, the Workers' Compensation Research Institute (WCRI) reports the average number of medical visits per claim in California is over 70% higher than for other states. With no requirement to

²⁰ Union Tribune Editorial "Key vote today on overhauling system" The San Diego Union Tribune February 11, 2004

²¹For a detailed explanation of the medical process experienced by an injured employee and injury categories, please see appendix.

²²Under the current workers' compensation system, injured employees can be assessed by one of the following practitioners: a general physician, osteopath, psychologist, acupuncturist, optometrist, dentist, podiatrist, or chiropractor.

²³Burton, John: 24-Hour Pilot Program.

justify excessive treatment to a regulating entity, medical practitioners face little incentive to self-monitor over-utilization of services.

Lastly, injured workers complain of limited access to quality care and see this as a major weakness in the workers' compensation system. The reasons mirror many of those already mentioned, predominately those that relate to inefficiencies. Physicians typically base treatment priorities on a patient's ability to pay or the timely payment from a third party. Despite high premiums, studies suggest that consistent access to quality medical care remains inadequate.

CLAIMS RESOLUTION

The architects of the Workers' Compensation, Insurance and Safety Act meant to ensure timely relief to injured workers' without the need of a trial process. Ideally, such a goal aimed to protect both the employee and employer from incurring excessive costs resulting from worker injury. In place of going to court, employees simply file a claim through the "no-fault" administrative process. If the dispute continues between employees and employers or insurers regarding injuries then the Workers' Compensation Appeals Board (WCAB) steps in to encourage a resolution. Basically, this process aims to assess the effects and ramifications of an injury and pursue negotiation settlements.

If the above efforts at a settlement fail, the opposing parties apply for a trial. However, while waiting for trial the parties must participate in a mandatory settlement conference in which a judge attempts to facilitate a settlement. If the dispute still remains unresolved after the settlement conference the parties must proceed to the trial phase where the judge plays the role of ultimate arbiter. She will review the records and findings of the treating medical practitioners regarding the injuries and decide who will prevail. Even after this decision, dissatisfied litigants can file a Petition for Reconsideration with the WCAB's commissioners for review.²⁴ On the surface the claims resolution process appears streamlined as the legislators intended. Unfortunately, the opposite proves true for far too many cases.

In 2003, Rand's Institute for Civil Justice produced an extensive report entitled, "Improving Dispute Resolution for California's Workers" that thoroughly examined the dispute resolution process associated with the workers' compensation system. This analysis draws heavily from the report, as it represents the most intensive study of the system. Further, this discussion incorporates the dispute resolution process into a broader process identified as the claims resolution process. According to Rand, one of the

²⁴Rand – Improving Dispute Resolution for California's Workers.

fundamental reasons the claims resolution process falls short of reaching ideal levels of efficiency lies with the administrative infrastructure. Currently, throughout the system staffing levels fall well below those needed to accommodate the load of workers' compensation claims filed annually in California. Such understaffing results in significant delays and increased costs for the participants in the adjudication process. Lack of sufficient funding, further strained by the state fiscal crisis, provides the essential reason for the condition.

In addition to staff shortages, the workers' compensation system suffers from increasing litigation costs. These costs result from several main sources: delays in the claim process, increases in the number of fraudulent and frivolous cases, full reimbursement of legal fees to employees contesting benefits²⁵ and built in incentives for attorneys to recommend doctors willing to prescribe costly treatments and, or favorable disability assessments. The incentive in the last source mentioned works this way: the DWC caps worker compensation attorneys' fees at about 12-15% of the amount awarded to an injured worker. This presents willing attorneys the opportunity to achieve greater fees by pursuing the highest possible benefit payouts.

Additionally, a lack of consistency among workers' compensation administrative judges contributes to the inefficiency and ineffectiveness of the claims resolution process.²⁶ The condition originates from the system's structure itself, which permits workers' compensation laws to be "liberally" construed by judges with the expressed purpose of extending benefits for the protection of persons injured in the course of employment"²⁷. This establishes an adjudication system in which partial and unbalanced legal decisions set precedent for all workers' compensation judges. Such precedent threatens the equity and fairness of the workers' compensation legal system to provide adequate relief to injured employees and employers. Finally, the generous granting of postponements and continuances, more often than not requested by employees' attorneys, by judges also contributes greatly to both increased delays and costs.²⁸

²⁵ Please see page 18.

²⁶ Rand – Improving Dispute Resolution for California's Workers.

²⁷ www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=03001-04000&file=3200-3219, Section 3202 of the California Labor Code

²⁸ Rand – Improving Dispute resolution for California's Workers.

The Billion Dollar Question - What Should California Do?

The preceding chapter identified several deficient areas within California's workers' compensation system that present the opportunity for needed reform. In an attempt to answer the central question; "What should California do?" the next phase of this analysis begins with the formation of narrowly defined policy goals and proceeds to survey the various approaches that may satisfy those same goals. Throughout the exercise it is essential to be mindful of the social values that were, and continue underpin the aims of the workers' compensation system as these must necessarily figure into the ultimate recommendation for reform.

WHAT SHOULD REFORM ACHIEVE?

The road to designing successful reform starts with the formation of clearly defined goals that guide the process and provide a standard for evaluating the success or failure of the selected measures. This analysis identifies the following goals as essential to ensuring meaningful reform in workers' compensation: protecting the employee and employer, equity and fairness, cost minimization, efficiency and effectiveness and balanced interests.

Protecting the Employee and Employer

The employer/employee relationship, one of the most fundamental to a capitalist system, occupies the center of the workers' compensation debate. Employees desire protection from workplace injuries that lead to impairment and disability. Employers, required by California law to purchase workers' compensation insurance, desire a system that shields them from excessive litigation. Both seek a system that minimizes potential harm to their economic relationship possibly resulting from the healing and claims processes that follow workplace injuries. The passage of the Boynton Act intended to address these basic interests held by both stakeholders, and as a "social contract" manifests itself in the "no-fault" compromise. The primary goal of reform must reaffirm the original intent of the workers' compensation system – protecting the employee and employer.

Criteria: medical and financial relief from workplace injuries and permanent disabilities for the employees, and minimal liability and litigation directed at the employer.

Equity and Fairness

Equity and fairness represent important and constant considerations in workers' compensation. Given the complicated nature of the interrelations among the numerous stakeholders within the system; employees, employers, insurance providers, medical practitioners and attorneys, it is essential to ensure a system in which all interests receive equitable and fair consideration, again with the central focus on the employee and employer.

Criteria: an absolute reduction in the litigation rates within the system. Besides outright complaints regarding the system, the level of litigious activity within the workers' compensation system provides at least a proximate representation of the level to which employees, employers and insurers feel the process succeeds in providing fair and equitable treatment.

Cost Minimization

Cost is a constant driving force in the workers' compensation system. Typically, cost is measured in dollars but is also regularly calculated in time, effort or the amount of stress induced by a given experience. Employees and employers share a vested interest in a system that minimizes the costs of insurance premiums, medical services, legal fees, fraud and time. An increase in insurance premiums may reflect the rising costs of all of the above. With respect to employers, mandatory insurance premiums represent a quasi-fixed labor cost; the more employees a firm hires, the greater the overall cost for workers' compensation insurance. Thus, an increase in insurance premiums will result in employers making decisions that affect both the level and kind of labor employed. In extreme cases the firm may opt to substitute capital for labor which reduces employment opportunities.²⁹ In the face of such economic realities, the workforce as a whole undoubtedly shoulders a portion of the higher insurance costs. Both employers and employees have a shared interest in minimizing the cost of insurance premiums.

Criteria: affordable insurance premiums and medical services, reasonable attorney fees and minimized fraud.

²⁹ Ehrenberg, Ronald and Smith, Robert. Modern Labor Economics. Pearson Education, Inc. 2003. pp 190-193

Increase Efficiency and Effectiveness

The original drafters of the workers' compensation system intended a streamlined process that delivered quality relief to the injured worker while not exposing the employer to legal action by the employee. Inefficiencies impact not only the immediate stakeholders, employees and employers but hinder the proper functioning of the entire system rendering it ineffective. A system that contains uniform standards and guidelines and clear processes benefits all stakeholders in reducing the amount of time expended within the system.

Criteria: minimization of time each stakeholder expends working through the system from injury claims and the receipt of medical services through potential claims resolution and, or litigation. In regards to effectiveness, the workers' compensation system must return the injured worker to as productive a state feasible medical options allow, with the ultimate aim as his/her complete return to the workforce.

Balanced Interests

Balancing the interests of the stakeholders vested in the workers' compensation will prove one of the most daunting tasks. The divergent nature of the interests involved logically results in some friction throughout the system. Despite the difficulty, each of the interests and concerns among the stakeholders requires consideration and evaluation, again with priority going to employees and employers. Compromise is an inherent and essential feature of public policy and in the case of workers' compensation reform it will undoubtedly play a major role. On balance, the various stakeholders must not perceive their compromised position as making them solely worse off.

Criteria: general agreement among the stakeholders on the recommended reform measures and, or potential legislation that results measured by their ultimate adoption.

Approaches to Reform

Within this chapter the policy analysis considers several approaches to reform in the areas of the workers' compensation insurance industry, the medical services sector and the claims resolution process. In each case, the approach is matched against the established policy goals and criteria and a determination is made regarding how effectively they meet any number of the goals. Ultimately, the approaches that fulfill the most essential goals and criteria on balance will form a recommended course of action.

WORKERS' COMPENSATION INSURANCE INDUSTRY

Status Quo

Maintaining the status quo seems an unlikely approach at reform given the widespread malaise surrounding the system. Few, if any voices weighing in on the issue even suggest such an approach.

Employer Choice

Removing the mandatory requirement to carry workers' compensation insurance imposed on employers would absolutely reduce the premium costs for many firms. In the case of those companies who consider themselves "low-risk" with regards to workplace injuries, they might avoid purchasing any insurance coverage and effectively reduce their premium rate to zero. However, such an action introduces the affects of adverse selection. With employers left to choose whether or not to purchase coverage, those in a "low-risk" category would likely refrain from buying any insurance. Employers who view themselves as "high-risk" in terms of employee injury, would continue to purchase workers' compensation insurance. This creates a market of predominately "high-risk" employers and results in actuarially unfair premium pricing due to the increased risk and certainty of claim payouts. Without "low-risk" employers and their premium payments to smooth the market, insurers must increase the rates for those who do purchase insurance.³⁰ In fact, the mandatory feature of California's system works to counteract the effects of adverse selection.

³⁰ Weimer, David and Vining, Aidan. Policy Analysis: Concepts and Practice. Prentice Hall, 1999. pp 122-123

On the other hand, firms might choose to invest the cost savings from not purchasing insurance to create a safer workplace, or set aside all, or a portion of the savings for the sole purpose of covering workplace injuries as they occur. In addition, the employer might choose to use the option to self-insure through self-insurance groups. Whatever the employer does with the savings, under such a scenario she chooses the desired course of action free from government interference. Unfortunately, this approach removes all burden of protecting employees from the employer, potentially leaving the worker to fend for himself. This creates a workplace environment where miscalculation invites potentially devastating problems and complications in the wake of injuries.

The Boynton Act meant to do away with such uncertainties. Essentially, the same social values at work then maintain their relevance today. Californian's view safe and protected workplaces with a premium and any move to reverse a system that ensures this will meet tremendous resistance and potentially end the political career of any legislator who voted for such proposal. This approach is simply not feasible.

