

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: CEO-Risk Management Division

BOARD AGENDA # \*B-5

Urgent

Routine

AGENDA DATE May 13, 2008

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval of Agreement between the County of Stanislaus and Claims Management, Inc. (CMI) as Third Party Administrator for the Workers' Compensation Claims Management Program

STAFF RECOMMENDATIONS:

1. Approve agreement between the County of Stanislaus and Claims Management, Inc. for the Workers' Compensation Claims Management Program from July 1, 2008 through June 30, 2013.
2. Authorize the Chair of the Board to sign the Agreement.
3. Authorize the Chief Executive Officer or his designee to negotiate and sign an extension to the agreement for years four and five. (Continued on Page 2)

FISCAL IMPACT:

For the current year the cost of this service is \$575,000. The proposed cost for three years is \$603,750, a 5 percent increase for fiscal year 2008 - 2009; \$627,900, a 4 percent increase for fiscal year 2009 - 2010; and, \$653,016, a 4 percent increase for fiscal year 2010 - 2011. The negotiated cost for the three years is \$1,884,666. Funds for claims management services are included in the Workers' Compensation Self-Insurance Fund for fiscal year 2008 - 2009. The cost of this agreement is included in the distribution of annual department Workers' Compensation charges.

BOARD ACTION AS FOLLOWS:

No. 2008-343

**THIS ITEM WAS REMOVED FROM THE AGENDA.**  
**NO ACTION WAS TAKEN.**

Approval of Agreement between the County of Stanislaus and Claims Management, Inc. (CMI) as Third Party Administrator for the Workers' Compensation Claims Management Program.

**STAFF RECOMMENDATIONS: (Continued)**

4. Authorize the Chief Executive Officer or his designee to sign future amendments/extensions to the agreement based on material changes in the examiner's caseload or legislative changes in the law.

**DISCUSSION:**

Background:

Claims Management, Inc. has been the County's Workers' Compensation claims management administrator since August 1993. Since that time the CEO-Risk Management Division has released 5 requests for proposals to determine competitiveness in the market and to assure the County receives the best service for its money. The most recent request for proposal for Workers' Compensation claims administration was sent in late April 2005.

The CEO-Risk Management Division and Claims Management, Inc. (CMI) have developed an excellent partnership and work as a team with County departments, physicians and defense attorneys. The CMI Unit assigned to Stanislaus County, teams with the CEO-Risk Management Division on a quarterly basis for each of the five high-cost, high-risk County departments to review selected claims, to exchange information for closure purposes and to provide detailed information to assist departments in managing and controlling their costs. CMI and the CEO-Risk Management Division also meet with the defense teams on a semi-annual basis to determine strategies on all litigated claims.

In view of the positive and excellent relationship that exists between Claims Management, Inc and the County (CEO-Risk Management Division), it is cost effective and beneficial to the County to continue this relationship into the future. The current agreement, which expires on June 30, 2008, provides in part in Section 17 – Amendment, that the agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties. County Counsel advised that although the current agreement provides for an amendment, a new agreement, rather than an amendment, would be in the best interests for both parties for tracking costs, revising the attachments and establishing new goals. Therefore, the process for a Request for Proposal was not necessary.

Both parties have discussed and agreed upon fees for the next three years. Prior to the end of the three year period, the parties will negotiate and agree to the fees for an additional two years. Therefore, the new agreement is recommended for five years, three of which have a fixed annual fee, with years four and five to be negotiated and agreed upon.

Approval of Agreement between the County of Stanislaus and Claims Management, Inc. (CMI) as Third Party Administrator for the Workers' Compensation Claims Management Program.

Recommendation:

Claims Management, Inc. has twenty-seven years of experience in administering workers' compensation claims for both private employers and public agencies such as cities, counties, schools, hospitals and special districts. CMI's current clientele include:

- 110 individual employers within 36 contracts
- 2/3 public agencies and 1/3 private employers.
- 8 Counties.
- 9 Cities.
- 90 School districts.
- 1 Special District
- 2 Hospital Districts
- 10 Private companies.

