

Date: May 7, 2018

To: Commission on Health and Safety and Workers' Compensation (CHSWC)

From: Diane Worley, Director of Policy Implementation,
California Applicants' Attorneys Association ("CAAA")

Re: Evaluation of the Return-to-Work Fund in California's Workers'
Compensation System: Performance to Date and Options for Modification
(Draft Report, RAND, March 2018)

The following comments regarding the draft 2018 RAND Evaluation of the Return-to-Work Fund Report are submitted on behalf of the California Applicants' Attorneys Association ("CAAA").

In late 2016 while still serving as Chair of the Senate Committee on Labor and Industrial Relations, Senator Mendoza requested that CHSWC conduct a review of the Return to Work Fund.

Specifically, Mendoza requested that the review determine if there is a gap between the number of workers who were awarded Supplemental Job Displacement Benefits (SJDB) and the number of workers who applied for the RTW Fund, and if such a gap exists, if the gap is growing or shrinking over time.

Presumably this was to determine whether all eligible workers were applying for the RTW Fund supplemental payment and therefore, whether the payment amount should be adjusted.

The 2018 RAND Evaluation of the Return-to-Work Fund Report (conducted on behalf of CHSWC and now posted for public comment) clearly confirms that **all eligible workers are not applying for the Return- to -Work Fund Supplemental payment primarily because they have not received adequate notice of their eligibility.**

Additional key findings from the RAND report are below including CAAA's comments:

- I. Annual payments from the RTW Fund are significantly below \$ 120 million**

As of October 31, 2017, a total of \$142,965,000 has been paid out in RTW Fund supplement payments. This covers the period 4/13/15-10/31/2017. (See page 27, Table 3.2, of the RAND report)

The Return to Work program was to be annually funded in the amount of \$120 million for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss.

Based on the accounting in the Rand report **there is well over \$400 million dollars that has not been delivered to workers nor assessed to employers since SB 863** was signed into law in 2012. (The Return to Work Fund program should have gone into effect in 2013 for workers with injuries on or after 1/1/2013. It took over 2 years, or until 4/13/15, for the DIR to finalize regulations and install “kiosks” at local WCAB offices.)

Based on current numbers a total of approximately 16,000 Return to Work applications are projected to be received in calendar year 2017. This would equal \$80,000,000 in annual payments from the RTW Fund, leaving a net unpaid balance in the fund of \$40,000,000 for calendar year 2017.

II. Slow Take-up

Take-up of the program is low: in a sample of eligible workers, just over half applied to receive the benefit. This is the biggest shortcoming of the program.

The most important factor predicting access to the program was legal representation, suggesting that many workers are failing to navigate the process on their own.

After controlling for a wide range of other factors, eligible workers with legal representation were over forty percentage points more likely to apply for the Return to Work Supplemental Payment (RTWSP) than comparable eligible workers without representation.

Obviously the reason “legal representation is the key factor in predicting who would apply” is because those are the workers who have someone explain to them their eligibility when they receive the voucher and/or get help applying with the attorney’s scanner and computer that many workers don’t otherwise have access to.

Eligible workers were also more likely to apply if they had more severe disabilities and lower pre-injury wages.

Take-up rates are typically below 20 percent for claimants who received a voucher prior to the implementation of the RTWSP in 2015.

However, take-up by voucher recipients increased significantly for claimants who were issued a voucher in 2015, and appeared flat at about 52.5 percent among claimants who were issued a voucher in 2016.

Based on these findings, RAND recommends that modifications to the RTWSP focus on increasing program take-up among currently eligible workers.

DIR could accomplish this by amending the regulations to make issuance of the Return-to-Work Supplement *automatic*, and through outreach and notification efforts.

CAAA has advocated from the beginning for a simpler process to deliver the RTW Fund benefit. Eligibility for the benefit is simple. Anyone with a post 1/1/13 injury who receives a supplemental job displacement voucher(SJDBV) is eligible for a payment.