Return to Mandated Rates

Re-introducing regulation into the market through rate administration will work towards ensuring the solvency of insurers and the maintenance of price stability. In fact, John Garamendi proposes this approach in his extensive workers' compensation reform package. However, the SCIF, covering about 60% of the employers, already dampens competition in the market, and thus the addition of increased regulation may effectively kill private interest altogether, placing a greater burden on the SCIF to cover employers. Arizona's workers' compensation system, often looked to as a model for California, extols the stability and integrity administered rates bring about but admits to the decreased level of competition that results in the market. No doubt to many Californian's increased regulation seems the logical choice, however, in a state that needs to encourage business growth in all areas of the economy anything that reduces free market incentives and activity seems counter productive to the state's financial health. While this measure would not impact the employee directly in any major way, both employers and insurers experience the negative externalities of diminished choice and reduced profitability.

Private or Public System

Moving to a completely private market by ending the role the SCIF would most likely create a more competitive insurance market while reducing the financial liabilities of the state. However, Californians will not accept the complete absence of the government from the market, especially those employers who look at the SCIF as the insurer of last resort in a mandatory system. Conversely, if the state moves to a system where the SCIF provides the only choice for insurance, effectively a monopoly market, it faces a

much greater degree of financial liability. In addition, a loss of tax revenues and employment opportunities would result in the absence of private firm activity in the market. There is little chance of garnering support from either legislators or voters for such an approach. In addition, the state bears no incentive to behave as efficiently and effectively as a private firm, which would compound the effects of moral hazard. Neither, a completely private or public market seems likely in California given the inability for such a system to effectively satisfy enough stakeholders.

Cost Sharing by Employees

An approach not considered among mainstream or popular reforms requires the employee to pay for a portion of the cost of workers' compensation insurance. Such a provision presents at least a partial response to the moral hazard predicament. The employee might pay her portion through payroll withholding, a deductible, a co-payment or all of the above. In this way, the employee to some degree self-monitors the depth and scope of the care they seek from the medical practitioner. The injured worker reserves extreme medical utilization in the cases where absolutely necessary for effective treatment. In this way, the patient, who knows best the true extent of most run of the mill bangs and dings caused at work, monitors her progress and will stop treatment at the threshold where the marginal benefit of additional treatment equals the marginal cost of the treatment. In effect, the patient stops treatment once the marginal benefit falls short of the marginal cost of the medical services.

In the setting outlined above, the medical practitioner deals directly with at least one of the parties responsible for covering a portion of the cost of medical services and will likely prescribe more routine, affordable and limited, yet effective treatments. The doctor seeks to limit negative experiences and feedback to ensure a stable and satisfied customer base. Almost all private insurers outside the realm of the workers' compensation market use this approach, whether associated with personal insurance purchases individuals make or even in tandem with group health plans offered by employers. Many economists agree that such an approach can effectively combat the costly affects of moral hazard. However, California's employees will never bare a direct cost of workers' compensation for the simple reason that the benefit, over ninety years old, retains the status of an entitlement or right. One may even include workers' compensation benefits among the "third rails" of politics and, as such, direct employee payment will never gain political feasibility in California.

MEDICAL SERVICES

Status Quo

Maintaining the status quo within the medical services arena is not politically feasible within California's current climate of reform. Further, and perhaps more importantly, this approach does little to contain increasing industry costs. Over the last decade, most legislative reform efforts within the area of medical services focused on rising costs. Most reformers consider this area the most essential to change with good reason. Medical costs act as a main cost driver in the determination of insurance premiums. Efforts that improve the efficiency and effectiveness of medical services delivery will directly impact the workers' compensation insurance industry and the claims resolution process. In the long-term, barring any unintended consequences, costs will decrease in both arenas.

Control Practitioner Selection

One of the more challenging debates concerning workers' compensation involves the power to choose a medical practitioner; self-interest dictates that both the employer and employee would prefer sole discretion in selecting the practitioner. Many observers believe that doctor's sympathies within third party payer system rest inordinately with the patient. For the employer, the preferred practitioner may possess a better record of discouraging over-utilization. In contrast, the employee desires a doctor partial to their concerns and willing to prescribe any and all courses of treatment no matter the cost effectiveness.

Several feasible approaches exist for structuring and controlling practitioner selection. One consideration involves contracting with service provider networks or other HMO type services for treating workers' compensation injuries. While this suggestion requires state oversight, it would utilize an existing infrastructure and system proven relatively efficient and effective at servicing large numbers of people. From a cost benefit analysis this option may offer substantial savings, necessitating few operational modifications as it draws upon a framework that already functions in the private sector. One might argue that this approach limits the depth of practitioner choice; however, a greater benefit may result from the cost centric approach of eliminating undesirable doctors with questionable practices and ethics.

Create a Certified Network of Practitioners

A variation on the former approach and one not frequently discussed among various California reform packages, involves the creation of a state certified network of workers' compensation practitioners. The Industrial Relations Board or the Office of Workers' Compensation, acting as an outside body removed from the immediate interests of the employer and employee, could assume responsibility for the oversight

of such a program. Compared to the above option, this suggestion may cost more to implement as it will require greater state involvement until the achievement of a negotiated system by all stakeholders; periodic reviews of practitioner performance would also require state oversight. Though there is nothing to say that whatever network agreed upon can not mirror private sector models. Additionally, the question of government involvement remains unclear. Since workers' compensation is considered a right for California employees, is more government oversight with a distinct role necessary to ensure the public good?

With either approach the question of exact physician designation becomes moot. Employees can choose any practitioner, even if different from their employer, as long as their selection falls within the contracting options or the approved network. It could be further argued that both choices may provide a better overall quality of care and reductions in fraud resulting from greater oversight would lower overall costs. Increased efficiency would work to expedite claim reviews and payments.

The issue of physician designation and selection surfaces in other proposals and in various state systems. Garamendi's plan remains silent on this topic while Governor Schwarzenegger contends that employees should retain the sole right to select their medical practitioner. The initiative sponsored by the Small Business Action Committee (SBAC) asserts that both parties must agree upon the doctor. Following that same idea, Project Help in the State of Washington created a system in which the employer and employee unions agree upon a source for medical services. Alternatively, Texas is debating giving more control to the employer.

Standardize Medical Fee and Diagnosis Schedules

Standardizing workers' compensation fee schedules offers another way to ensure system efficiency and cost minimization. By indexing fees to a nationally, recognized standard and allowing for cost of living variations, the rates stay competitive with the market. Indexing fees to a national standard further addresses the issue of over-utilization because such standards impose limitations on benefits. If practitioners deem further treatment beyond the allowable limit necessary, then an oversight body may authorize additional treatments as needed.

The lack of uniform medical findings and the broad assessment of injuries act as another cost driver in the medical arena. Disability benefits are paid out based on the type and extent of the injury through the recommendation of the treating practitioner. The California Industrial Medical Council lists appropriate measures for assessing illness and injury related to work but the guidelines are not stringent enough.

Because the system lacks the necessary procedures to achieve a more consistent basis for evaluating injuries, a varying degree of benefit pay-outs occur, thus exacerbating the system. However, due to the subjective nature of assessing an injury and the methods for diagnosis, adopting a uniform approach may prove difficult to achieve.

On the standardization front, Garamendi proposes the establishment of a medical fee schedule for all services indexed to Medicare or Medi-Cal schedules. Choosing a different index standard, the SBAC initiative advocates for the diagnosis and treatment of industrial injuries governed by American College of Occupational and Environmental Medicine guidelines. Proponents of the initiative further support the institution of utilization controls that focus on proven medical treatments using evidence based guidelines in “curing and relieving” the effects of industrial injuries. Schwarzenegger differs and suggests that the concept of “medical necessity” replace the notion of “cure and relieve”. The Garamendi Plan seeks the establishment of an independent medical review structure composed of medical professionals. Additionally, he wants to extend the generic-drug dispensing requirement currently imposed on pharmacies to hospitals, clinics and physicians when filling workers’ compensation prescriptions.

CLAIMS RESOLUTION

Status Quo

The status quo in regards to the claims resolution process will result in a continued increase in the costs associated with litigation and time for employees, employers and insures. This falls well short of satisfying most interests, most importantly those of employees and employers.

Expedite Process

In order to minimize delays in the claims resolution process the state could locate sources of additional funding to increase staff levels and modernize the current computer information system. Legislators could pass a law that functions similar to Proposition 98 for public education, mandating that a certain portion of the state fund go to the Department of Industrial Relations. Such a provision might include restrictions on fund allocation, such as for use exclusively in the hiring of staff, technological improvements and expansion of offices throughout the state. This type of legislation guarantees adequate financing to accommodate the demands on the claims resolution process, with attention on reducing delays. The political feasibility of such a measure remains unclear given current budget realities. Both the influence of the many interest groups in state politics and the complexity of the state budget process hinder the

possibility for successful implementation of such a legislative measure. The effort would require intense lobbying to persuade the legislature to choose the Department of Workers' Compensation over other equally under funded causes or programs.

At the other end of the spectrum, the state might reorganize the administrative structure of the Department of Workers' Compensation and, or the WCAB. An effective reorganization plan would include the consolidation of offices, as well as increased regional cooperation between offices to assist with smoothing the caseloads of understaffed offices throughout the system. An absolute reduction in the number of administrative offices might produce cost savings the state could reinvest in staff training and technological infrastructure. Two difficulties with such an approach stand out, job loss and compounding the problem of inefficiency. In a tight job market, legislators will discourage any effort that would put state employees out of work. Also, efforts to consolidate and streamline offices could backfire, producing the opposite of the intended effects, greater delays and inefficiencies leading to greater dissatisfaction.

The development of a work-study program with local law schools aimed at inducing students to serve as law clerks for the courts could provide a cost effective way to increase the supply of needed labor. Additional workers could greatly increase efficiency and reduce delays and thus costs. In addition, The Department of Industrial Relations could follow suit and add staff at minimal cost through the development of internship programs with state law schools. Internships proved successful and cost effective within the state capitol and would alleviate the work demands currently placed on the courts and local offices of the workers' compensation adjudication system. The training plays an important role in such an approach. Currently, training procedures, or lack thereof, for claims handlers proves ineffective, bringing in additional sources of labor with effectively less knowledge of the claims resolution and adjudication process may tax limited resources within the system and further exasperate current problems associated with efficiency and effectiveness.

Eliminate Incentives for Excessive Litigation

In pursuit of minimizing litigation costs, the state might place a cap on the total amount of legal fees workers' compensation attorneys receive. Such a limitation reduces the incentive for attorneys to contest fraudulent workers' compensation claims, issues easily resolved through the settlement process and removes the temptation to pursue inordinate benefit payouts. Certainly, not all attorneys would take advantage of such incentives, but their existence nonetheless provides opportunity for abuse. A reduction in the number of frivolous lawsuits and excessive litigation in the workers' compensation courts alleviates costs to businesses and insurance companies. The workers' compensation system in Texas pays attorneys

on an hourly basis subject to rate and time limitations, which ultimately reduced the number of attorneys' willing to take on workers' compensation cases.³¹ This same condition could result in California given any variety of schemes developed to limit legal fees. Employees will possibly face a greatly diminished pool of workers' compensation attorneys and not receive quality representation. Trial attorneys in the state will most certainly rebuke such efforts, as it effectively would mean closing them out of a lucrative market.