The County has received excellent claims management services at highly competitive prices from CMI since 1993. CMI was incorporated in California in 1981 and is a regional company doing business in California, headquartered in Rancho Cordova.

Associated Companies:

**Claims Management, Inc.** has three associated companies, Horizon Managed Care, LLC (HMC), Managed Benefit Administrators, LLC (MBA) and Single Source, LLC (SS). All are separate, independent companies, owned by the same principals.

**Horizon Managed Care, LLC (HMC)** is a full-service Medical Managed Care company that provides all medical management services including bill review, medical PPO, hospital discount contracts, nurse case managers, ancillary support services, etc.

**Managed Benefit Administrators, LLC (MBA)** administers self-funded employee benefit programs. **MBA**, formerly Acordia, administers employee benefit programs such as health, cafeteria/125 plans, vision, dental, life, COBRA, and long/short term disability. They help design your plan, provide a suitable medical provider panel, and assist your employees with coverage questions.

**Single Source Medical** is a Durable Medical Equipment supply company that provides medical equipment at less than industry rates for CMI's clients.

**Single Source Consulting** is a Risk Management and Ergonomic Consulting Company. The Unique Advantage to the CMI, HMC, MBA, SS relationship is that together they can curtail several forms of "double-dipping", where the employee has reported the same injury to both the workers' compensation carrier and the health insurance carrier, collecting on both programs. CMI and MBA can exchange data on claimants and stop this practice, saving the County significant money. With CMI and MBA administering the County's programs, the County will see the advantage.

Approval of Agreement between the County of Stanislaus and Claims Management, Inc. (CMI) as Third Party Administrator for the Workers' Compensation Claims Management Program.

**New Agreement:**

1. Claims administration fees negotiated for the following three years are as follows:
  - 2008 – 2009 - \$603,750 – 5 percent increase
  - 2009 – 2010 - \$627,900 – 4 percent increase
  - 2010 – 2011 - \$653,016 – 4 percent increase
  - 2011 – 2012 - TBD - TBD
  - 2012 – 2013 - TBD - TBD
  
2. Each senior examiner will have a caseload of no more than 150 open indemnity claims at any one time. It is preferred that a one-to-one ratio be maintained between technical assistance and claims examiners. Senior Claims Examiners will have the certification from Self-Insured Plans.
  
3. CMI's pricing includes the following elements in the Examiner Driven cost control programs:
  - Subrogation Management Program
  - Vendor Control
  - Vendor-Driven Cost Control
  - Provides Network (PPO)
  - Hospital Discount Program
  - Nurse Case Managers
  - Durable Goods Discount Contracts
  - Chiropractic and Physician Consultants Peer review
  - Medical Provider Network
  - CMI Special Investigation Unit (SIU)

**Summary**

The County is receiving quality claims management services from Claims Management, Inc., at a competitive price. It is recommended that Stanislaus County continue to use the claims management services of Workers' Compensation provided by CMI. The County's philosophy of aggressive claims handling and effective loss control strategies are also high priority goals for CMI who have become excellent partners with the CEO-Risk Management Division by assisting in the development of proactive and leading edge programs and activities.

Approval of Agreement between the County of Stanislaus and Claims Management, Inc. (CMI) as Third Party Administrator for the Workers' Compensation Claims Management Program.

**POLICY ISSUES:**

The Board of Supervisors should determine if the recommended actions to continue with CMI as third party administrator for the County's Workers' Compensation Claims Management Program are in the best interests of the County, are cost effective and results in efficient delivery of public services.

**STAFFING IMPACT:**

There is no staffing impact as a result of approving and implementing the recommendations in this report. The position of Disability Manager, under the direction of the Deputy Executive Officer, will continue to process all claims filed, in conjunction with County Counsel, CMI, and the defense attorneys.

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Claims Management, Inc. ("Contractor") on July 1, 2008.

**Recitals**

WHEREAS, the County has a need for services involving Management and Administration of Workers' Compensation Claims; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request

under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

## 2. Consideration

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

## 3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any

reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.



