



California Workers' Compensation Institute

1333 Broadway - Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Website: www.cwci.org

May 20, 2019

VIA E-MAIL – OSIPRulemaking@dir.ca.gov

Lyn Asio Booz, Chief
Department of Industrial Relations
Office of Self-Insurance Plans
11050 Olson Drive, Suite 230
Rancho Cordova, CA 95670

Re: Proposed Amendments to OSIP Regulations

Dear Ms. Asio Booz:

These comments on proposed modifications to the Office of Self-Insurance Plans regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 81% of California's workers' compensation premium, and self-insured employers with \$72.0B of annual payroll (31.6% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, City of Torrance, Contra Costa County Risk Management, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, East Bay Municipal Utility District, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, United Airlines, University of California, and The Walt Disney Company.

Recommended revisions to the proposed regulation are indicated by **underline** and **strikeout**. Comments and discussion by the Institute are identified by *italicized text*.

Recommendations:

**SELF-INSURER'S PROFILE AND FINANCIAL SUMMARY REPORT (Form P-1)
Part B. Employer Profile**

2. Employer Demographics:

a. Geographic Area of Service:

(1) Description: _____

(2) WCIRB Geographic Study Region(s):

[\[https://www.wcirb.com/sites/default/files/documents/2018_wcirb_geo_study.pdf\]](https://www.wcirb.com/sites/default/files/documents/2018_wcirb_geo_study.pdf)

~~[Alternative 2] Covered California Pricing Region(s): _____~~

~~_____~~

~~_____ [Health and Safety Code § 1399.855(a)(2)]~~

4. Employees:

c. Number of Public Safety Employees (Labor Code §§ 4800 et seq.) _____

d. (1) Total number of Volunteers: _____

(2) Number of volunteers for whom employer provides elective coverage (Labor Code § 3363.5): _____

6. Total Wages and Salaries Paid \$

a. Payroll of Public Safety Employees \$

b. Were any Public Safety Employee Salary Continuation benefits under Labor Code §4850 provided in the most recent fiscal year?

Yes No

c. Was any Industrial Disability Leave provided (in lieu of Workers' Compensation temporary disability payments and in accordance with Government Code §§ 19869 – 19877.1) in the most recent fiscal year?

Yes No

JOINT POWERS AUTHORITY (JPA) SELF-INSURER'S PROFILE AND FINANCIAL SUMMARY REPORT (Form J-1)

Part B. Joint Powers Authority Profile

2. JPA Demographics:

a. Geographic Area of Service:

(1) Description: _____

(2) WCIRB Geographic Study Region(s): _____

[\[https://www.wcirb.com/sites/default/files/documents/2018_wcirb_geo_study.pdf\]](https://www.wcirb.com/sites/default/files/documents/2018_wcirb_geo_study.pdf)

~~[Alternative 2] Covered California Pricing Region(s):~~

~~[Health and Safety Code § 1388.855(a)(2)]~~

5. Employees of JPA member agencies:

c. Number of Public Safety Employees (Labor Code §§ 4800 et seq.) _____

d. (1) Total number of Volunteers:

(2) Number of volunteers for whom employer(s) provides elective coverage (Labor Code § 3363.5): _____

7. Total Wages and Salaries (including benefits) Paid \$ _____

a. Payroll of Public Safety Employees \$ _____

b. Were any Public Safety Employee Salary Continuation benefits under Labor Code § 4850 provided in the most recent fiscal year?

Yes No

c. Was any Industrial Disability Leave provided (in lieu of Workers' Compensation temporary disability payments and in accordance with Government Code §§ 19869 – 19877.1) in the most recent fiscal year?

Yes No

Discussion:

The Institute recommends adoption of the geographic regions defined by the Workers' Compensation Insurance Rating Bureau (WCIRB) to align self-insured reporting with reporting of insurers.

The Institute recommends that references to "Labor Code §§ 4800 et seq." be revised to include the precise range of code sections included (e.g., "§§ 4800 - 4820" or "§§ 4800 - 4856").

The Institute questions the new limitation of "volunteers" provided with elective coverage to only those from "public agencies" under section 3363.5. If the intent is to obtain information related to all volunteers for whom coverage has been elected, the reference to section 3363.5

should either be stricken or be expanded to include other types of volunteers (rec & park, private nonprofits, sheriff's reserve, school districts, juvenile court wards, etc.). The addition of "of volunteers" is recommended for purposes of clarity.

The Institute suggests inclusion of a specific reference to Labor Code section 4850 in order to clarify the exact type of Public Safety Employee Salary Continuation benefits being reported.