The state could establish a penalty system that imposes fines on attorneys found guilty of pushing frivolous or fraudulent lawsuits and overwhelming the courts with claims involving minor injuries in the workplace. Such a provision further reduces the incentive of workers' compensation attorneys to abuse the adjudication process. A penalty system can also be extended to include fines imposed on judges that postpone claims and consistently surpass the Labor Code time restrictions on the maximum number of days needed to process a claim to an initial settlement conference and trial. Increased accountability provides incentive for workers' compensation judges to maintain expediency in the claims process and operate in accordance with the California Labor Code. The effective oversight and enforcement capability of such an approach remains unclear. First, the WCAB would need to establish effective standards or means for identifying frivolous cases and then follow through with fining attorneys who pursue such cases. In addition, imposing fines on judges may prove problematic in terms of oversight and determining just who bears responsibility for delays in the adjudication process. In order to achieve any of the above functions bureaucratic expansion is likely, which increases costs. The overall feasibility politically or structurally of such an approach seems limited.

Settlement Credits for Employers

California may introduce a reward incentive to employers and insurance companies for settling claims in the mandatory settlement conference, thus reducing the number of litigated claims and costs of going to trial. In the state of Arizona employers and insurance carriers gain credit against future benefits which may go to the injured employee.³² Effectively, it reduces the next possible benefit payout to that same employee. If anything, this approach gives both the employer and employee incentive to weigh the costs and benefits of pursuing settlement versus litigation. On the employer's end the incentive to settle could increase, while for the employee it may encourage greater litigious activity to ensure that they don't lose

³¹ www.tabcc.org/news/current/news040108.html

³² Finical Scott, and M. Brent Peugnet: Settlement of Workers Compensation Claims: viewed at: <http://www.fclaw.com/seminar/Materials/Fall02LEWorkersCompensation.pdf>.

future benefits. Overall, employees will not support this approach, as they will expect equitable benefits for each injury and perceive the credit to employers and insurers as being at their expense.

Standardize Judicial Rules

The Workers' Compensation Accountability and Reform Act, a current voter initiative proposed by the Committee for Workers Compensation Reform and Accountability offers hope in the area of reform. The initiative recommends the replacement of the "liberal" construction provision in judicial decisions with a strict burden of proof provision which requires courts to pass judgment based on a "preponderance of evidence", such as objective medical facts, surrounding a workers compensation case³³. Such an amendment establishes a uniform rule for the courts in handing down decisions, thus increasing the efficiency and effectiveness of the workers' compensation adjudication system. Eliminating liberal construction of workers' compensation laws by administrative law judges restores the equity and fairness of the workers compensation legal system as objective reasoning replaces subjective decisions. Amending the labor code to remove the liberal construction provision also reduces litigation costs, as the court system will experience a reduction in the number of cases appealed to the Workers' Compensation Appeals Board.

³³ Workers Compensation Accountability and Reform Act Section 8.

The Recommended Approach for an Improved System

Having worked through many potential approaches for reform, this chapter works to pull the most effective choices together into a single recommended approach to improving California's workers' compensation system.

WORKERS' COMPENSATION INSURANCE INDUSTRY

Self-Insurance Groups (SIG)

In order to achieve reform in the workers' compensation insurance industry the state must increase the incentives for individual self-insurance and self-insurance groups by lowering the regulations necessary to self-insure and to obtain and join a self-insurance group (SIG). Increasing the incentives means reducing the start-up costs for self-insurers and for self-insurance groups through lower licensing fees and equity requirements. Reduce equity requirements by \$1 million for self-insured employers and by \$2 million for self-insurance groups.

Self-insurance groups are composed of several employers who pool their money together to insure each other in the event of an injury. As of 2001, there were 324 self-insured employers in the private sector and 328 self-insured employers in the public sector with an additional 1,557 public agencies that operate group self insurance.³⁴ In order to establish eligibility to self-insure, the employer must apply and meet specific requirements under the California Department of Industrial Relations. These requirements include \$5 million in shareholders equity, average net profits of \$500,000 per year for the last five years and certified and independently audited financial statements. Furthermore, each year they must provide a report that details the medical and indemnity claims paid out, the future liability on open claims, the average number of employees and total wages for each adjusting location and the list of all open indemnity claims. Self-insurers pay an annual license fee and must be assessed for fraud, bankruptcy, and OSHA requirements. For SIGs, the requirement is a net worth of over \$10 million in order for employers to unite in a group.³⁵

By lowering the costs of self-insurance, it becomes more attractive for companies to self-insure and to unite in insurance pools. Self-insurance allows for cost minimization in that self-insurers avoid overhead

³⁴ Department of Insurance Office of Self Insurance Plans www.dir.ca.gov/SIP/Generalinfo.htm

³⁵ Ibid.

costs such as advertising and marketing. It also allows the employer to have a greater impact on the claims process. By completing an in-house evaluation of the claim, the time it takes to understand the nature of the injury and to subsequently make the necessary payment is greatly reduced. By eliminating the middleman of the SCIF or private insurers, the time lag is lessened. Furthermore, litigation should decline because of the increased communication between the self-insurer or the SIG and the employer. Increased understanding of the process and of benefits should help streamline the system, as well as reduce costs.

In addition, self-insurance increases incentives to provide for a safer workplace. Since the self-insurer or SIG must pay out all claims, the employers now have more of an economic incentive to make the work environment less risky for employees, possibly lowering the number of instances of worker injury. Self-insurers are less likely to experience extreme rate fluctuations because all operations are done in house and the employer is aware of the risks associated with a given occupation. Indeed, many self-insurance groups specialize within a specific industry and thus share risk relatively equally. Specialization of self-insurance groups allows the group to self regulate in regards to who can be in the group. If there happens to be a renegade member of the group that is responsible for a sizable number of claims and drives up premiums, then the group has the freedom to ask the risky company to leave. That company is then free to obtain insurance through the SCIF. Specialization allows for the SIG to effectively access the risk of each occupation and to make proper judgment calls on the payment of claims. Through specialization, the employees and employers should trust each other more in the claims process because both parties are aware of the functions of the occupation and the risks associated with that occupation.

Lastly, self-insurers retain any underwriting profits, providing dividends to its members. Generous self-insurers can even funnel benefits back to the workers. With that scenario, both the employers and employees gain rewards for the prevention of injuries. The state of California gains as well. By increasing incentives towards self-insurance, the market begins to remove the burden of the SCIF. The SCIF, which was never intended to hold a majority of the market, can resume its role as an insurer of last resort. Perhaps, with a reduced policy load, it can use more resources towards combating fraud within SCIF claims.

A possible downside of self-insurance is that the cost of the claims is the burden of the employer, or all the employers in a pool. While that is a risk, it is a transparent one. Indeed, a more risk adverse company would prefer to purchase commercial insurance. Under this system, the benefits would be obtained at the expense of additional risk. Self-insurers and SIG insolvencies have occurred in the past and probably will

still continue in the future but self-insurance will remain attractive because of the lure of lower premiums. Although this proposal suggests lowering the shareholder equity, \$1 million for self-insurers and \$2 million for SIGs should only reduce it. This is large enough to provide the impetus for more self-insurance, but small enough that the risk for insolvency increases only slightly.

To mitigate concerns over the stability of these newly self-insured entities, our proposal suggests expanding the oversight capabilities of the Insurance Commissioner. By allowing the Insurance Commissioner to actively evaluate the financial strength of these self-insured firms, California can avoid another insolvency crisis. Self-insurers need to provide the commissioner with a full detailed report of their revenues and losses. Furthermore, we propose the creation of a state reserve fund that would allow the state to cover the transition costs of any self-insurance insolvency that might occur. This would be financed through a tax on any excess reserves held by the self-insurers. With this measure, the state is assured that it will have the resources to cover the workers of failed self-insurers.

MEDICAL CARE SERVICES

Standardize Medical Fee and Diagnosis Schedules

This analysis proposes the creation of a comprehensive medical fee schedule for all practitioners and services that is connected and indexed against a national standard. We recommend indexing baseline fees to Medi-Cal and adjusting for the cost of services in California; because the structure is currently utilized by the health care industry it has the potential for easy adaptability for the workers' compensation system. This analysis advocates some flexibility to accommodate higher payments for procedures or treatments that are recognized as medically complex by national associations. According to a 2003 audit conducted by California's Division of Workers' Compensation, outdated medical fee schedules are still being used to assess physician fees, inpatient care and pharmaceutical costs.³⁶ The Official Medical Fee (OMF) Schedule is used to determine reimbursement rates for services even though most rates have not been updated since 1999. Fee schedules for some services are based on rate scales that are over twenty years old. Streamlining the medical fee schedules can result in real cost savings to the entire system.

The audit also states that the cost outlier threshold is currently \$14,500, compared to the federal average used for Medicare of \$33,560. If this threshold were updated, it would reduce the percentage of inpatient

³⁶ www.dir.ca.gov/dwc/audit.html California Division of Workers' Compensation - Audit, April 1, 2003

hospital claim payments from 11% to 5%.³⁷ It is further noted that most workers' compensation insurance plans pay as much as 30% more for prescription drugs. This rate surpasses Medi-Cal fees and employer health plans for prescription drugs by as much as 140% for generic drugs and 110% for brand-name drugs. The audit suggests that if workers' compensation rates for only prescription drugs and inpatient fees were matched with Medicare and Medi-Cal rates over \$964 million in premium savings could be achieved in 2004.

Indexing fee schedules to Medi-Cal forces tighter utilization controls aimed at further moderating the use of medical care and services. Whereas deductibles and co-payments in third-party-payer systems act as mechanizations to discourage over-utilization of services, the current workers' compensation system contains few controls that act as deterrents. Recent legislation only capped chiropractic and physical therapy visits to twenty-four per claim though insurance carriers may approve additional visits. This measure does not go far enough. In a benchmark comparison of twelve states, *The Workers' Compensation Research Institute* found California was double the national average for all medical visits. The average number of visits per claim for other major states is seventeen; in California the average number of visits per claim is thirty-four. California practitioners also order more tests and prescribe more medications than do doctors in other states. With utilization determined through the indexing of fees to the Medi-Cal standard, all medical services, including surgical outpatient care, will align medical costs for workers' compensation with similar treatment costs for care given under non-occupational health insurance programs. In addition to lowering medical costs, this recommendation will improve the effective delivery of medical care services. From an economic standpoint, we can expect that lower medical costs will assist in driving down premium prices in the long-term.

To close loopholes within the existing structure, changes may need to be made to California Labor Code Section 4600. Under this code, employers are required to provide "all medical, surgical, chiropractic, acupuncture...hospital treatment...surgical supplies...devices and services that are reasonably required to cure or relieve from the effects of the injury."³⁸ Labor Code 4600 is ambiguous and this ambiguity lends itself to a multitude of interpretations and abuse. By eliminating the excessive over-use of medical services, a reduction of costs will occur, followed by lower premiums. Greater efficiency will result from the implementation of this recommendation due to shortened injury claim periods and the utilization of medical resources where evidence proves that treatment is effective.

³⁷ Ibid.

³⁸ We recognize that without any changes made to the labor code, our recommendation may not be as effective.