6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles self-insured retentions or named insured's must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insured's, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insured's regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of the Contractor; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's

insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-: VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insured's under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in

connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

## 8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents,

representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, Photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act

(Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
CEO-Risk Management Division  
Attention: David L. Dolinar, Deputy Executive Officer  
1010 10<sup>th</sup> Street, Suite 5900  
Modesto, CA 95354  
(209) 525-5714

To Contractor: Claims Management Inc.  
Scott D. Kramer, President  
P.O. Box 3042  
Sacramento, CA 95812-3042  
(916) 636-9736

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

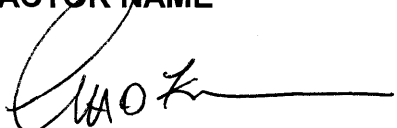
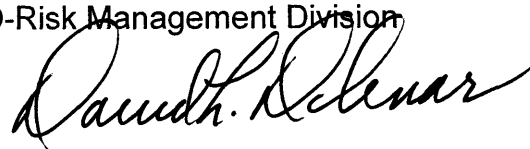
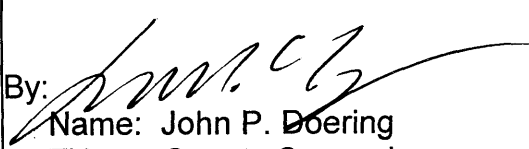
20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

<p><b>COUNTY OF STANISLAUS</b></p> <p>By:</p> <p>Chair of the Board of Supervisors</p> <p>"County"</p>	<p><b>CONTRACTOR NAME</b></p> <p>By: </p> <p>Name: Scott D. Kramer Title: President</p> <p>"Contractor"</p>
<p>ATTEST: Christine Ferraro Tallman Clerk of the Board of Supervisors of the County of Stanislaus, State of California</p> <p>By: Deputy Clerk</p>	<p>Taxpayer Identification No. 94-2737686</p>
<p>APPROVED AS TO CONTENT: CEO-Risk Management Division</p> <p>By: </p> <p>Name: David L. Dolenar Title: Deputy Executive Officer</p>	
<p>APPROVED AS TO FORM:</p> <p>By: </p> <p>Name: John P. Doering Title: County Counsel</p>	

## EXHIBIT A

### A. SCOPE OF SERVICES

#### 1. Services to be provided MUST include, but not be limited to:

##### A. Claims Administration - Existing Claims

Administration and adjustment of all claims, which were, reported prior to July 1, 2008. Existing claim inventory consists of 493 open indemnity claims and 37 open medical only claims. Of the 493 open indemnity claims 178 of which have been settled and are open for future medical awards. The County has averaged 201 new indemnity claims and 200 medical only claims per fiscal year.

##### B. Claims Administration - New Claims

Staff for administrating all claims reported during the contract year, to include the council services of claims examiners with a minimum of three years active claims adjusting experience as a claims examiner. A claims trainee or assistant will not be satisfactory. Each examiner should have a claims caseload of no more than 150 open indemnity claims at any one time. In addition, it is preferred that a 1-to-1 ratio be maintained between technical assistance and claims examiners. Finally, the county prefers the claims examiners be assigned to the County's account exclusively.

Note: These positions shall be supervised and shall have their Self-Insured Competency Certificate. These positions, have available to them at all times an experienced claims person who will have passed the State of California test for Administrator, Self-insurance Plans given by the Self Insurance Plans office or other division administrating the test.

### II. CLAIM MANAGEMENT

- A. Promptly makes up a claims file within 24 hours after receipt from the County. Investigate questionable claims, coordinating with County staff.
- B. Expedite the employer's report when or if the doctor's first report of work injury is received.
- C. Establish monetary reserves adequate for the expected compensation and medical benefits possible due on each injury/claim file made up. A diary system to review the status of each injury/claim must be set-up a maximum of 30 days, but preferably every 20 days, where appropriate.



D. Establish prompt phone or personal contact with all employees, and the employee's supervisor, except in cases when employees are already represented by an attorney for the following:

1. With major or severe injuries.
2. Injuries that could have extended lost time.

E. All claim files shall be available to the County for inspection, review, and/or claims audit with or without prior notice to the adjusting firm. It is understood and agreed that all files will remain the property of Stanislaus County at all times.

