

Claims Working Group

# Meeting Summary

To: Participants of the Claims Working Group  
Date: August 14, 2018

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**RE: Summary of July 25, 2018 Meeting**

## Discussion Topics

At the meeting, the following topics were discussed:

### 1. Third Quarter 2018 Review of Diagnostics

The meeting materials included the WCIRB's diagnostic exhibits that are reviewed by the Actuarial Committee and Claims Working Group on a semi-annual basis. Among the diagnostics discussed by the Working Group were the following:

- a. Permanent and temporary disability claims continue to close at faster rates. Permanent disability claim closures have also accelerated in recent periods. A member suggested that, at least on an anecdotal basis, some judges have recently increased scrutiny of early settlements during settlement conferences which could, if this practice becomes widespread, reduce the acceleration of claim closures.
- b. The median and mean duration of temporary disability on permanent disability has continually decreased since 2008. Several Working Group members noted that the trend is largely related to an improved economy with rising salaries, increased number of hours worked, good job opportunities and other factors which encourage claimants to return to work.
- c. The quarterly number of eligible independent medical review (IMR) provisions of Senate Bill No. 863 (SB 863) increased significantly during the first half of 2018 compared to 2017. The Working Group noted that this increase may be attributed to improved efficiency from certain applicant attorney firms streamlining the IMR submission process.
- d. Lien filing continues to decrease significantly from 2017 through the second quarter of 2018, which is likely due to the additional lien restrictions from Senate Bill No. 1160 and Assembly Bill No. 1244 (effective January 1, 2017). The Working Group suggested that another factor leading to the decrease may be the consolidation of multiple objections on a single lien as opposed to filing individual liens.
- e. Pharmaceutical payments decreased dramatically from service year 2013 to 2017. The Working Group suggested that the decrease is largely driven by greater awareness of opioid abuse, IMR, anti-fraud efforts and medical fee schedule changes.

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### 2. Update on WCIRB Study of Cumulative Trauma Claims

Staff presented a preliminary summary of its study of cumulative trauma (CT) claims. The Working Group noted that the recent increases in CT claims has been focused in the Los Angeles and San Diego regions. It was also noted that CT claims are reported much later than other types of claims, are often filed on a post-termination basis, are often initially denied by the insurer, and almost always are represented. Staff received several suggestions from the Working Group to enhance the study, which will be finalized in September.

### 3. Update on Medical Severity Trends

Staff presented an updated analysis on the medical severity trends by medical component using medical transaction information through service year (SY) 2017. It was noted that the share of total medical payments for pharmaceuticals decreased by more than half from the second half of SY2012 to SY2017, while that of medical-legal (ML) services increased by 2%. The relative share of other medical components has experienced very modest changes. Staff noted that while the ML services share has increased since 2012, it was noted that recently there had been a decline in the most complex and expensive services (ML104) and an increase in the most basic ML services (ML102), which has offset some of the increase in prior years.

Staff summarized the changes in inpatient costs at both the transaction and episode levels. Staff noted a continued reduction in transactions per claim from SY2015 to SY2017, while the paid per transaction increased. This was likely in part attributable to the changes to the fee schedule applicable to Ambulatory Surgery Centers and a shift of minor inpatient procedures to outpatient settings, leaving more intensive (and more expensive) care to dominate the remaining inpatient procedures.

On a cumulative basis, staff noted that the total medical payments per claim based on medical transaction data have declined by 16% from the second half of SY2012 to SY2017, which was largely attributable to the impact of SB 863, subsequent legislation and anti-fraud efforts. For physician services, staff noted a sharp increase in paid per transaction for Evaluation & Management, Physical Therapy and Other Medicine, and a large drop in payments per transaction for major Surgery, Radiology and Anesthesia services. It was noted that these changes were expected with the four-year transition to the Resource-Based Relative Value Scale (RBRVS) based schedule during this period.

### 4. Legislative, Regulatory and Judicial Update

The Working Group reviewed pending legislation in 2018 as provided in the meeting materials. With respect to regulations, a Working Group member advised that the Division of Workers' Compensation received a significant number of comments in response to posting the Medical-Legal Fee Schedule Bill Regulations in the pre-rulemaking forum, but that it was unclear if the Fee Schedule is subject to the formal rulemaking process.

The Working Group also reviewed the pending cases included in the meeting materials. The Working Group discussed that oral arguments before the California Supreme Court in *King v. CompPartners* were held in May 2018. The Working Group discussed that if the Court holds that a utilization review organization can be subject to tort liability: (1) the cost to perform utilization review will likely increase, (2) it may become difficult to find doctors willing to perform utilization review and (3) more treatment, particularly of controversial procedures, may be approved.

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The Working Group also discussed the recent decision by the California Supreme Court in *Dynamex v. Superior Court* which established the stricter “ABC Test” when classifying workers as independent contractors for wage and hour purposes. It was noted that to the extent the decision impacts status decisions for workers’ compensation purposes, both premium and loss amounts could be impacted.

Finally, a Working Group member mentioned a recent Workers’ Compensation Appeals Board decision that is likely to be appealed to the California Court of Appeals involving cumulative trauma claims and whether a mere change in employment gives rise to a new cumulative trauma claim.