ICIS SAYS…

The Industry Claims Information System (ICIS) is a transactional level data warehouse developed by the California Workers' Compensation Institute to meet the changing and expanding research and analysis requirements of the workers' compensation industry and CWCI's membership. ICIS currently encompasses data on more than 2.1 million 1993-2002 California workers' compensation claims contributed by 9 insurers representing about 70 percent of the California workers' compensation market.

The value of data depends on its practical applications. The Institute often relies on ICIS to generate "hard numbers" that can be used to advance the public policy debate on a wide variety of workers' compensation issues and concerns. In many cases, ICIS is the first and only source for this much needed empirical data. This ICIS Says Report examines the potential impact of legislative changes enacted in 2003 that replaced vocational rehabilitation benefits to injured workers with a new Supplemental Job Displacement Benefit.

• *May 4, 2004*: **VR Claims: Summary of 2004 Benefit Changes/Comparative Analysis**

Question: How do vocational rehabilitation payments prior to 2004 compare to the maximum voucher amounts allowed by the new Supplemental Job Displacement Benefit program that took effect for injuries on and after January 1, 2004?

ICIS Data Elements Needed: The proportion of California work injury claims involving vocational rehabilitation benefits, broken out by PD rating level. Average vocational rehabilitation payments on pre-2004 VR claims by PD categories (less than 15 percent; 15-25 percent; 25-49 percent; 50-99 percent).

Background: The recently repealed vocational rehabilitation (VR) benefit was implemented as a part of California's workers' compensation system in 1975 to facilitate a return to productive employment for injured workers whose injuries prevented a return to their regular duties. State lawmakers deemed that a mandatory rehabilitation benefit was necessary because various studies then (and since) indicated that unemployment and underemployment rates for disabled persons were substantially higher than for non-disabled persons.

In introducing the vocational rehabilitation benefit to the California workers' compensation system, the Legislature initially estimated that it would consume approximately 2.7 percent of the employer's premium dollar. However, the actual cost of the benefit started to escalate almost immediately, eventually exceeding 12 percent of premium by 1987[1]. As a result, the Legislature made several attempts to rein in costs as a part of general workers' compensation reforms in 1989, 1993, and 2003. These efforts were successful in part, with VR costs subsiding from a high of $534 million in 1990 to $236 million in 1995, but the cost of the benefit rose again, climbing to more than $500 million as claim and premium costs soared between 2000 and 2003.[2] Because actual costs have exceeded original estimates by such a great margin, employers and claims administrators have tended to believe the rehabilitation benefit did not produce results commensurate with its expense.

The rehabilitation benefit also attracted attention based on allegations of abuse. Claims administrators cited anecdotal stories illustrating the abuse and overuse of the benefit by injured workers -- often assisted by their legal representatives and treating physicians. Payers and employers accused injured workers of exaggerating their injuries and symptoms to obtain the benefit, using the benefit to extend disability payments, and of returning to pre-injury occupations after completing expensive rehabilitation plans. On the other hand, claimants and their representatives accused claims administrators of unreasonably delaying benefits and services for many deserving injured workers, unnecessarily adding to the cost of the benefit. While there are few detailed studies of the VR benefit, the 1989 CWCI study suggested both users and administrators shared responsibility for rising costs.

Approximately 10 percent of all injured workers with indemnity (lost time) claims meet the medical eligibility requirements necessary to be deemed "Qualified Injured Workers" (QIWs) for vocational rehabilitation[2]. The industry has little recent data on the return-to-work success rate for individuals who complete VR plans because very few have been followed to the point of re-employment. The Institute's 1989 study found that 64 percent of those who participated in plans returned to full-time employment. Because 36 percent of plan participants did not return to work, some have concluded that the cost of the benefit was not justified by the results. Notably, however, a recent National Organization on Disability/Harris survey showed that 81 percent of the able-bodied population was employed, while 66 percent of the disabled population is either unemployed or under-employed,[3] suggesting that vocational rehabilitation services may significantly improve return-to-work rates for California's industrially injured population.

Suggestions that VR should be eliminated because of its poor cost-benefit ratio and its abuses first surfaced in 1984 as part of the Legislature's initial attempts at overhauling the workers' compensation system. The benefit survived several reform attempts, though injured workers' maintenance benefits and VR counselor fees were capped in 1990, and the benefit as a whole was limited to a maximum cost of $16,000 in 1994. These "caps"

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[1] CWCI Research Notes, Vocational Rehabilitation Effectiveness in California, December 1989, p.2

[2] Medical eligibility occurs when the injured worker is unable to return to their usual and customary work or their employment at time of injury.