### III. COMPENSATION AND MEDICAL BENEFITS

A. Provide all compensation and medical benefits that may be due, in a timely manner and in compliance with the statutory requirements of the California Labor Code and County exceptions. All treatment plans should be reviewed and approved in accordance with Utilization Review criteria to determine if treatment is reasonable, necessary and appropriate based on readily accepted scientific medical evidence such as ACOEM or other nationally recognized and peer-reviewed scientific medical evidence.

B. Ensure that all required benefit and informational notices are sent to the injured employees in a timely manner.

C. Provide estimates of permanent disability on all claims the benefit may be due, communicating it to the County and to defense counsel on litigated claims.

D. Arrange medical evaluations when needed, reasonable, and/or requested. Provide copies of all medical reports and legal correspondence to the County according to law.

E. Promptly pay all medical and other bills on the claims within 20 days or file a timely objection.

F. Reduce medical bills, other than medical legal expenses, to the Relative Value Schedule and recommended rates set by the Administrative Director, Division of Industrial Relations or based on PPO contracts that may apply.

G. Medical Control

1. Administration of the County's existing Medical Provider Network (MPN), including monitoring medical treatment to allow changes through the MPN. Any changes to the MPN will require the County's final approval.

2. Monitor medical treatment for injured employees, including the review of all "Doctors First Report of Work Injury", to ensure that the treatment is related to a compensable injury or illness and is in

compliance with ACOEM and other nationally recognized and peer-reviewed scientific medical evidence guidelines.

3. Maintain close liaison with treating physicians to ensure that employees receive proper care and to avoid over-treatment situations and to assure physician compliance with Utilization Review standards.
4. Consult with the County to provide guidance and evaluations of the physical capabilities of injured employees to return to work, including modified duty options. The County has an aggressive Disability Management Program and will accommodate modified duty whenever possible.
5. Maintain close working relationship with the CEO- Risk Management Division, Disability Management Unit which includes the Disability Manager, the Disability Coordinators, and Disability Assistant.

#### H. Employee Services

1. Provide information and guidance to the County's employees regarding workers' compensation benefits, inquiries on specific injuries and permanent disability ratings in accordance with the County's policies and the County's MPN.
2. Assist in resolving employee problems related to an industrial injury in non-litigated cases.
3. When medically appropriate, develop rehabilitation programs for injured employees for approval by the County, the employee, and other agencies to provide rehabilitation, retraining or reassignment for employees with physical or performance limitations resulting from industrial injuries for injuries prior to 1/1/2004. Injuries on or after 1/1/2004 may be eligible for a job displacement voucher.
4. Recommend policies and procedures to ensure that the employee's ability to work is consistent with the findings of the Workers Compensation Appeals Board.

### IV. REHABILITATION, JOB DISPLACEMENT, LITIGATION & SUBROGATION

#### A. Rehabilitation

1. Comply with the Labor Codes statutes and rules & regulations applicable to rehabilitation for workers' compensation injuries.
2. Provide close supervision of the rehabilitation vendor service that may be used on County's claims. The choice of which

rehabilitation vendor to use on County claims shall be made jointly with County staff. Rehabilitation vendors should work closely with the CEO-Risk Management Division, whenever possible, to rehabilitate injured workers into alternate positions within the County.

3. Maintain adequate reserves on all claims where rehabilitation is an issue.
4. Prepare and submit the Division of Industrial Relations Rehabilitation forms as required by statute.

B. Job Displacement

1. Provide injured employees Job Displacement vouchers in a timely manner and comply with the Labor Codes statutes and rules & regulations applicable to job displacement benefits for workers' compensation injuries

C. Litigation

1. Selection of defense counsel shall be agreement between the County and the Administrator. Investigations are to be coordinated with County staff.
2. Litigation effort shall be controlled and closely monitored by the administrator with regular communication with the County (copies, etc.).
3. Medical Control of litigated claims shall stay with the Administrator and shall not pass to defense counsel unless approved by the County.
4. The County staff must first approve settlement authority on litigated claims before being presented or negotiated with the injured workers' attorney. The County must be informed of all settlement offers below \$5,000. The County must approve all others in excess of \$5,000.
5. When an application for adjudication has been filed, the adjusting firm, within the claims examiners' skills, will make an effort to settle the claim without assigning it to a defense counsel. This would be on the less complex single-issue type of claims.

