

February 27, 2014

Angie Wei, Chair
Commission on Health and Safety and Workers' Compensation
1515 Clay Street, 17th Floor
Oakland, CA 94612

RE: March 6th Agenda Item V. – Firefighter and Peace Officer Study

Dear Ms. Wei,

In anticipation of the March 6, 2014 Commission on Health and Safety and Workers' Compensation (Commission) meeting, at which Bickmore Risk Services (BRS) is scheduled to provide an update on the Firefighter and Peace Officer Study, the undersigned organizations would like to highlight some concerns relative to the study.

First, we would like to thank the Commission for taking on the difficult job of evaluating the cost associated with Assembly Speaker John Perez' efforts to extend the statute of limitations on death benefits for some firefighters and peace officers. This is an emotional issue that deserves sober reflection by an authoritative body such as the Commission. As such, the Legislature and Governor assign great weight to the work product ultimately adopted by the Commission. Consider, as an example, Governor Brown's veto message of the Speaker's AB 1373 of 2013:

"This measure is identical to the one I vetoed last year.

At that time, I outlined the information I wanted to see before I would be in a position to properly evaluate the implications of this bill. The information is still forth coming."

In his previous veto message of the Speaker's AB 2451, the Governor made it clear that, in order to evaluate the proposed legislation, he required an understanding of both the need for the bill and its potential costs. It is clear that the Commission's research, which focuses on the cost aspect, is pivotal to the Governor's requirement. As such, we respectfully urge the Commission to proceed cautiously and responsibly as it meets the burden of informing the public and those in the workers' compensation system about this legislative proposal.

As we begin the new legislative year, we note that Speaker Pérez has introduced AB 2360, which we suspect he will offer amendments to address in detail the expansion of eligibility of death benefits. It is in this context that we offer the following observations.

Concerns with Data Availability

When BRS last updated the Commission on June 13, 2013, there was a great deal of concern expressed about the quality of data available to evaluate the cost of expanding the eligibility of these death benefits. Mr. Priven, of BRS, advised the Commission that his analysis was completed using two separate data sets. Specifically, he used national survey and Workers' Compensation Information System (WCIS) data to perform his analysis. The draft minutes for the June 13, 2013 meeting, excerpted below, memorialize several examples of this concern:

“Mr. Priven stated that there were limitations to WCIS data, due to the availability of only 174 death claims, and this makes it difficult to extrapolate to the entire state. There is a further limitation in that it is not known what percentage WCIS data are of total state coverage, preventing extrapolation despite the first limitation.” (Page 3)”

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“The baseline is \$250,000; however, that would change depending on the number of dependents, and as the benefits are extended out to later years, the people receiving those benefits are older and age would impact the number of dependents. Therefore, looking at past trends in death benefits will not inform the future because it is a different population with a different age and different distribution of dependents.” (Page 3)

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“Mr. Priven then stated that the national data has limitations. There are no solid statistics on the cancer rate of California safety workers versus nationwide. The National Institute for Occupational Safety and Health (NIOSH) is doing some work in this area. He stated again that they do not know the number of cancer claims that are actually reported as workers’ compensation claims. The survival rates in the national survey data are just survival; if diagnosed with cancer, the years of survival do not mean the death was by cancer, as one could die of something else. The national survey data therefore are not a perfect match but are the best data available.” (Pages 3-4)

After Mr. Priven’s presentation, when commissioners had an opportunity to ask questions, further concerns were expressed about the availability of reliable data:

“Commissioner Steinberg asked what the takeaway of his work was on the financial impact of AB 1373. Mr. Priven responded that that is still a big unknown. If there is no impact on utilization, then it appears that the impact on claim frequency would not be that great. Whether it impacts new claims coming in and becoming workers’ compensation claims is a very big unknown.” (Page 4)