Basing medical care on objective medical findings gains wider support daily as evidenced in many of the current reform proposals before Governor Schwarzenegger. The medical care offered through workers' compensation is based on a "cure and relieve" standard. This presupposes that the mandate to "cure and relieve" is based on sound, proven principles of medical necessity. Objective medical findings are necessary to establish quality care standards to ensure that the largest number of people can receive the most effective treatment. The adoption of a uniform standard for diagnosing workplace injuries is critical, as these injuries determine all paid benefits. This analysis asserts that a qualified medical examiner (QME) is necessary when determining permanent disability while an objective medical review board is adequate to determine the extent of temporary injuries involved in claims. The adoption of this recommendation, by itself or in tandem with standardized fees and utilization controls, supports greater efficiency and efficacy within the workers' compensation system. Using the same medical standard, doctors would write reports that rely on a uniform methodology and language that insurance raters could assess with relative ease, thus reducing delays in payments. Along with injury assessment standardization, balanced reform efforts should include the reduction of disproportionate disability costs. The lack of standardization leads to excessive disability benefits; "like" injuries are not evaluated equally and leads to discrepancies. If a standard evaluation for injuries were enacted based on "medically necessary", the percentage of inconsistent disability pay-outs would drop. This analysis expects a reduction of excessive litigation often associated with varied outcomes.

Control Practitioner Selection

Finally, the development of a state approved network of workers' compensation practitioners will go a long way towards meeting many of the criteria proposed in this analysis. This recommendation proved effective in neighboring states and possesses the potential for tremendous cost savings to California. The creation of a state certified network of physicians can ensure a level of expertise about an already complicated system and further provide a greater level of uniformity and consistency in practice, diagnosis, and treatment. An employee could retain the right to choose a practitioner different from their employer, as long as the doctor was a member of the certified workers' compensation network. While this remains the most drastic of our medical recommendations, the climate is ripe for reform that will bring cost savings to California employers.

CLAIMS RESOLUTION

Expedite Process

In order to resolve the issue of understaffing, increase staff levels by recruiting law students from state law schools to serve internships in district offices. This approach would enable the Department of Industrial Relations to add staff at minimal cost. District offices benefit from the addition of interns, which can help district offices speed up the claims process, thereby increasing the efficiency and effectiveness of the adjudication process. Employers and employees benefit from an efficient and effective adjudication process that provides expeditious settlements for workers' compensation claims.

An indirect consequence of increasing the number of interns working in district offices is an increase in the number of under trained personnel spearheading the claims process, which poses a threat to efficiency and effectiveness of the claims process. Training may be needed to bring students up to speed in order to increase their contributions in the adjudication process.

Eliminate Incentives for Excessive Litigation

Towards minimizing litigation costs, we propose establishing tighter limits on legal fees awarded to attorneys. Given the political clout of attorneys in the state legislative process, the implementation of tighter limits on legal fees is a moderate approach, in which a political balance may be reached among stakeholders. Reforming the current legal fee schedule improves the efficiency and effectiveness of the courts, reduces litigation costs on employers, and restores the equity and fairness of the workers' compensation court system as an institution providing remedy for injured workers' with claims regarding benefits.

An unintended consequence of tighter limits on legal fees is a reduction of attorneys unwilling to practice law in the workers' compensation industry. This may affect the due process of injured workers, as leading attorneys in the workers' compensation market laws might exit the industry.

Standardize Judicial Rules

The most effective recommendation for reforming the lack of consistency in the courts is set forth in the Workers' Compensation Accountability and Reform Act, a current voter initiative proposed by the Committee for Workers' Compensation Reform and Accountability. The initiative recommends that the liberal construction provision be replaced with a strict burden of proof provision, in which court decisions are handed down based on a "preponderance of evidence", such as objective medical facts, surrounding a

workers' compensation case³⁹. Such an amendment establishes a uniform rule to be applied by the courts in handing down decisions, thus increasing the efficiency and effectiveness of the workers' compensation court system. Eliminating liberal construction of workers' compensation laws by administrative law judges restores the equity and fairness of the workers' compensation legal system as subjective decisions are replaced by objective reasoning. Amending the labor code to remove the liberal construction provision also reduces litigation costs, as the court system will experience a reduction in the number of cases appealed to the Workers' Compensation Appeals Board.

³⁹www.lao.ca.gov/initiatives/fiscal_letters/2004/040018.html. Workers' Compensation Accountability and Reform Act Section 8.

Putting the Recommendation Into Play

One of the most challenging aspects of developing public policy is the employment of an effective implementation strategy. Without a plan for ensuring the adoption of a well-reasoned approach the recommendation remains only a good intention and fails to influence policy. To that end, this chapter presents an approach for putting the proposed recommendation into play within the public policy arena.

THE CURRENT POLITICAL CLIMATE

The current political climate in California presents an atmosphere favorable for reform. Now that Propositions 57 and 58 passed and short-term fiscal concerns have been dealt with, Governor Schwarzenegger will focus his attention on the next most pressing issue - workers' compensation reform. Indeed, it is almost a foregone conclusion the state will adopt a reform package within year. The Governor himself imposed the deadline for a reform package on March 1, 2004. With that date since passed, the administration still waits for movement on the issue within the legislature. In the absence of action, Governor Schwarzenegger made it clear he means to take the debate to the people. He intends on using the initiative process on the November ballot to circumvent a divided and, or stalled legislature.

However, prior to November the primary method of reform implementation is through the legislative process. Currently, a litany of bills populates the statehouse halls that attempt to go at the problem in a piecemeal fashion. Recently Senator Ross Johnson proposed a series of bills, one of which addresses the "predominate" versus "proximate" issue. Two of bills addressing the reform of workers' compensation as a whole, were SBX4-3 introduced by Senator Charles Poochigian, and ABX4-1 authored by Assemblyman Abel Maldonado. These bills reflect the Governor's desire to see change within the system. They include using objective medical standards to determine permanent and temporary disability through implementing an independent medical review board, expanding the use of alternate claims resolution, defining "cure and relieve" under the guideline of "predominate" cause rather than "proximate" cause. Further, they allow employers more input in choosing physicians through health care providers and implementing the notion of pre-designated doctors agreed upon by employees and employers.

Insurance Commissioner John Garamendi introduced the other main reform package debated in policy circles. Like the Governor's bill, his package includes multiple provisions, including establishment of

objective medical standards through an independent medical examiner and the use of AMA guidelines. In addition, Garamendi’s plan requires continued education for physicians in order that they can make informed medical decisions. He pegs the fee structure to the Medicare scale; allows for harsher penalties for all forms of fraud; provides for a carve-out pilot system to unite benefit delivery with health care coverage; mandates immediate payout of benefits to employees; introduces return to work incentives by requiring physicians to report what level of work the employee could return to; reforms the SCIF to strengthen it financially and institutes a minimum rate cap to ward off insolvencies. Garamendi’s reform package remains un-authored by a sitting member of the legislature although he testified to the Assembly Insurance Committee.

OUR RECOMMENDATION STANDS OUT

Our recommended approach encapsulates much of the zeal inherent in both Governor Schwarzenegger’s and Garamendi’s plans. Several similarities including the need for objective and an acknowledgement that over utilization of medical services acts as a cost driver in premium rates reflect this. Also, our proposal shares a belief that litigation is too prevalent in the system, that the costs of the system add to the overall burden of workers’ compensation and that attempts to correct the troubled insurance market itself appear necessary. On the surface, our recommendation coincides with several aspects of the existing dominant proposals. The following table compares the essential elements of our recommended approach with those alternatives.

We Recommend	Garamendi	Initiative	Schwarzenegger
Encourage self-insurance			
Standardize provider diagnosis payment systems	X	X	X
Certify providers	X	X	
Limit legal Fees		X	
Standardize judicial decisions		X	

Within the medical services arena, the most significant proposed reform is the creation of a state approved network of workers' compensation practitioners, specially trained and skilled to effectively and efficiently address the needs of injured employees. Though a dramatic step if adopted, this action would encourage an improved level of stability and uniformity while reducing the time exhausted per claim. Aggressively targeting medical services will monitor cost drivers within the legal sphere and the insurance structure. Other medical reforms in this analysis differ only slightly in the specifics from other proposals under consideration.

While Garamendi's insurance market reforms address the issue of preventing insolvencies, they don't go far enough towards long term cost reduction. His measures address certain structural flaws he believes the Insurance Commissioner should address. While this may reduce the overall fluctuations in the market, it does not encourage the market to expand and provide more options for employers, which would result in lower average costs. In contrast, our approach encourages more businesses to self-insure and join self-insurance groups to achieve real savings in workers' compensation insurance and end the current dependency on the SCIF. This feature represents a departure from the alternative approaches examined in this analysis.

BRINGING THE RECOMMENDATION TO SACRAMENTO

We recommend presenting our reform package to the California legislature. Taxpayer groups and various business friendly organizations in the state, including the California Chamber of Commerce, would most likely approve our reforms, like the majority of those by the Governor and the Insurance commissioner. The insurance industry would also most likely be a supporter of these reforms since it reduces the cost of claims and simplifies the system. Despite the overall benefits to the industry, commercial insurers could be concerned over the increased incentives for self-insurance, due to a threat of increased competition. The SCIF would probably support it, since they are reluctant to take on more policies. Increased self-insurance would lighten their policy load.

Unions and applicant attorneys have been the most vocal opponents of the current bills and would position themselves as reluctant to any reforms. Despite the opposition, we hold that this proposal balances the interests of all the parties. While this is true, this reform aims to make the system better for workers, as well as employers. The people that benefit the most from reforms would be the injured workers themselves. With a streamlined system, workers can obtain their benefits faster and with fewer complications. In particular, the unions and applicant attorneys would approve of the increased funding

for the courts. Increasing funding not only benefits the worker by ensuring justice sooner, it also makes the attorney's job easier because they now have the infrastructure they need.

Much of the medical community has resented much of the reforms already proposed. Our proposal provides the doctors with objective standards to work with. These standards allow for the disability diagnosis to be done quicker and more effectively, and thereby increasing the number of instances where all parties agree on the level of disability payment. Objective medical standards allow them to do their job without being second-guessed. Furthermore, physicians would be in favor of an increase in self-insurance, because self-insurance allows for a tighter bond between employers and doctors in treating an injured worker.

With these interests balanced the political feasibility of our reform package increases. As major players in Sacramento politics, a majority of these groups must be satisfied in order to achieve passage of a reform bill. We believe our proposal satisfies this requirement.

TRANSFORMING THE RECOMMENDED REFORMS INTO LEGISLATION

These measures should be adopted within the Insurance committees of the State Senate and Assembly. Republicans would probably favor this measure over Democrats since the Democratic base is composed of labor unions and trial attorneys. Therefore, the best candidates for carrying the bills through the State Senate are Senator Ross Johnson, Vice-chair of the Committee, Senator Rico Oller, or Senator Bill Morrow. In the Assembly, Insurance Committee vice chair John J. Benoit, or fellow Republicans Keith Richman, Russ Bogh, Dennis Mountjoy, Robert Dutton, Ken Maddox, and John Campbell, would most likely adopt the measure.

Any legislation though must work with Democrats and thus both committee chairs, Juan Vargas in the Assembly and Jackie Speier in the Senate must be involved with the adoption process. In fact, winning them over is key, since they set the agenda and decide when to bring the bills to the floor. If our bill passes both houses, Governor Schwarzenegger would most likely sign it. The only questions are whether the legislature will pass a reform package at all, a circumstance that seems very likely considering the political climate, and which bill makes it to his desk first.