D. Subrogation

Proceed against responsible persons, agencies, and/or their agents in subrogation actions in an effort to recover losses suffered by the County

by way to compensable injuries to County employees, volunteers, inmates, or any other individual as deemed appropriate by the County CEO-Risk Management Division. The workers' compensation administrator with the County and/or their liability program administrator shall coordinate subrogation efforts on injuries wherein there is also property loss to the County.

- E. Fraud Unit - Third Party Administrator shall take an aggressive stance against fraud by filing FB1/FB2 forms with the State Department of Insurance. Whenever warranted the Third Party Administrator shall aggressively pursue fraud cases with the District Attorney's office.

## V. ADDITIONAL SERVICES

- A. At the sole discretion of the County, examiners attendance at Workers' Compensation Appeals Board Hearings, rehabilitation conferences, conferences with legal counsel (defense counsel), meeting with County staff, departments and employee groups shall be required.
- B. Claims Management services to include:
  - 1. Special claims review of open claim files at the request of the County.
  - 2. Regular quarterly review of all indemnity claims with reserves in excess of \$50,000 and/or of problem & complex claims as deemed appropriate by the County.
  - 3. Ensure that all required payments are made timely and that medical bills are paid within 20 days or objection timely filed.
  - 4. Index all new claims with all appropriate index vendors.

### C. Forms

Forms necessary for the County's processing and benefits or claims information are to be provided at the expense of the adjusting firm (to include the DWC-1 forms, state mandated posting notices, workers' compensation facts brochures, MPN website, MPN brochures and MPN employee notification letters.

### D. Reports

Prepare and provide the CEO-Risk Management Division with the OSHA 300 and OSHA 300A reports. Assist the CEO-Risk Management Division with the Public Self-insurance Annual Report. Prepare charts and graphs on a quarterly basis for statistical analysis of countywide claim frequency and severity as well as similar charts and graphs for the top five departments. Provide the CEO- Risk Management Division with an annual report as of June 30th each year with loss trend analysis. Provide charts and graphs to be used in the development of Departmental Action Plans.

E. Excess Insurance Carrier Claims & Reports

Prepare and submit information to the County's excess insurance carrier of all claims that exceed the limits of self retained workers' compensation liability. Comply with all excess insurance carrier reporting and notice requirements.

F. Bill Review

Bill review may require a separate contract.

G. Medical Provider Network (MPN)

The County has an approved MPN in place. The claims administrator will also administer the MPN and will maintain the MPN. The administrator will provide any necessary notice to the State, medical providers, claimants and or their representatives. The County will have final approval of the physicians to be included in the MPN.

VI. FINANCIAL ACCOUNTING

A. A trust fund shall be maintained for the purpose of paying benefits that may be due on the claims. The amount that will be maintained in the trust fund shall be determined by the parties and confirmed by written document or letter.

1. Payments from the trust fund will be those sums that should reasonably be paid on benefits mandated and/or required by the California labor Code on those injuries were such benefits may be due.

B. TPA will reconcile bank statement monthly and will submit copies to the CEO-Risk Management Division for final verification.

C. The adjusting firm shall provide a monthly check/vouchers register of all transactions made for the period. It shall list the checks/vouchers in numerical order, claim number, amount, payee, recoveries of all types and any other information considered necessary.

D. At the sole discretion of the County, there may be an annual/yearly financial audit of the trust account to ensure the integrity of the account. This account may also be subject to a Grand Jury audit at any time.

E. Request for special deposits and all requests for payments in excess of \$5,000 must be requested prior to check being disbursed and reimbursement at month end for a trust transfer balance.

- \* Penalties that are incurred due to no-fault of the County shall be reimbursed to the County within 30 days of payment of penalty.
- \* Overpayments that occur due to no-fault of the County shall be reimbursed to the County within 30 days of overpayment. Overpayments will be documented by monthly reports provided to the County by the vendor.