[3] Towards Researching a National Employment Policy for Persons with Disabilities, A report for the 22nd Mary Switzer Memorial Seminar, "Emerging Workforce Issues: WIA Ticket to Work and Transition," by Peter David Blanck & Helen A. Shartz, University of Iowa, September 15, 2000

reduced the cost on a per case basis (VR costs for all plan cases closed in 1989, whether the plan was completed or not, averaged $19,400[4]), but claims of abuse and misuse did not abate. As part of the 1989 and 1993 reforms, the Legislature created incentives for employers to retain injured employees by mandating premium refunds for employers who retained their employees and reduced VR costs for insurers. Modified and alternative return-to-work strategies subsequently improved from approximately 13 percent[5] of the participating QIW population to more than 30 percent.[6] The significance of this very substantial and cost-effective increase went largely unnoticed. Despite the increase, however, there still is room for improvement. A recent comparison of overall return-to-work rates for injured workers in California, Oregon, Washington, New Mexico and Wisconsin found that three years after injury, 13.7 percent of workers with permanent partial disabilities in California were out of work, compared to 9.7 percent in Oregon, 11.2 percent in Washington, 11.5 percent in New Mexico and 11.6 percent in Wisconsin.[7]

In its 2003 session, the California Legislature finally eliminated the VR benefit (effective for dates of injury on or after 1/1/04) and replaced it with a non-transferable "supplemental job displacement benefit" (SJDB) – or "voucher." This benefit provides a retraining or skills enhancement voucher to injured workers who have permanent disability (PD) and whose employers do not offer them an appropriate modified job or alternative work.[8] The maximum value of the voucher varies depending on the injured worker's level of permanent disability.

Application: Isolate a sample of pre-2004 permanent disability claims from the ICIS database, identify those with vocational rehabilitation payments, classify those claims by PD rating using the four PD rating categories used to determine the new Supplemental Job Displacement Benefit; calculate the average VR payments for claims in each of those four categories and compare them to the maximum SJDB payments.

Analysis: The Institute started by identifying a sub-sample of 119,545 PD claims with $7.1 billion in benefit payments (including $934 million in voc rehab benefits) from accident years 1996 through 2000 that included vocational rehabilitation benefit payments. The analysts then noted the PD rating for each claim and broke out the VR claim sub-sample across the four PD rating categories (Exhibit 1):

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[4] CWCI Report to the Industry, Vocational Rehabilitation: The California Experience, 1975-1989, October 1991

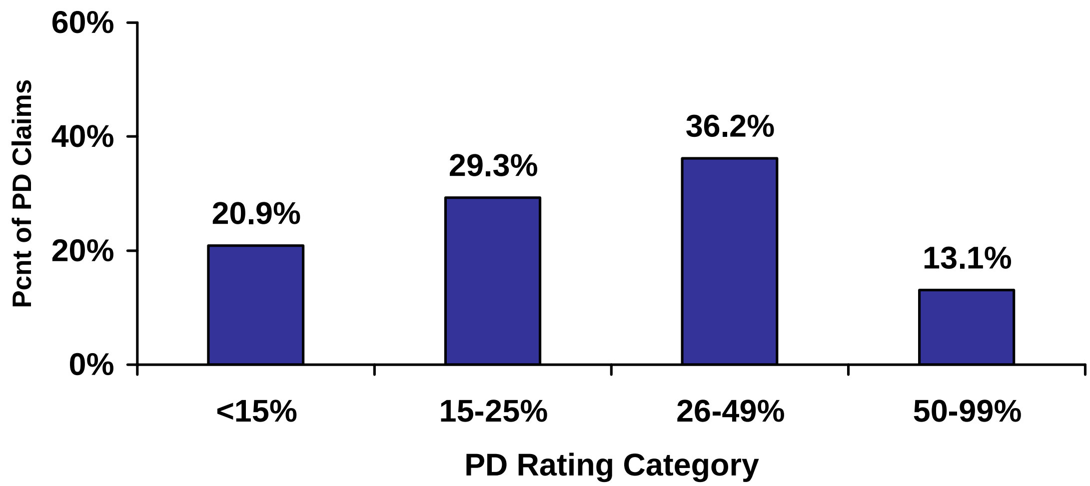
[5] CWCI Research Note, Vocational Rehabilitation Effectiveness in California, December 1989

[6] California Commission on Health and Safety and Workers' Compensation, 2002-2003 Annual Report

[7] "Analysis of Wage Loss and Return to Work in Other States," California Commission on Health, Safety and Workers' Compensation 2002-2003 Annual Report, December 2003