The Institute recommends including reference to Government Code Sections 19869 – 19877.1 to clarify the specific type of payments that may be made in lieu of temporary disability payments.

FORM AR-2 ADDENDUM -- Aggregate Claims Information

Number of New Notices of Representation Received in FY	
Total number of claims in each category as of the end of the reporting period.	
	Open Indemnity Claims
	Open Medical-Only Claims
	Open Future Medical Claims
	Public Safety Employee Claims
	Industrial Disability Leave Claims
	Catastrophic Claims
	Fatality Claims

Aggregate amount of benefits paid for each disability category	
	Temporary Disability Benefits Paid (\$ amount)
	Number of Claims where TD benefits were provided
	Public Safety Employee Benefits (Labor Code §§ 4800-48xx) Paid (\$ amount)
	Number of Claims where Public Safety Employees received salary continuation benefits
	Industrial Disability Leave Benefits (Government Code §§ 19869 – 19877.1) Paid (\$ amount)
	Number of claims where Industrial Disability Leave benefits were provided

Aggregate amount of Medical Costs paid for each category	
	Interpreters (\$ amount)
	Physicians (\$ amount) [requires clarification]
	In-Patient Hospital (\$ amount)
	Out-Patient Hospital and Ambulatory Surgery Center (\$ amount)
	Radiology (\$ amount)
	DME supplies (\$ amount)
	Physical Therapy (\$ amount)

	Pharmaceutical (\$ amount)
	Surgery (\$ amount)
	In Home Support (\$ amount)
	Medical-Legal (\$ amount)
	All other Medical Costs not included above (\$ amount)

Aggregate amount of Legal and Loss Adjustment Expenses for each category	
	Attorney Fees and Legal Costs (\$ amount)
	Photocopy Fees (\$ amount)
	Interpreter's Fees (\$ amount)
	Medical Cost Containment Fees - total (\$ amount)
	Allocated and unallocated loss adjustment expense (\$ amount)
	Bill Review <u>and IBR</u> - total (\$ amount)

Estimated Future Liabilities:	(Estimate of total incurred costs, less paid) - OPEN CLAIMS ONLY
	Temporary Disability (\$ amount)
	Permanent Disability (\$ amount)
	<u>Public Safety Employee Benefits (\$ amount)</u>
	<u>Industrial Disability Leave Benefits (\$ amount)</u>

Discussion:

Absent a definition for “catastrophic claims,” reporting will be inconsistent. By way of example; the WCIRB defines catastrophe claims in very specific terms as “any single accident resulting in a compensable injury to two or more persons.”¹ On the other end of the spectrum, the Workers’ Compensation Appeals Board has recently issued a binding en banc decision interpreting “catastrophic” for purposes of Labor Code §4660.1(c)(2)(B) by stating that every such claim must be evaluated on its own particular facts.² A clear definition for reporting purposes is needed here.

As with the references to “Labor Code §§ 4800 et seq.” in the P-1 and J-1 forms, the Institute recommends that specific reference to the relevant code sections be included (e.g., “§§ 4800 - 4820” or “§§ 4800 - 4856”).

Inclusion of the relevant Labor and Government Code sections provides clarity regarding the specific costs to be reported.

¹ Workers’ Compensation Insurance Rating Bureau (WCIRB), *California Workers’ Compensation Uniform Statistical Reporting Plan – 1995. Title 10, California Code of Regulations, § 2318.6, eff. January 1, 2019.*

² *Wilson v. Cal Fire / SCIF* (2019) 84 Cal. Comp. Cases --, 2019 Cal. Wrk. Comp. LEXIS 29 (Appeals Board en banc) (ADJ10116932, 5/10/2019).

The total amount paid for “physicians” requires clarification. Payments made to physicians may also be included in “Surgery,” “Imaging,” and “Physical Therapy” since physicians may provide any of the listed services. Payments made to Ambulatory Surgery Centers are separate from out-patient hospital payments and should be included if the intent is to capture all out-patient facility payments.

Independent Bill Review (IBR) fees should be included in the “Bill Review” total if the intent is to capture all payments related to bill review.

Both “Public Safety Employee Benefits” and “Industrial Disability Leave Benefits” are continuing salary paid by the employer directly, and not included as part of the payer’s reserves. These items should be removed from the requested estimated Future Liabilities” section.

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

Stacy L. Jones, Senior Research Associate
Ellen Sims Langille, General Counsel

SLJ:ESL/pm

cc: Executive Director, Department of Industrial Relations
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members