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**Local Factors, Statewide Impacts:
A Background Paper on California's Workers' Compensation System and
the Greater Los Angeles Area**

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Since 1913, California's workers' compensation system has attempted to provide an equitable balance between the needs of California's injured workers and employers. At the core of this balancing act is what is colloquially referred to as the 'grand bargain': injured workers receive necessary treatment (and an award if the injury is permanent), but lose the right to sue--- meaning workers' compensation becomes the exclusive remedy for all workplace injuries. Employers, on the other hand, do not need to worry about workplace injury liability in the courts, but they are liable for the medical treatment for injured workers (as well as a permanent disability indemnity award if the injury is serious).

While the system generally succeeds in providing that equitable balance for most injured workers and employers, few stakeholders would argue that that the system is an unqualified success for all of California's injured workers. Nowhere is this truer than in Los Angeles County and the Los Angeles Basin, where both data and anecdotes suggest that the workers' compensation system shows signs of significant strain and inefficiency. The purpose of this background paper is to give a brief overview of California's workers compensation system and what recent research suggests about how the system is functioning in the Greater Los Angeles area.

Legal Structure of California's Workers' Compensation System

Article XIV, Section 4 of the California State Constitution reads (in part):

The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers ... to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the



course of their employment, irrespective of the fault of any party... the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government...

This broad article serves as the foundation of California's workers' compensation system, and it was originally passed in 1911 by a vote of the people (Senate Constitutional Amendment No. 32, Article XX, Section 21).

The primary Labor Code Sections largely echo the constitutional requirements. Labor Code §4600 provides that medical, surgical, chiropractic, acupuncture, and hospital treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. Similarly, Labor Code §5402 provides that employers must initially provide up to \$10,000 in medical treatment for a claim – even if that claim is later rejected.¹

Size of California's Workers' Compensation System

Based on estimates from the 2014 Commission on Health and Safety and Workers' Compensation (CHSWC) annual report, employers incurred approximately \$21.4 billion in system wide costs by California's workers' compensation system. This included more than \$5 billion in indemnity benefits, more than \$7.8 billion in medical benefits, and nearly \$10 billion in reserve costs and administrative expenses. For more than a decade, medical costs have been the single largest expense for employers and insurers in the workers' compensation system.

Indemnity Benefit Structure of California's Workers' Compensation System

As was discussed above, the cost of medical benefits is significantly higher than indemnity benefits. However, indemnity benefits are an important benefit for injured workers and are frequently what people reference when discussing benefits in the workers' compensation system. The different forms of indemnity benefits are discussed below.

Temporary Disability (TD) benefits are benefits the worker receives when the occupational injury results in lost time and wages. The purpose of this benefit is wage replacement: TD replaces 2/3rds of an injured worker's wages, with a ceiling set at \$1095.70/week for 2015.² The benefit lasts for up to 104 weeks, except for certain serious injuries. TD is the most common type of indemnity benefit, and is generally not a significant friction point in the system.

Permanent Disability (PD) benefits are, as the name suggests, benefits awarded in the event that the injury results in permanent reduced earning capacity. The two types of PD indemnity

¹ The \$10,000 cap came from SB 899 (2004). Prior to this, liability was basically uncapped.

² The TD ceiling increases every year based on the State Average Weekly Wage (SAWW).

benefits are Permanent Partial Disability (PPD) and Permanent Total Disability (PTD). PTD is very rare; it would generally occur in very serious injuries such as blindness, amputation of limbs, or paralysis. Generally, when one is discussing PD, one is discussing PPD.

As per Labor Code §4660.1, “*determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of injury.*” A physician does this analysis once the injured worker is permanent and stationary (P&S), or when the nature and degree of disability has reached a point where it is neither worsening nor improving. The physician must refer to the American Medical Association’s Guides to the Evaluation of Permanent Impairment in order to determine disability. Once this is done, the physician can determine the permanent disability rating using the Permanent Disability Ratings Schedule (PDRS), which is created by the Administrative Director of the Division of Workers’ Compensation. This rating is communicated through a percentage – eg. PD rating of 15%.³

In the event of a dispute, the case would then be referred to a Qualified Medical Examiner (QME).⁴ QMEs are physicians who have passed a Division of Workers’ Compensation (DWC) test that certifies them as qualified to resolve medical disability disputes. QMEs are selected from a panel; basically, either side disputes the PD rating, requests a panel, receive a list of three QMEs that meet the appropriate criteria, and then each side gets to reject one QME, leaving the remaining QME as the examiner to resolve the rating dispute.⁵

If an injured worker’s injuries are severe enough to result in a PD rating of 60% or more (including PTD), the worker would be awarded a life pension as well as a “traditional” PD benefit. As the name suggests, this is a cash award that would continue for the life of the injured worker. As a PD rating of 60%+ would suggest, injured workers eligible for a life pension would be the most seriously injured workers, and therefore life pensions are relatively rare.

Medical Disputes in California’s Workers’ Compensation System

In most cases, the provision of medical care for an injured worker begins with a physician submitting a Request for Authorization for Medical Treatment (RFA) to the injured worker’s employer or insurer in order for the physician’s recommended treatment to be approved. On the RFA, the physician must detail his or her diagnosis and treatment, and must also include an additional form which provides a narrative that substantiates the need for treatment. Upon receiving the RFA, the employer or insurer has only two choices: approve the treatment or send

³ For a worker who is found to be totally disabled (PTD), the rating would be 100%.