## VII. DATA PRODUCTS - LOSS REPORTS

Provide a computerized loss and analysis and summary reports each month covering activity on all newly reported, opened, and newly closed claims for the period. The report will be customized, as determined by the County, for County needs within the capability of the adjusting firm and, as a minimum, provide the following for claim year:

- A. Monthly listing of all open and all closed claims by department and location stating the claim number, injured's name, cause and type of injury, body part, amount paid during the period to date and remaining reserves for medical, compensation, and any allocated expense there may be. Total amount incurred for each type of payment must also be shown.
- B. Summaries of all open (including litigated) and closed claims, medical only and indemnity, by fiscal year. Summaries must include Division (location), department and total County. In addition, a summary of expenses as indicated in "A" above must be provided.

## VIII. RECORDS, FILES, TRANSCRIPTS, TAPES, ETC.

All records, files, transcripts, computer tapes and any other materials on workers' compensation adjusting activities developed on the County of Stanislaus workers' compensation claims is the property of the County and must be relinquished in good order and condition upon termination of an eventful contract with the adjusting firm without an additional cost.

## IX. SUPPLEMENTAL SCOPE OF SERVICES

- A. Audits
  - 1. In the event of the State audit by OBAE (Office of Benefits Assistance and Enforcement), the Administrator selected shall be responsible for all associated legal costs, including those of the County.
  - 2. The Administrator is required to cooperate with an independent outside auditor selected by the County. The County reserves the

right to audit the contractor at any time and as frequently as the County may deem necessary.

B. Penalty assessments and payments

1. To parties hereto acknowledged that they are familiar with the various penalties that the California Workers Compensation Reform Act of 1989 (and subsequent laws) can impose on both employers and claim administrators. Penalties arising from a failure of the County to provide timely notice of claims or such other employer obligations shall be and remain the sole responsibility of the County and the County hereby agrees to indemnify, defend and hold the Administrator harmless from all claims arising from the imposition of such penalties. Administrative penalties arising solely from the failure of Administrator to comply in a timely and proper manner with its duties as a claims administrator shall be and remain the sole responsibility of the Administrator and the Administrator hereby agrees to indemnify, defend and hold the County harmless from all claims arising from the imposition of such administrative penalties.
2. More specifically, the parties acknowledge that the California Workers' Compensation Reform Act of 1989 requires first payment of Temporary Disability Indemnity within 14 days of the County's knowledge of the injury and generally imposes an automatic penalty of 10% of the amount delayed for late a indemnity payments which shall be payable directly to the injured employee without application. Furthermore, the parties agree that unless the Administrator is provided with notice of the claim within 10 days of the County's knowledge of the injury, the above referenced automatic penalty of 10% shall be and remain the sole responsibility of the County. The Administrator will agree, however, to make good-faith effort with due diligence to issue the first Temporary Disability Indemnity payment within the 14-day requirement, even in the event that notice of claim is not received by the Administrator within 10 days of the County's knowledge of injury.

C. Meetings with the County

The County requires the Administrator to schedule, organize and conduct meetings with County representatives at least 12 meetings per year. The purpose of the meetings will be to review current cases, review the functioning of the workers' compensation program, developed coordinated plans for handling claims, coordinate plans for returning employees to work, and develop and implement appropriate rehabilitation plans. From time to time, the County may request contractor to address specific issues as may arise during the course of the contract about which County desires additional information.

D. Cost Savings

Maximize cost by efficient and timely provision of benefits to injured workers', utilization review, medical provider networks, recovery of subrogation rights, co-defendant contributions, advantageous negotiated settlements, and early return to work as appropriate.

E. Training County Personal

Assist in the training of County staff as required. Design forms, procedures and techniques to improve the claim process. Instruct County personnel as directed by the County CEO-Risk Management Division about automated systems and reports. Update County staff on current changes in workers' compensation law and case decisions.

F. Procedure Manual

Assist in preparing and maintaining standards and procedure manual in compliance with state law and County needs with particular attention to a coordination of benefits between the Labor Code and the Government Code.