Although our recommendation shares many ideas put forth in both Garamendi and Schwarzenegger's plans, it has more in common with the SBAC initiative. The difference between our proposal and the

SBAC initiative involves our reform for expansion of self-insurance as well as our recommendation for a state certified network of workers' compensation practitioners. While the initiative advocates for an approach for standardization of doctors, it does not propose the implementation of a state certified network. In regards to the change to the claims resolution process, the initiative also resembles our reforms. We believe that blending our reforms with the current SBAC initiative will provide the greatest relief for California from the ensuing crisis of workers' compensation.

INITIATIVE PROCESS: A LEGISLATIVE ALTERNATIVE

If the legislative process does not prove fruitful, then the process of collecting signatures for a November initiative must begin. Again, with such a loud outcry over workers' compensation, and with the popularity and political credibility of the Governor, getting it on the ballot should not present an insurmountable challenge. Getting the initiative passed will again depend on whether the proposal is accepted by most of the affected parties.

Conclusion

The workers' compensation system created by the Boynton Act over ninety years ago suffers from increasing costs and severe inefficiencies, failing to adequately protect employees and employers from the costly effects of workplace injuries. This analysis set out to identify the central issues and problems underlying the system's failure with the intention of developing a viable plan for reform. The recommended approach provides legislators and Californians with a plan of attack that balances the interests of employees and employers with others, such as insurers, medical practitioners and attorneys. If California is to correct the shortcomings within workers' compensation and prevent the affects from further spilling over into the state economy near term action is necessary. The overall health of the state requires the augmentation of the social and economic value of the workers' compensation system.

Appendices

APPENDIX 1: INSTITUTES IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

The Workers Compensation Insurance Rating Bureau of California (WCIRB): An unincorporated, nonprofit association comprised of all companies licensed to transact workers' compensation insurance in California and has over 400 member companies. It is also a licensed rating organization and the designated statistical agent of the Insurance Commissioner. Since 1915, WCIRB has been responsible for rating levels of workers compensation insurance.

The State Compensation Insurance Fund (SCIF): Founded in 1941, SCIF is a non-profit, public enterprise fund that operates like a mutual insurance carrier. It is an insurer of last resort if private insurers are unwilling or unable to insure a certain employer.

The Uninsured Employers' Fund: Compensates the worker directly when an employer is unlawfully uninsured or has failed to pay or post a bond towards compensation. The SCIF tries to recoup the cost from the employer after the compensation has been covered. There are an estimated 1,000 to 1,500 claims filed each year with the Uninsured Employers Fund at a cost of around \$24 million a year, funded through a General Fund appropriation.⁴⁰

The Subsequent Injuries Fund: Compensates the worker for injuries that they obtained in a previous incident in the event a new injury has occurred. The employer is only responsible for the compensation of the latter injury. The Subsequent Injuries fund compensates for the former injury if the combined permanent disability is at least 70%. In one year, about 400 claims are filed with the Subsequent Injuries Fund, costing roughly \$6.5 million.⁴¹ This \$6.5 million is partially financed through death benefits that go the state when an employee has no dependents, with the balance financed through a General Fund appropriation.

The California Insurance Guarantee Association (CIGA): An organization created by the California Legislature in 1969 to pay claims of insolvent insurance carriers that are licensed to do business in the state of California. A thirteen-member board of governors, appointed by the insurance commissioner,

⁴⁰ Cathy Hwang and Brian H. Kleiner, Understanding Workers Compensation (Management Research News Patrinton Vol. 25, Iss. 3), 2002: 65

⁴¹ "The California Workers Compensation System", California Department of Industrial Relations Workers Compensation Basics, August 5, 1998 <<http://www.dir.ca.gov/DWC/basics.html>>.

manages the association. CIGA is not an insurance company. CIGA was created to provide only a limited form of protection in the event of insurer insolvency. CIGA consists of three separate funds that guarantee different lines of insurance, including workers' compensation; personal lines, such as auto, homeowners, personal liability; and others, such as commercial property, liability, products liability, supplemental and pollution.

The Workers' Compensation Appeals Board (WCAB): A seven-member, judicial body appointed by the Governor and confirmed by the Senate, exercises all judicial powers vested in it by the Labor Code. Its major functions include review of petitions for reconsideration of decisions by workers' compensation administrative law judges of the Division of Workers' Compensation and regulation of the adjudication process by adopting rules of practice and procedure. The mission of the WCAB is to exercise all judicial powers vested by the Labor Code in a reasonable and sound manner and to provide guidance and leadership to the workers' compensation community through case opinions and regulations.

Department of Industrial Relations, Division of Workers' Compensation: The administration of workers' compensation claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

APPENDIX 2: THE CALCULATION OF WORKERS' COMPENSATION INSURANCE PREMIUM RATES

A workers compensation premium is calculated depending on certain criteria, namely the type of occupation. Using a formula, the rate is calculated based upon the average losses to insurers from claims of employees in specific jobs in certain industries. Each occupation is given a different rating depending on the classification of the duties performed by the employee. There are over 500 classifications.⁴² The classification structure is developed by the WCIRB.

The insurance companies use these ratings to assess how risky the work is for an employee. Less risky jobs equate to lower ratings, while the opposite is true for higher risk jobs. Once the rate is determined, then an employer can then figure out how much the premiums will be depending on the size of their company. The insurer can still adjust this figure depending on whether the industry as a whole has forced the insurer to compensate greatly in the past. The final figure for the premium is not determined until an audit is done on the employer's payroll and an inspection of the workplace is undertaken. Clear records of the employers' payroll are necessary to check for employer errors in reporting and the inspection

⁴² Kilgour, John G., "Workers Compensation Reform in California: AB749 of 2002 and AB227 of 2003" Compensation and Benefits Review 2003

allows the insurer to address any safety issues that might be of concern. After this, the premium is established for the employer.

Rates though are subject to oversight by the California Department of Insurance. Under California's open rating system, each insurance company can set rates based upon their own ability to cover claims and other expenses. After this rate is determined, each insurer must file their rates with the Department of Insurance. One of the functions of the Insurance Commissioner is to approve or disapprove of the rates. Rate approval is based on whether the insurance company can remain solvent under the policy and whether the company has adequate reserves to pay out current and future claims. If the insurer is found to have inadequate funds, then the Commissioner will not approve of the policy, binding the insurer to raise the rate.

APPENDIX 3: SUMMARY OF LEGISLATIVE AND REGULATORY CHANGES⁴³

Roseberry Act in 1911 (the Compensation Act): Participation in the workers' compensation system was voluntary for employers.

Boynton Act in 1913: Laid the foundation for California's current workers' compensation system. It required employers to provide workers' compensation benefits to their employees, with the agriculture sector exempted from the system until 1959⁴⁴.

Since passage of the Boynton Act, the California system encountered a steady stream of reforms with the most extensive, and poignant to this analysis, occurring since 1989. The 1989 and 2004 workers' compensation reforms were intended to decrease system costs and the amount of time needed to settle cases.

Margolin Bill, AB276 1989 created the Qualified Medical Evaluator (QME) and alternative dispute resolution mechanisms. In addition, the statute limited each party to a single medical-legal report on any issue by each appropriate specialty or subspecialty. Chapter 892 prohibits admission into evidence of any medical opinion, other than a report from the treating physician, which was obtained before the service of the assessment by the Agreed or Qualified Medical Evaluator. As a result, doctors dropped, and attorneys

⁴³ The bills in this section were retrieved from the Institute of government studies <<http://www.dir.ca.gov>>

⁴⁴ California, California Workers' Compensation Law, Issue 0, 1994, 5th ed. 1-4.

increased new client calls, while the number of “stress” cases and costs associated with vocational rehabilitation has increased.

AB 971 (Peace) 1991, made additional changes by applying a further restriction denying recovery for those psychiatric injuries resulting from regular and routine employment unless the employee has worked for that employer for at least six months.

AB 110 (Peace) 1993 Stat. Chap. 121, effective July 16, 1993 made numerous changes to the process of selecting medical evaluators, which could be expected to reduce the number of reports. Chapter 121 allows the treating physician, who is primarily responsible for the care of the injured worker, to write a comprehensive medical-legal evaluation if a dispute develops.

SB 223 (Lockyer) 1993 changed the causation standard on psychological injuries to require that actual events of employment must be predominant as to all causes combined. However, if the psychiatric injury results from a violent act or from direct exposure to a violent act, the employee is required to prove by a preponderance of the evidence that actual events of employment were a substantial cause of the injury. Cal. Lab. Code #3208.3(b) (3) (amended by Chapter 1242) defines substantial cause as at least 35-40%. Chapter 1242 also provided that psychiatric injuries are not compensable if substantially caused by a lawful, nondiscriminatory, good faith personnel action. Further restrictions were also placed on recovery for psychiatric injuries following notice of termination of employment or layoff. The injury must have occurred prior to the time of notice of termination and one or more of the following conditions must exist: 1) sudden and extraordinary events of employment caused the injury; 2) the employer had notice of the injury prior to notice of termination or layoff; 3) employment records contain evidence of previous treatment of the psychiatric injury; 4) a finding of sexual harassment; or 5) evidence that injury occurred after notice of termination or layoff, but prior to the effective date of the termination or layoff.

SB 30 (Johnston, D) 1994 removed the floor on premium charges and allowed for competitive pricing. Effective January 1, 1995, the state's insurance commissioner could offer advisory premium rates benchmarked against loss and loss adjustments.

AB 749 & AB 486 (Calderon, D) 2002 increased temporary and permanent disability rates as well as death benefits. The increases will occur in increments over a period of several years. Employers must advise new hires of their right to workers' compensation, including their right to pre-designate a physician, within the first pay period. Failure to advise employees of their rights and responsibilities

could result in penalties. Unless otherwise indicated in writing by the treating physician, pharmacies are directed to dispense generic equivalents. Employers must obtain workers' compensation insurance; failure to do so will result in a per employee penalty.

AB 227 (Vargas, D) & SB 228 (Alarcon, D) in 2003 increased maximum fines for worker's compensation fraud from \$50,000 to \$150,000 and repealed existing vocational rehabilitation statutes. It provides a new supplemental job displacement benefit in some instances. Benefits are limited to four areas or any combination of those areas. Expands responsibilities for the insurance commissioner to include projected cost savings when setting advisory premium rates and maintain a rate comparison for the top 50 WC carriers in the state.

SB 228 (Alarcon) requires every California employer to have a certified written Injury & Illness Prevention Program in order to get Workers Compensation Insurance. Every employer shall establish, implement and maintain an effective written Injury and Illness Prevention Program (IIPP) that has been certified for California. Physician fees will reduce 5% from January 1, 2004 until January 1, 2006. The Industrial Medical Council (IMC) is eliminated and the relative functions are transferred to the Administrative Director (AD). SB 228 repealed the treating physician's presumption of correctness relating to injury except in cases where the employee pre-designated the treating medical professional. In addition, it extends the term of the Court Administrator to five years, and requires the Administrative Director to partner with the Commission on Health and Safety and Worker's Compensation (CHSWC) to adopt medical utilizations schedule by December 1, 2004.