⁴ It is also possible for both parties to skip/avoid the QME process and agree to a single medical evaluator. This would be an Agreed Medical Evaluator (AME).

⁵ As with many things in workers’ compensation, the QME process is more complicated than it appears.

the RFA to utilization review. According to a 2014 study by the California Workers' Compensation Institute, 75% of all treatment is approved and is not submitted to UR.

Utilization Review (UR) is the review process for medical treatment recommendations by physicians which evaluates if the request for medical treatment is medically necessary. The full UR process varies by vendor, but it generally involves initial review by a non-physician, with higher level review(s) being conducted by a physician or physicians. **Only a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services may modify, delay, or deny a request for medical treatment.** Of the 25% of medical treatment that is elevated to UR, nearly 77% is approved by UR. When combining the treatments that are approved by the insurer or employer, the CWCI study found that 94.1% of all medical treatment is approved.

If the UR physician does modify, delay, or deny the medical treatment, then the injured worker can appeal the decision to Independent Medical Review (IMR). As the name suggests, IMR is an independent process where doctors, contracted by the Division of Workers Compensation (DWC) through Maximus Federal Services, review an UR decision and either uphold the decision or overturn the decision. An IMR decision is considered an official determination of the DWC and, barring error, discrimination, or fraud on the part of the IMR physician, is the final word on medical treatment in the workers' compensation system. Of the 5.9% of treatment that is elevated to IMR, 88% of decisions uphold the UR determination.

The "Los Angeles Phenomenon" in California's Workers' Compensation System

Troublingly, the Los Angeles area stands out as a peculiar outlier in medical utilization, medical disputes, and indemnity claims. While stakeholder anecdotes suggest that Los Angeles's status as an outlier is historical rather than recent, several recent studies have highlighted several areas of strange behavior specific to Los Angeles. This backgrounder will focus on two: indemnity claims and IMR requests.

Indemnity Claims and Los Angeles

As noted above, workers who suffer serious injuries are eligible to collect indemnity benefits. Claims involving indemnity benefits tend to be more expensive due to the awarding of indemnity benefits and the severity of the injury, but also because claims involving indemnity benefits tend to involve litigation. While indemnity rates can be expected to vary by region due to industrial mix, stakeholders have anecdotally reported that Los Angeles has shown disproportionately high indemnity rates for many years.

Last month, the Workers' Compensation Insurance Rating Bureau (WCIRB) released a study that broke California up into 19 regions to study regional variability in both workers' compensation claims generally and indemnity claims specifically. After controlling for the

industrial composition for each region, the study found that the Los Angeles/Long Beach region has 36.5% more indemnity claims and 34.5% more workers' compensation claims generally than would be expected. Similarly, the Santa Monica/San Fernando Valley and San Gabriel Valley/Pasadena had 26.7% and 21.7% more indemnity claims, respectively. No other region showed such notably high indemnity claim frequency ratios. The study is included in the background material for this hearing for reference.

Independent Medical Review (IMR) and Los Angeles

IMR was widely considered to be a cornerstone of the 2012 workers' compensation reform. Initially estimated to save \$390 million, the WCIRB has subsequently found that IMR *created cost pressures* in the neighborhood of \$100 million. This due to the large volume of IMR requests, which the employer must pay for and vary between \$123 and \$515 per request. When the WCIRB created its cost savings estimate, the projected volume of IMR requests was 51,000 requests per year. Between January 1, 2013 and August 31, 2014 alone, nearly 189,000 IMR requests were filed, many of which were duplicates. As noted above, this volume dramatically exceeds the estimated volume of IMR requests, eroding the projected savings.

The question as to why the current volume of IMR claims is dramatically higher than what was initially projected remains a topic of conjecture. However, in a CWCI study released in April of this year, the study noted significant regional variability in the number of IMR decisions that are issues. Specifically, when adjusting for workers' compensation claims volume, the study found 50% more IMR decisions originating from the LA Region than would be expected. The study also found that about 1,200 medical providers were responsible for 83% of the IMR decisions. This may suggest that a small number of Southern California medical providers are responsible for the majority of IMR decisions in the State of California. This study is also included in the background material for this hearing.

What is the Cause of the "Los Angeles Phenomenon"?

Taken together, the high volume of workers' compensation claims and medical disputes in the Greater Los Angeles area paints a portrait of a workers' compensation system in crisis. Troublingly, there is little agreement among stakeholders on what is the cause of the "Los Angeles" phenomenon. Typically, stakeholder narratives fall along simplistic lines, either arguing that Los Angeles is a dangerous region for workers, inhabited by employers and insurers that are driven to deny care for California's most seriously injured workers, or that Los Angeles is simply a cabal of fraud driven by unscrupulous attorneys and medical providers.

The purpose of this hearing is to move beyond simplistic narratives and towards a data-driven and comprehensive picture of why the Greater Los Angeles region is different from the rest of California. The Committee will hear from the Division of Workers' Compensation (DWC) and established experts on research describing regional trends in workers' compensation, the County of Los Angeles on how the workers' compensation system impacts local governance, and stakeholders on their experiences navigating the workers' compensation system in the Los Angeles region. These panels will begin important conversations and hopefully open the door to reforms and innovations that will ensure that balance and fairness for injured workers and employers in the Los Angeles region continues to be maintained by California's workers' compensation system.