G. Accreditation of Administrator

Administrator shall maintain appropriate accreditation and/or license as a provider of workers' compensation services in the State of California.

H. Toll Free Telephone Number

The County requests Administrator maintains a toll-free number for access to the Administrator's office by injured workers, and other interested parties. The cost of the toll-free telephone service will be the responsibility of the Administrator.

I. Claims Examiner Education



All claims examiners assigned to work on the County of Stanislaus account will have a solid working knowledge of the Labor Code, including reforms as provided in SB 227, SB 228, SB 899, and any other workers compensation reform in effect at the time of this RFP or in the future.

X. SYNOPSIS OF MAJOR SERVICES

The following is a synopsis of the major services, which will be requested of the firm, awarded the Claims Management Agreement:

A. Initial Services:

1. Preparation of the basic claims management agreement.
2. Written Utilization Review procedure to be filed with the State.
3. Development of the claims payment procedure (subject to County approval).
4. Design and printing of employer reports, medical referrals, notice to injured employees and any other forms necessary or required.
5. Establishment of banking arrangements or claims replenishment/reimbursement procedures.
6. Assume claims management of open files for prior policy years.
7. Establish all database-coding requirements.

B. Ongoing Services:

1. Issue payments of temporary disability synchronized with the County bi-weekly payroll period.
2. Issue 4850 payments with vouchers synchronized with the County bi-weekly payroll period.
3. Review and process all industrial cases in accordance with the requirements of the Department of Industrial Relations and the Workers' Compensation Appeals Board.
4. Maintain a physical claim record or file on each reported industrial injury.
5. Administer and monitor use of County's Medical Provider Network.

6. Assure medical treatment is in accordance with agreed upon Utilization Review policy and procedure and is based on readily accepted scientific medicine.
  7. Bill Review reducing fees to RVS or PPO contracts as appropriate.
  8. Maintain on a case-by-case basis current estimates of future claims cost.
  9. Prepare all necessary reports to the various state agencies (annual report to self-insurance plans, OSHA and others as required by law).
  10. Coordination of claims activities required due to legal, investigation or subrogation concerns.
  11. Advise the County on each subrogation/excess insurance reimbursable/recovery case and recommendations. Recovery checks on excess cases to be sent to County for deposit at the end of each quarter.
  12. Provide monthly, quarterly, and annual loss reports as needed and or as deemed appropriate by the CEO-Risk Management Division.
  13. Assist the CEO-Risk Management Division in returning injured employees to work as soon as medically possible.
  14. Work with County's Disability Management Unit on all problematic claims including but not limited to:
    - a. Modified Duty Assignments beyond 30 days. Evaluate every 30 days for signs of improvement.
    - b. Total Temporary disability in excess of 30 days. Evaluate every 30 days, develop and monitor action plans.
    - c. All claims where hospitalization is necessary.
- C. The Stanislaus County CEO-Risk Management Division's Workers' Compensation Claims Administration Policy and Procedure Guide is to be used as part of the claims administration process.
- D. The CSAC-Excess Insurance Authority Addendum A Worker's Compensation Claims Administration Guidelines are to be used in addition to the requirements in the Claims Administration Policy and Procedure Guide in Section C above.

## **B. COMPENSATION**

The Contractor shall be compensated for the services provided under this Agreement as follows:

County shall pay Contractor a total amount of \$603,750 for the first year of the Agreement (July 1, 2008 – June 30, 2009). \$627,900 will be paid in year two of the Agreement for July 1, 2009 – June 30, 2010 and an amount of \$653,016 will be paid in year three if the Agreement for July 1, 2010 – June 30, 2011.

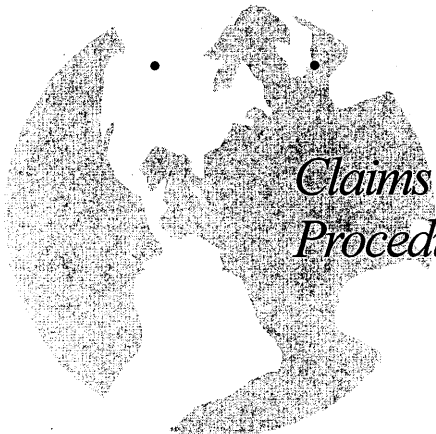
Each year's fee is payable in equal monthly installments due on the first of each month. The fee for any extended term of this Agreement shall be negotiated and agreed upon by the parties. In the event of a significant change in exposure base, material misrepresentation, or legislative changes, the parties reserve the right to renegotiate the fee schedule."