APPENDIX 4: THE CURRENT CALIFORNIA'S WORKERS' COMPENSATION SYSTEM⁴⁵

Workers' compensation insurance provides benefits to employees who are injured or become ill during the course of or due to employment. It is a no-fault system, meaning that injured employees need not prove the injury was someone else's fault in order to receive workers' compensation benefits for an on-the-job injury.

In California, every employer is required to carry insurance to cover the cost of occupational injuries and illnesses. This insurance requirement is mandatory even if you have only one part-time employee. Companies based out-of-state with employees hired in California must also have California workers' compensation insurance. Non-compliance with California state workers' comp laws can result in serious

⁴⁵ "The California workers' compensation system," January 6, 2004, <<http://www.dir.ca.gov/DWC/basics.htm>>

penalties and fines. Assembly bill 279 states that business owners who intentionally operate without workers compensation in California are subject to possible prison sentence and up to a \$10,000 fine.

The benefit structure defines what injured workers are entitled to receive when they sustain an injury "arising out of and in the course of" their employment. There are five basic types of workers' compensation benefits available, depending on the nature and severity of the worker's injury: (1) medical care, (2) temporary disability benefits, (3) permanent disability benefits, (4) vocational rehabilitation services, and (5) death benefits.

Medical Care: Injured workers are entitled to receive all medical care reasonably required to cure or relieve the effects of the injury, with no deductible or co-payments by the injured worker. Generally, the employer controls the medical treatment for the first 30 days after the injury is reported, and the employee is then free to select any treating physician or facility. However, if the employee has notified the employer prior to the injury that he or she has a "personal physician" -- a physician or surgeon who has previously treated the employee -- that physician may treat the employee from the date of injury. Choice of treating physician differs, however, if the employer and employee have opted for a managed care program.

Temporary Disability Benefits: Those workers unable to return to work within three days are entitled to temporary disability benefits to partially replace wages lost as a result of the injury. The benefits are generally designed to replace two-thirds of the lost wages, up to a maximum of \$490 per week.

Temporary disability benefits are payable every two weeks, on a day designated with the first payment, until the employee is able to return to work or until the employee's condition becomes permanent and stationary.

Permanent Disability Benefits: Injured workers who are permanently disabled -- those who have a permanent labor market handicap -- are entitled to receive permanent disability benefits. A worker who is determined to have a permanent total disability receives the temporary disability benefit -- up to \$490 per week -- for life. A worker determined to have a permanent partial disability receives weekly benefits for a period, which increases with the percentage of disability, from 4 weeks for a 1% permanent disability up to 694.25 weeks for a 99.75% disability.

Permanent partial disability benefits are also payable at two-thirds of the injured worker's average weekly wages, but are subject to a much lower maximum. As of July 1, 1996, the rates are \$140 per week for

disabilities less than 14.75%, \$160 for disabilities rated at 15% to 24.75%, \$170 for disabilities rated at 25% to 69%, and \$230 per week for disabilities rated at 70% to 99.75%. Those with a permanent partial disability of 70% or more also receive a small life pension -- a maximum of \$153.65 per week -- following the final payment of permanent partial disability benefits. The percentage of permanent disability is determined by using the Permanent Disability Rating Schedule and an assessment of the injured worker's permanent impairment and limitations.

The Permanent Disability Rating Schedule specifies standard percentage ratings for permanent impairments and limitations, and provides for the modification of these standard ratings based on the injured worker's age and occupation. The standard rating is adjusted for age by lowering the rating for younger workers and increasing it for older workers on the theory that it is easier for younger people to adjust to a permanent handicap. The standard rating is adjusted for occupation by increasing the rating if the permanent impairment or limitation will be more of an impediment in performing the worker's occupation, and lowering the rating if it will have a lesser impact.

The assessment of the injured worker's permanent impairment and limitations is made by either the treating physician or a "Qualified Medical Evaluator" (QME). The Industrial Medical Council appoints and regulates QME's. If there is disagreement with the treating physician's opinion and an attorney does not represent the worker, he or she chooses a physician from a three-member panel obtained from the Industrial Medical Council. If an attorney represents the worker, the parties must attempt to agree on a physician to perform the evaluation. If they are unable to agree, each side may obtain evaluations from a QME of their choice. If the evaluations are disparate, the amount of permanent disability will be determined by negotiation or, if necessary, litigation.

Vocational Rehabilitation Services: Injured workers who are unable to return to their former type of work are entitled to vocational rehabilitation services if these services can reasonably be expected to return the worker to suitable gainful employment. This includes the development of a suitable plan, the cost of any training, and a maintenance allowance while participating in rehabilitation.

Once an injured worker is determined unable to return to his or her previous type of work, the employer and worker jointly select a rehabilitation counselor who will determine whether vocational rehabilitation is feasible, and if appropriate, develop a suitable rehabilitation plan. The goal of a rehabilitation plan is to return the injured worker to "suitable gainful employment" -- employment or self-employment that is

reasonably attainable and which offers an opportunity to restore the injured worker as soon as practicable and as near as possible to maximum self-support.

The maintenance allowance payable to an injured worker while in rehabilitation is, like temporary disability benefits, designed to replace two-thirds of lost earnings, but the maximum weekly amount is lower -- \$246 per week. The worker may, however, supplement the maintenance allowance with advances of permanent disability benefits up to the point where the worker is receiving the same weekly amount as he or she received in temporary disability benefits. Total costs for rehabilitation are now limited to \$16,000 for workers injured on or after January 1, 1994.

Death Benefits: In the event a worker is fatally injured, reasonable burial expenses, up to \$5,000, are paid. In addition, the worker's dependents may receive support payments for a period of time. These payments are generally payable in the same manner and amount as temporary disability benefits, but the minimum rate of payment is \$224 per week. The total aggregate amount of support payments depends on the number of dependents and the extent of their dependency. Generally, the maximum (where three or more total dependents are eligible) is \$160,000, though additional benefits are payable if there continues to be any dependent children after the basic death benefit has been paid.

The Benefit Delivery System: Unlike most social insurance programs (e.g., social security, unemployment compensation), workers' compensation in California, as well as in most other states, is not administered by a government agency. Primarily private parties -- insurance companies authorized to transact workers' compensation and those employers secure enough to be permitted to self-insure their workers' compensation liability, administer workers' compensation benefits.

When an employer becomes aware of an on-the-job injury, the employer is expected to begin the process of providing the injured worker the benefits to which he or she is entitled under the law. The benefits are paid by either the employer (if the employer is authorized to self-insure) or the employer's insurer.

The state's role in benefit delivery is to oversee the provision of workers' compensation benefits, provide information and assistance to employees, employers, and others involved in the system, and to resolve disputes that arise in the process.

The vast majority of workers' compensation claims are handled expeditiously and are administered without dispute or litigation. These are, for the most part, the smaller claims -- those in which only

medical care is provided and those in which the injured worker is disabled for only a few days. These smaller claims account for more than three quarters of all workers' compensation claims. The balance of the claims -- those in which there are significant periods of disability or permanent disability -- account for the vast majority of costs and litigation. In these more serious cases, litigation is common.

Most workers' compensation cases are litigated initially before workers' compensation referees employed by the Division of Workers' Compensation (DWC). A consultant in the DWC Rehabilitation Unit first hears rehabilitation disputes, and that decision can be appealed to a workers' compensation referee. The decisions of workers' compensation referees are subject to reconsideration by the seven members Workers' Compensation Appeals Board (WCAB). A WCAB decision is review able only by the appellate courts.

Most disputed or "litigated" cases are settled without a decision being rendered by a workers' compensation referee. Most case dispositions are compromise and release settlements -- settlements in which all future liability is released in return for a stipulated amount. Applicant's attorney's fees must be approved by a workers' compensation referee, and are generally 9-15% of the settlement amount. Defense attorneys' fees are not regulated.

The Benefit Financing System: The benefit financing system is the process by which employers finance their liability for workers' compensation benefits. Employers may finance their liability for workers' compensation benefits by one of three methods: (1) self-insurance, (2) private insurance, or (3) state insurance.

Self-Insurance -- Most large, stable employers and most government agencies are self-insured for workers' compensation. To become self-insured, employers must obtain a certificate from the Department of Industrial Relations. Private employers must post security as a condition of receiving a certificate of consent to self-insure.

Private Insurance -- Employers may purchase insurance from any of the approximately 300 private insurance companies which are licensed by the Department of Insurance to transact workers' compensation insurance in California. Insurance companies are free to price this insurance at a level they deem appropriate for the insurance and services provided.

State Insurance -- Employers may also purchase insurance from the State Compensation Insurance Fund, a state operated entity that exists solely to transact workers' compensation insurance on a non-profit basis. It actively competes with private insurers for business, and it also effectively operates as the assigned risk pool for workers' compensation insurance.

In addition, there are two special funds that pay benefits to injured workers under some circumstances: (1) the Uninsured Employers Fund, and (2) the Subsequent Injuries Fund.

Uninsured Employers Fund -- When an employee is injured while working for an employer who is unlawfully uninsured, and the employer fails to pay or post a bond to pay the compensation due the employee, the employee's compensation is paid from the Uninsured Employers Fund. An attempt is made to recover the amount paid from the uninsured employer.

About 1,000 to 1,500 new claims are filed with the Uninsured Employers Fund annually, at a cost that has reached about \$24 million per year. Most of this cost is paid by an annual General Fund appropriation.

Subsequent Injuries Fund -- When an employee has a previous permanent disability or impairment and sustains a subsequent injury, the employer is not liable for the combined disability, but only for that caused by the later injury. However, when the combined permanent disability is at least 70% and certain other criteria are met, the employee may receive additional compensation from the Subsequent Injuries Fund.

About 400 claims are filed with the Subsequent Injuries Fund annually, at a cost of about \$6.5 million. About half the cost is financed by death benefits paid to the state in cases where the deceased employee had no dependents and the balance is paid by an annual General Fund appropriation.

The workers' compensation system is premised on a trade-off between employees and employers -- employees are supposed to promptly receive the limited statutory workers' compensation benefits for on-the-job injuries, and in return, the limited workers' compensation benefits are the exclusive remedy for injured employees against their employer, even when the employer negligently caused the injury. Workers' comp costs are directly linked to the size of payroll. Consequently, California employers are responding by freezing the size of their staffs, reducing hours or laying off workers. Most California businesses will pay slightly less for workers' compensation insurance in 2004. Being effective from January 1, 2004 workers' comp pure premium rates filed by insurers to date are below rates in 2003 by an average 3.6 percent.

APPENDIX 5: THE GARAMENDI PLAN COMPLETING WORKERS' COMPENSATION REFORM⁴⁶

On September 12, 2003, the California Legislature passed omnibus workers' compensation reform legislation, which was signed by Governor Davis and became law on January 1, 2004. This reform promises nearly \$5 billion in onetime savings and an additional \$5.6 billion in ongoing annual savings. My analysis indicates that workers' compensation pure premium rates should be decreased 14.9% below current levels. This results in an advisory pure premium rate level that is only 0.8% above July 2002 pure premium rates. However, for these savings to be realized, all participants in the workers' compensation system must live up to their responsibilities in implementing these reforms.