CAAA recommended during the public rulemaking process that simply having the claims administrator electronically transmit the voucher when it issues to the DIR RTW Fund unit should be enough to trigger the automatic issuance of a RTW Fund payment from the department. **We fully support RAND's recommendation to implement an automatic/ no application process.**

On the outreach recommendation it really seems to be too little too late. Why wasn't this something the DIR actively pursued 5 years ago? Outreach should only be a compliment to automatic payments and never an alternative. Definitely **notice of a \$5000 RTW Fund benefit being available to eligible workers should be more prominently displayed on the DIR website and on the SJDBV form.**

III. The Return to Work Supplemental Payment targets workers with more severe disability.

RAND finds that compared to other permanently disabled workers, Return-to-Work Supplement recipients are a particularly vulnerable group on average. They come from lower-wage jobs with a higher risk of turnover, live in communities where they could face higher barriers to accessing support, and tend to experience more severe injuries with longer durations.

RAND also finds that Return-to-Work Supplement recipients tend to have higher PD ratings than other permanently disabled workers without the Return-to-Work Supplement, providing further support for the finding that they experience more severe injuries.

This supports that the RTWSP is targeted to workers who are less likely to return to work and thus face disproportionate earnings losses.

Further, these findings are consistent with the 2016 RAND Wage Loss study which concluded that lower-wage and more economically vulnerable workers are more likely to lose their jobs following permanently disabling injuries, and that failure to return to work leads to worse earnings losses.

The 2016 RAND Wage Loss study also acknowledges that the Return to Work Fund benefit is a wage replacement benefit for the lowest wage workers with disproportionately high earnings losses. The study states:

“The Return to Work Benefit has the largest impact on wage replacement rates for the lowest-wage workers. Since the other provisions of SB863 lead to larger benefit increases for middle-income and high-income workers, the Return to Work Benefit has an important role to play in preserving the progressivity of PPD benefits. We also found that the Return to Work Benefit serves a policy objective that is not advanced by the other SB863 reforms by making PPD benefit compensation more progressive. Even though it has a modest impact on overall wage replacement rates, the fact that the benefit was targeted to the lowest earning and most at-risk workers – those who do not return to work after an injury – led to an overall increase in the progressivity of benefits.”

(2016 RAND Wage Loss Study: Summary of Key Findings and Implications, page xii)

IV. RAND recommends no increase in amount of RTWSP due to uncertainty

Employers have saved hundreds of thousands in annual assessments because of the low uptick in rolling out the RTW Fund program.

It is going to take months or years for the DIR to set up an automatic payment system.

As we are now in the sixth year of the Return to Work program it is long overdue for the \$120 million fund to be paid out annually to workers who apply each year regardless of the number who apply.

In light of the current program's low take-up and the degree of uncertainty about the size of the eligible population, RAND recommends a clearer understanding of the population that will ultimately be eligible before the DIR considers raising the amount of the payment currently set at \$5000.

The argument against increasing the Return-to-Work Supplement amount is that the current program may face solvency pressure if take-up among currently eligible workers increases dramatically. The study recommends that steps (such as automatic payment and outreach efforts) to increase take-up should be taken before raising the benefit level.

However, the number of eligible workers applying every year has been well under the 24,000 figure projected in the initial RAND study, so there is no imminent danger of the funds being exhausted before each eligible worker who applies gets the base \$5,000 payment.

CAAA has proposed that all money remaining in the Fund at the end of each calendar year should be distributed pro rata to those workers who received payments from the Fund during that calendar year with a cap of \$25,000 (which is a high number based on current applications).

If this proposal was in effect for calendar year 2017, there would be an additional \$2500 to pay out to the 16,000 workers who applied. Simple math. Simple solution to what may be a moving target for the next several years.

V. Doctors aren't completing the Return to Work and Voucher Form

Finally, **CAAA agrees with RAND's findings that treating physicians do not always complete the forms necessary for workers to receive the SJDB and thus become eligible for the RTWSP, suggesting that targeted efforts to educate physicians about their reporting responsibilities could also improve workers' access to the Return-to-Work Supplement.**

Several Physicians interviewed agreed that the information contained on the MMI report and the RTW & Voucher Reports is redundant and increases the amount of paperwork required of the doctor. In such cases, physicians provide information for the MMI report but do not fill out or submit the RTW & Voucher report.

Additionally, **the physicians don't get paid for completing the RTW & Voucher Report.** As a result, fewer SJDB vouchers are issued to those who would otherwise be eligible. As an incentive for completing the RTW and Voucher report, **CAAA recommends that doctors get paid for their time completing this essential RTW & Voucher report with an amendment to the Official Medical Fee Schedule allowing for this payment.**