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“Commissioner Bloch asked what Mr. Priven believes could explain how such a low number of these deaths (174 cases) ended up in the workers’ compensation system. Mr. Priven responded that he did not know, but the first step is to determine what percent of the firefighters and peace officers in the state would have their workers’ compensation claims reported to the WCIS in a way that cancer claims could be identified. If it is a low percentage, then 174 could be the correct number. Mr. Priven stated that he too was surprised by the low number, but until they can figure out what percent of the state actually reports, it is difficult to know. Commissioner Bloch asked if there was a way to get around the data limitations. Mr. Priven responded that he would ask the Commission to comment on that. Acting Executive Officer Judge Taylor stated that while they are trying to find better information, there does not seem to be a way to reconcile the small number in WCIS with what one would expect to see just from the general cancer rate in the population and that this is a data quality issue.” (Page 5)

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“Chair Brady stated that given the described limitations of the data, if this were an airplane, one would not get in it. He then stated that this appears to be the first few steps of a much longer journey. Perhaps NIOSH would have additional data, and he asked about the timeline for that report. Mr. Priven responded that results were due as early as this summer, and that the additional data would be very helpful. Chair Brady stated that he wanted to acknowledge the challenges Mr. Priven faced in collecting bits and scraps of data, so he believes there is a broader message about thinking about the design and what way of obtaining data would be reliable in the long-term.” (Page 5)

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“Mr. Priven responded that he does not know at this time whether there will be costs in the final report. That would require overcoming some hurdles, and he does not know if that can be done. He stated that he agrees that it would be useful to have costs as part of the final report, and he will do what he can to include costs but cannot promise it.” (Pages 5-6)

Our organizations highlight the above passages not to undermine the credibility of BRS or Mr. Priven. Rather, it appears that the Commission, in pursuit of much-needed information to resolve a question of tantamount importance to injured workers and their employers, may be asking BRS to answer a question that cannot be answered with the data currently available.

Data Questions Should Be Answered

Based on the Commission’s role as a clearing house of ideas, and the reality that political decisions will be made based on the work product of the Commission, we urge you to ensure that the data issues raised by Mr. Priven are addressed sufficiently

We also question specific aspects of the BRS study which may further obstruct the desired outcome of objective data used to evaluate future costs as a result of the extension of the statute of limitations. First, language in both AB 2451 and AB 1373 regarding the date of injury potentially includes those public safety employees no longer in active employment; BRS does not specifically include that population in its report, making any assumption of future costs difficult to quantify. It seems clear from both the intent and the specific language of AB 1373 that the extended statute of limitations proposed in the bill would apply to claims arising from cancer-caused deaths of retired safety officers who have left active employment. By excluding the current public safety retiree population from their calculations, BRS significantly underestimates the potential increased costs that would result from extending the statute of limitations. Secondly, we question the use of Workers’ Compensation Information System (WCIS) data for demographic purposes for the BRS report, as WCIS reporting from carriers, self-insured employers, and public agencies has been historically inconsistent, at best. Such a lack of data integrity should be addressed by the Commission as it considers the cost-impacts of this expansion of benefits.

In closing, our organizations thank the Commission for the opportunity to address our concerns with the BRS Report. However, the Commission would be doing a disservice to the Legislature and the workers' compensation community (including both employers and employees) if the need for quick action is permitted to engulf the Commission's mission as a sober research entity.

Sincerely,



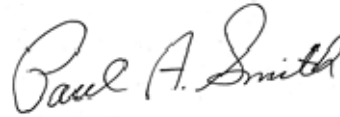
Jason Schmelzer
California Coalition on Workers' Compensation



Faith Conley
California State Association of Counties



Dan Carrigg
League of California Cities



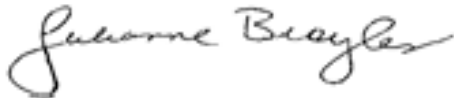
Paul A. Smith
Rural County Representatives of California



Jack Blyskal
CSAC Excess Insurance Authority



Dorothy Holzem
California Special Districts Association



Juli Broyles
California Association of Joint Powers Authorities

cc. Office of Governor Edmund G. Brown
David Lanier, Secretary of Labor
Christine Baker, Director – Department of Industrial Relations
Lachlan Taylor, Executive Director – Commission on Health and Safety and Workers' Compensation