The 2003 workers' compensation reform is a very courageous and significant first step that addresses many of the largest cost drivers and moves us closer to a more functional, predictable and competitive workers' compensation market. However, while the Legislature can be proud of its recent accomplishments, the monumental task of workers' compensation reform is far from complete. As I have done since taking office, I will continue to make workers' compensation my top priority and I will work collaboratively with business, labor, the Governor, and the Legislature to return workers' compensation to the system originally envisioned in the historic bargain of 1913 -- a no-fault system that protects employers from liability and compensates injured workers equitably and efficiently. Below is a list of the issues that we must address in 2004 to complete that task.

Permanent Partial and Total Disability (PD)

Problem: The current system for determining an injured worker's level of disability (PD, PPD, TD) is highly subjective and inconsistent leading to increased litigation and irrational settlements in which small injuries receive too much and serious injuries too little. Similar injuries should receive consistent PD ratings. This is not currently the case in California's PD rating system.

Solution: California must develop a more equitable and consistent permanent disability rating system based on objective assessments of disability. Restructuring permanent disability must be the top priority for 2004 workers' compensation reform. This can be done by (1) creating a more standardized and consistent method for the determination of impairment, and (2) reducing the frictional costs in the dispute

⁴⁶ California Department of Insurance, January 9, 2004, <<http://www.insurance.ca.gov>>

resolution process by incorporating an independent medical examiner. Both of these changes will simplify the system, generate more equitable, efficient and timely PD settlements, and lead to dramatically lower levels of litigation within the system. The Rand Study on PD commissioned by CHSWC (expected Feb. 2004) will provide the foundation for a more efficient method of determining impairment. The Legislature should take immediate action on legislation to improve the current system once this study is complete. PD reform should also address apportionment. An employer should not have to pay a second time for permanent disability that has already been awarded.

Immediate Worker Benefits

Problem: For countless reasons, injured workers are too frequently denied the immediate, essential, and, often, basic medical treatment and indemnity benefits they are entitled to under the workers' compensation system. In nine out of ten cases, the injured worker is ultimately granted the medical care they or their physician initially requested. These unnecessary delays in benefit payments and medical treatment lead to unnecessary costs (increased medical, indemnity, and litigation). As untreated workers' medical conditions worsen, they take much longer to return to work, and they seek legal counsel to resolve the issues.

Solution: The employer must be responsible for providing immediate workers' compensation benefits (indemnity and medical treatment) to all injured workers. Employers will have up to one year to deny a claim as opposed to the current 90-day period. Employers should be able to deny a claim for fraud at any time. If fraud is proved, the employer is entitled to restitution. Employers will be responsible for all compensation benefits for specific injuries until the claim is denied.

Utilization Management (IMR)

Problem: Over utilization of medical services is a major cost driver that does not necessarily aid injured workers, extends injury claims, and wastes medical treatment resources. Numerous interstate comparisons and California-specific studies have demonstrated that over utilization of medical treatment is a serious problem within California's workers' compensation system. The 2003 reforms made significant improvements in establishing effective medical utilization controls by implementing evidence-based medical treatment guidelines and placing hard caps on chiropractic and physical therapy treatments. Despite these significant improvements, there is still more that needs to be done to complete the reform.

Solution: To build upon the 2003 reforms, we propose developing a strong definition of "reasonable medical treatment" and a streamlined independent medical review (IMR) process. For the evidence-based

clinical treatment guidelines to achieve full effect, they need to be accompanied by a strong definition of “reasonable medical treatment.” To reduce litigation and get workers the most appropriate medical care, an IMR process should support the new treatment guidelines where medical practitioners make workers’ compensation medical decisions. For guidelines to be effective, it is also imperative for medical providers, insurers’ claims staff, and Workers’ Compensation Appeals Board (WCAB) judges to be quickly and thoroughly trained on implementation of the new medical treatment guidelines. While these evidence-based guidelines will be the accepted standard of treatment, the examiner can consider new or additional scientific evidence of efficacy to approve a treatment that exceeds the guidelines.

Anti-Fraud Measures

Problem: The current culture of California’s workers’ compensation system is one where abuse and fraud are widespread and serve as a cost driver in the system. This culture must change. The high premiums, low benefits, and overall inequity of the current workers’ compensation system contribute to an environment that is highly vulnerable to fraud. Workers’ compensation fraud includes abusive and fraudulent provider billing practices (up-coding, unbundling, prescription billing, durable equipment, and services not rendered), medical-legal mills, and applicant and insider fraud. Numerous factors exacerbate and perpetuate workers’ compensation fraud, including personal and business economic hardship, public acceptance of insurance fraud, and inadequate resources (manpower and funding) to investigate insurance fraud cases. Some insurance companies have also been derelict in their responsibility to fight fraud. The lack of uniform methodology and standards for assessing and reporting suspected fraud is a contributing factor.

Solution: The California Department of Insurance (CDI) is restructuring its fraud and investigative units to improve coordination efforts and to prioritize workers’ compensation cases. CDI is also improving its working relationship with district attorneys and other state, federal, and local law enforcement agencies with an emphasis on information sharing. As part of these anti-fraud efforts, CDI supports immunity for individuals reporting suspected fraud. CDI also proposes making uninsured employers subject to felony charges.

State Compensation Insurance Fund (SCIF or State Fund) Reform

Problem: Elimination of the minimum rate law in 1995 led to a vicious cycle of under pricing workers’ compensation premiums. Since that time, more than two-dozen workers’ compensation insurance companies have been placed in regulatory conservation, liquidation, or supervision. As these companies failed and competition dwindled, State Compensation Insurance Fund, the insurer of last resort, picked up

the slack, growing from 20% of California's workers' compensation market in 2001 to well over 50% of the market today. The impact of this rapid growth has placed enormous strain on the organizational structure and financial position of State Fund. To correct these problems, State Fund must undertake a series of difficult, but necessary adjustments to build up its financial strength.

Solution: State Fund should implement the reforms recommended in the IBM consulting report as appropriate. It should shed business that can be placed elsewhere in the market. State Fund should carefully evaluate its rating plan making sure all accounts are properly priced and ensure that savings from the 2003 workers' compensation reforms are reflected in those rates. State Fund should take necessary steps to increase enrollment in the Kaiser Alliance program, in order to help control escalating health care costs. Also, current law requires that all five voting SCIF Board Members must be SCIF policyholders 12 months prior to being appointed to the SCIF Board and during their entire tenure on the Board. We support removal of the SCIF policyholder requirement for two of the voting SCIF Board Members. This freedom and flexibility would allow recruitment of specialized expertise and fresh perspectives for SCIF oversight.

Physician Fees Indexed to Medicare

Problem: The 2003 workers' compensation reform implemented a Medicare-indexed fee schedule for outpatient surgery clinics. However, it did not implement the Medicare-indexed structure for all medical services, specifically physician fees. California's current physician fee schedule is not tied to Medicare, is not regularly updated and does not accurately reflect the cost of care. Current law expects a state agency with inadequate funding and little experience to create and update complex medical fee schedules. Experience has proven it does not work.

Solution: Tying costs to the Medicare fee schedule makes sense. It will provide a payment standard, allow for consistent and timely updates to the fee schedules and lead to additional cost savings through lower administrative costs on implementing and updating the schedules. Indexing to Medicare does not mean services are limited to Medicare prices, rather it provides a familiar standard upon which medical fees can be indexed. The stability and predictability that a Medicare-indexed fee schedule provides will save money by allowing actuaries to more accurately predict costs and insurance companies to correctly set their premiums.

Irrational Penalty Structure

Problem: Penalties imposed on insurers for late and inadequate payment of claims should have a reasonable relationship to the violation. The current penalty structure is irrational, allowing penalties to be assessed against the species of benefits paid, both past and future, for the entire claim, rather than the specific amount of payment that was either delayed or refused. Consequently, in a case where \$200,000 in medical benefits was paid, a late \$10 payment on reimbursement for a prescription to an injured worker can result in a 10% penalty or \$20,000. The current structure provides strong incentives to allege penalties in order to gain larger settlements resulting in inequitable penalties and unnecessary litigation. The 2003 reforms exempted CIGA from paying 5814 penalties on inherited claims, but the 5814-penalty structure was not addressed.

Solution: Require injured workers and their attorneys to timely and specifically report when they believe employers have unreasonably delayed or refused to pay benefits. Allow for disputes on unreasonably refused or delayed benefits to be resolved without litigation and payment of an immediate, no-fault 10% penalty based upon the amount that was refused or delayed. If the matter is disputed further, allow for the assessment of a larger 25% penalty on the amount in dispute or \$500, whichever is greater. This would help create a more responsive and rational penalty structure that effectively deters the specific negative conduct of the insurer or employer. It would also significantly diminish the opportunity to allege unwarranted penalties and reduce unnecessary litigation.

Return to Work

Problem: The overall complexity of the workers' compensation system leads to miscommunication, misinformation and frustration for injured workers and employers. Furthermore, the current system often provides clearer incentives for injured workers to claim disability than to return to work quickly. The lack of communication and misguided incentives contribute to slower medical treatment, longer disability, and increased litigation.

Solution: The best outcome for an injured worker is to get them back to work as quickly as possible. It is the employers' responsibility to ensure this happens. We must restructure the system so that injured workers, employers and all other participants in the system have the proper incentives to return injured workers to work as quickly as possible. Benefit systems must be structured so that injured workers want to return to work and employers want to accept injured workers back, even in a modified capacity, as quickly as possible. Doctors must be appropriately compensated for the time to evaluate return to work. More coordination, collaboration, and integrated communication between doctors, injured workers, and employers focused on getting the injured worker back to work is imperative. HCOs, ombudsman, nurse

case managers, and other similar programs all move the system in this direction. Changing incentives and improving communication will reduce time off work, permanent disability costs, and litigation costs.

Workers' Compensation Information System Reform

Problem: Currently, there is no extensive database of claims information available to analyze the efficiency of the system and detect outliers responsible for fraud and abuse in the system. The Department of Industrial Resources' Division of Workers' Compensation (DWC) is developing such a database as required by the passage of AB 749 in 2002. However, because of technical limitations, budget constraints and limited resources, DWC has not been able to develop this database in an efficient and timely manner.

Solution: The responsibility for developing and maintaining this database should be shifted from the DWC to the Workers' Compensation Insurance Rating Bureau (WCIRB). The WCIRB has the resources and technical capability to both develop and maintain the database and to conduct the analysis necessary to detect outliers and effectively use the information to combat fraud and abuse in the workers' compensation system.

Single Premium Health Care

Problem: Employers currently pay for workers' compensation medical costs, which account for close to 60% of workers' compensation premiums or an estimated \$13.8 billion in 2004. Most employers also pay for health care benefits for their employees.

Solution: Single premium health care would seek to integrate workers' compensation health costs and regular healthcare benefits into one system. This could lead to significant savings by eliminating duplication of administrative costs in these two systems and also eliminating legal costs related to determination of medical benefits.

California Department of Insurance
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1/9/04

APPENDIX 6: GOVERNOR SCHWARZENEGGER'S PROPOSAL⁴⁷

GOVERNOR ARNOLD SCHWARZENEGGER



WORKERS' COMPENSATION REFORM

OVERHAUL OF A BROKEN SYSTEM

THIS PROPOSAL:

Enhances benefits for the most severely injured, once California's workers' compensation system is brought to the national average in costs.