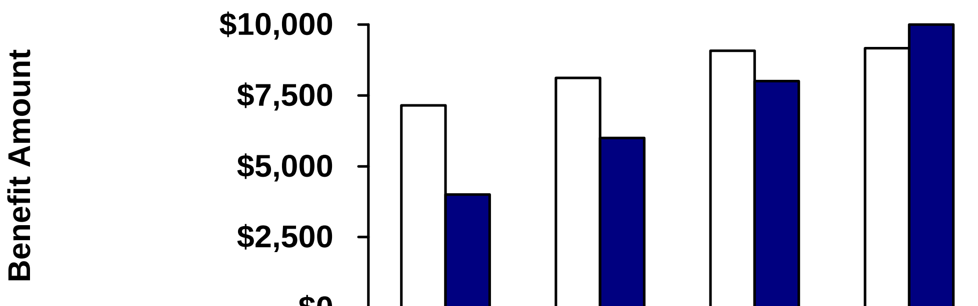
[8] L.C. § 4658.5 & 4658.6

Exhibit 1: Percentage of VR claims by PD rating category



The 2004 reforms set the value of the VR benefit voucher at different levels according to the PD rating. The voucher's maximum benefit level ranges from $4,000 for workers with permanent disability ratings of 1 to 14 percent, to $10,000 for workers with PD ratings of 50 to 99 percent. To get a sense of the potential impact of the post-2004 SJDB program on benefit payments, and where cost shifts may occur, the Institute compared the maximum values of the SJDB voucher against the average VR expense on the sub-sample of claims (Exhibit 2).

Exhibit 2: Average VR Payments Pre 2004 vs. Post 2004 SJDB Voucher Maximums



	<15%	15-25%	26-49%	50-99%
☐ Avg Pre-2004 VR Paid	$7,147	$8,115	$9,076	$9,163
■ Max 2004 Voucher	$4,000	$6,000	$8,000	$10,000

PD Rating

After determining the average VR payments for the four PD categories, and the proportion of VR claims in each category, the Institute calculated an overall average of $7,816 in vocational rehabilitation payments for the pre-2004 VR claims. Using the same

VR claim distribution across the four PD categories, the Institute then ran the same calculation using the maximum SJDB payments for each of the four PD categories. Assuming the maximum payout on each voucher, the Institute estimated that overall, SJDB payments will average $6,800, or 13 percent less than under vocational rehabilitation.

Conclusion: The data indicate that the potential cost impact of the voucher program will vary significantly by PD rating, ranging from as much as a 44 percent reduction in VR payments for claims with less than 15 percent PD ratings to a 9 percent increase for claims with PD ratings between 50 and 99 percent. For the vast majority of VR claims in California, maximum payments under the new voucher program are substantially less than the average that was paid in VR, so the Institute estimates that replacing vocational rehabilitation with the SJDB could reduce average VR payments by as much as 13 percent. It should be noted, however, that the aggregate cost (and any potential savings) of the SJDB program will be affected by other factors as well -- for example, if the SJDB is more heavily utilized than VR or if PD ratings shift under the SB 899 reforms – and by the extent to which average voucher payments fall below the maximums.

If the employer does not offer qualifying work within a specified time frame, the employee will be sent a voucher immediately after receiving a PD award, which he or she can use at any approved training facility. The Legislature contemplated that the employee would use his or her PD for self-support while attending a training or skills enhancement program. Many injured workers, however, receive a substantial portion of their PD in the form of PD advances before their level of permanent disability is determined and the award is issued, so it is unknown how many eligible injured employees will have the resources necessary to use this voucher.

An additional problem for employees, employers, and insurers is the lack of administrative regulations to provide a structure for using or administering the supplemental job displacement benefit. It is unlikely that these regulations will be in place until much later this year. As a result, employers and insurers have no guidelines for providing proper notice to employees, and employees have no way to know how they might plan for and use this benefit. Until the state implements the necessary regulations, system participants will only be able to guess at their respective obligations and opportunities.

There were approximately 53,000[9] California workers' compensation claimants who met the vocational rehabilitation eligibility criteria[10] as "Qualified Injured Workers" and received VR benefits in 2000. In contrast, recent estimates show that out of about 750,000 workers injured in California in 2003, more than 100,000 either have, or will have, a permanent disability. For injuries on or after January 1, 2004, any worker left

[9] WCIRB Bulletin 2003-18 cites 42,047 VR claims from insureds in policy year 2000. In order to estimate the additional number of VR claims for self-insureds, an index of 25% was applied to the Bureau value; WCIRB Bulletin 2003-16.

[10] A feasibility test with two parts: (1) the medical eligibility requirement and (2) vocational rehab eligibility to deter that the injured worker can benefit from VR services.

with a permanent disability will be potentially eligible for a voucher.[11] Though most will return to their regular duties and be ineligible for the voucher, employers and claims professionals need tools to help assess and manage the cases of those who qualify for the SJDB, and to set appropriate reserves.

Out of the roughly 100,000 injured workers in California who end up with some level of permanent disability each year, who will be most likely to use a voucher? It seems very likely that the same type of people who used VR under the old system will use vouchers under the new system. Therefore, CWCI will shortly release a study that provides a profile of the most probable users of the supplemental job displacement benefit vouchers.

[11] L.C. § 4658.5