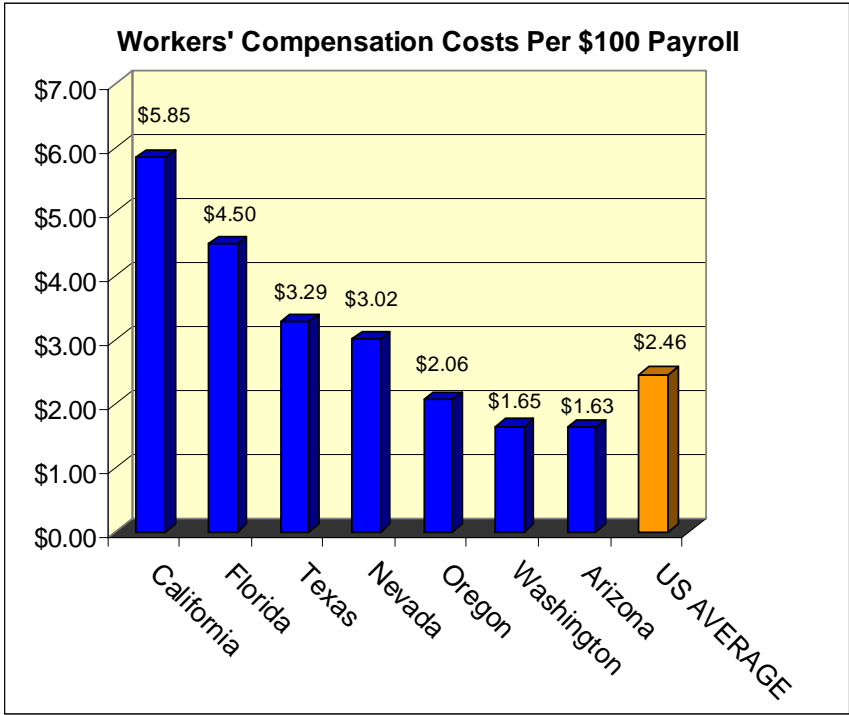
Reduces the cost to business by attacking the cost drivers from a multi-pronged approach – through managing medical costs and restructuring indemnity payments.

Builds on and fine-tunes SB 228 and AB 227, the workers' compensation bills passed earlier this year.

THE PROBLEM

California's workers' compensation rates are the highest in the nation and are significantly higher than our competitor states.

⁴⁷American Association of Independent Claims Professionals, < http://www.aaicp.net/issues/ca_comp6.htm>



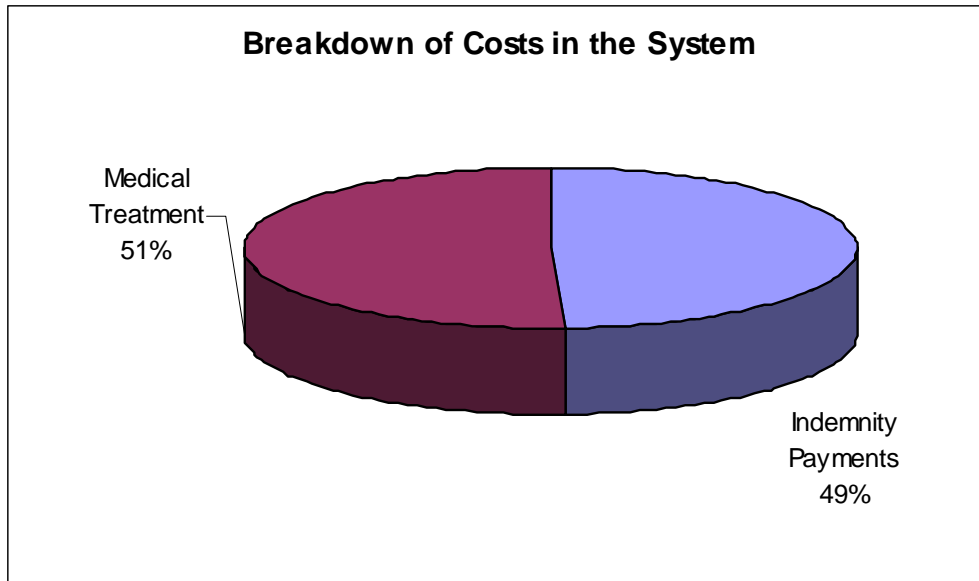
THE SOLUTIONS

ENHANCING BENEFITS FOR THE MOST SEVERELY INJURED

The benefit increases put forth in last year’s AB 749 will go into effect incrementally over the next three years. This proposal fully funds those increases. Additionally, this proposal goes one step further. If the California workers’ compensation system is brought to the national average, then an additional benefit increase will go into effect for the most severely injured.

GOAL: AFFORDABILITY

We must bring affordability to California’s workers’ compensation system so that costs are at or below the average rate for the entire country by reducing the average cost per \$100 of payroll from \$5.85 to \$2.46. This equates to an \$11.3 billion reduction in overall costs, from next year’s projected costs of \$24.9 billion.



Costs of the workers' compensation system are equally divided between cost to medically treat the worker and indemnity payments to the worker to compensate for loss of wages and permanent disability.

INDEMNITY COSTS

California's number of disability claims is almost 3 times the countrywide rate – in 2002 California had 1,221 claims per 100,000 workers, while the countrywide average was only 434. The cost of permanent disability per injured worker in California is also three times the average of that in other states.

Solutions:

Mandate use of objective medical findings.

Outline the use of nationally recognized guidelines, like the American Medical Association guidelines, for impairment to improve consistency of awards.

Curb the use of permanent disability (PD) benefits by limiting awards for those who return to their previously held job or who are offered, but refuse to return to their job, or an equivalent paying job.

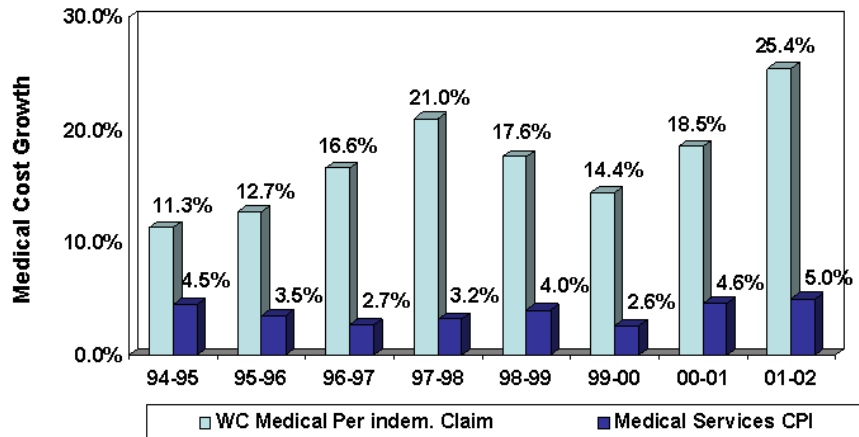
Bring rationality to the apportionment determination, so that a person cannot continue to receive new PD awards for the same injury.

There are two kinds of injuries – cumulative injuries and specific injuries. Ensure that cumulative injuries are truly “work-related” by applying the standard of “predominant cause” to those kinds of injuries. For all other specific injuries, apply a 10% standard.

Clearly define “permanent and stationary” so that claims cannot continue unresolved.

Require that medical physicians be the ones to determine permanent disability.

36. Year-to-Year Growth Avg Medical per Calif. WC Indemnity Claim vs. Nat'l Medical Services CPI (indexed to 1992)



2003 Annual Conference of WCIRB Committees

GG
WI
(7/03)

MEDICAL COSTS

California has developed two duplicative health care systems, each with their own administrative costs and each with their own set of rules. Employers who opt to provide health care to their workers are burdened with the expense of this duplication and employees find the dual systems confusing. Medical costs have been one of the fastest growing factors in the workers' compensation system in recent years. Some injuries treated in the workers' compensation system are up to five times more expensive than the same injury treated in the group health system.

Solutions:

Part A: Systemic Changes Throughout the System

Allow for an employee to change doctor after 30 days or to pre-designate a doctor only if the employer mutually agrees it to.

Make clear that the mandate to "cure and relieve" is based on sound, proven principles of medical necessity.

Establish an independent medical review process; ensure that the "qualified medical examiner" (QME) process is used solely for PD determinations.

Improve on the utilization controls created in SB 228 so that the abuse of over-utilization of the system is truly curtailed.

Part B: Optional Direct Access to Care

For employers offering health insurance to their employees, Optional Direct Access to Care would provide, in addition to the savings outlined in Part A, the advantage of a combined insurance policy that maximizes the benefits of the group health model while still ensuring adequate coverage to employees.

For employers, who are not quite able to provide health insurance, allow the same combined medical coverage options as well as all of the savings from the Part a benefits.

ADMINISTRATIVE COSTS

Solutions:

Amend Labor Code 5814 so that the penalty is assessed on the actual late payment rather than the entire claim – past, present, and future.

Allows an insurer or employer the ability to self-impose a penalty upon them so that an unintentional violation can be quickly remedied.

OTHER ISSUES

Solutions:

Exclusive Remedy Issue – Restore the exclusive remedy and reduce the possibility for lawsuits for employers who follow the law.

Eliminate prisoners from being eligible for compensation.

Eliminate the requirement included in SB 228 for all insurers to inspect the safety program of every single business.

Modify the Alternative Dispute Resolution (ADR) Program provisions of SB 228 so that all industries can avail themselves of the successful model of ADR currently authorized for the construction trades.

Small Group Self-Insurance Changes – Expand small group insurance laws to create additional options for group insurance pools. The bill requires that these provisions be consistent with the model act of the California Association of Insurance Commissioners.

APPENDIX 7: CALIFORNIA WORKERS' COMPENSATION REGULATIONS⁴⁸

780.1. Employee Selection of Personal Physician

If an employee wishes to be treated by a "personal physician" selected pursuant to Labor Code Section 4600, the employee shall notify his employer in writing. The notice need not be in any particular form, and may be in a form reasonably required by the employer and shall advise the employer of the name and address of such personal physician. Nothing in this Article shall prohibit an employer from permitting an injured employee to be treated by a physician of the employee's choice.

9781. Employee's Request for Change of Physician

An employee's request for change of physician pursuant to Section 4601 of the Labor Code need not be in writing. The employer shall respond thereto promptly, and in the manner best calculated to reach the employee, and in no event later than 5 working days from receipt of said request. Except where the employee is permitted to select his or her own physician or facility to provide medical treatment, the employer shall advise the employee of the name and address of the alternative physician, or chiropractor if requested, the date and time of an initial scheduled appointment, and any other pertinent information. The employer may confirm its response in writing.

9782. Notice to Employee of Right to Choose Physician

Every employer shall advise his employees in writing of their right to request a change of treating physician if the original treating physician is selected initially by the employer; to be treated by a physician of his or her own choice 30 days after reporting an injury; and to direct initial medical treatment, other than appropriate emergency or first aid treatment, by designating a personal physician and notifying the employer in writing of his or her choice prior to the injury. This duty may be satisfied by incorporating such advice in a notice, if posted in a conspicuous manner at all places of employment, or by any other regularly used means of communicating information to employees.

⁴⁸ CALIFORNIA CODE OF REGULATIONS (CCR),
<[HTTP://WWW.CHIROCOMP.COM/RESOURCES/REGULATIONSCCR.SHTML](http://www.chirocomp.com/resources/regulationsCCR.shtml)>

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