Subject to the Contractor's performance, the fourth and fifth years of the agreement will be negotiated and agreed upon by the parties. If the parties cannot reach agreement for years four and five, a Request for Proposal (RFP) will be sent for competitive quotes.

Stanislaus County

CEO-Risk Management Division

# Workers Compensation



*Claims Administration Policy and  
Procedure Guide*

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# Stanislaus County CEO Risk Management Division

## *Workers Compensation Claims Administration Policy and Procedure Guide*

### **LC 4850**

LC Section 4850 provides for full salary continuation in lieu of Temporary Disability benefits for one year for peace officers, criminal investigators in the DA's office and now for Probation Officers and Group Supervisors. The TPA will issue two vouchers paying the Maximum TD and the balance of the employee's salary coded as 4850.

Sheriff Deputies continue to receive certificate pay while off on 4850 but will not receive assignment pay (SWAT, Dive Squad, Bomb Team, Detective, Canine Unit, Posse, Hostage Negotiations, etc.) See MOU for further detail.

4850 is not to exceed one year of full salary continuation. Once the year of eligibility for 4850 has been exhausted, TTD will continue to be paid to the injured employee if the employee continues to be Temporarily Totally Disabled or the employee's eligibility for TD has been exhausted. TTD is paid at the Max rate of TD in effect at time of injury. Check the date of injury to determine when eligibility for TD ends and if the maximum TD rate should be changed (two-year rule).

TPA will verify employees work schedule with County prior to issuing the initial 4850/TTD vouchers. The beginning and ending 4850 payments require schedule verification. All vouchers issued in

between will be issued on an 80-hour basis (14 days) regardless of schedule, as long as the TPA has medical certification to keep the deputy off work or verification from the County that the department is not able to accommodate the current work restrictions.

Auditor's Payroll Division will check with RMD to determine if lost days are being covered by WC to allow the continuation of DIS being keyed by the department payroll clerk.

Prior to 1/1/04 If an employee reaches P&S status prior to 4850 benefits being exhausted and the employee is deemed to be a QIW, 4850 will continue in lieu of VRMA benefits. Make sure Cap is in place as a portion of 4850 benefit will be coded as VRMA and apply under the cap - e.g. 4850 weekly benefit is \$1,000 - max VRMA benefit in effect based on year of injury is \$246 a week. Employee receives \$1,000 a week in 4850 through payroll system. TPA issues voucher in the amount of \$1,000 a week \$246 of which is coded as VRMA and is applied to Voc Rehab Cap.

POST 1/1/2004 injured employees are eligible for Job Displacement benefit.

### **CalWorks (AKA: Stan Works FKA: GAIN prep) Welfare to Work**

Participants in both programs are covered through the State Fund.

Injuries for participants who are **not** paid – contact Robin Axton 8-2935 at **CSA**.

State Compensation Insurance Fund  
PO Box 3171  
Suisun City CA 94585  
1-877-405-4545 option 2

Injuries for participants wh are paid – Contact Karen Clement 8-3740 at **Alliance Worknet**.

Paid program participants policy # is 627947-07 (last two digits change each new policy year which begins July 1). Claims reporting is via fax at 1-800-371-5905.

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## Cancer Recovery

PRM contact; J. Bradley Burgess at Public Resource Management Group 916-677-4233 for cancer recovery through the State of California. Chapter 1171/89 amended section 3212.1 of the Labor Code stating that cancer which has developed in peace officers is presumed to have arisen in the course of their employment, unless there is evidence to the contrary. This presumption is extended to peace officers following termination of service for a period of three (3) months for each year of service to a maximum of sixty (60) months.

### **Reimbursable Activities**

Claimants will be reimbursed for those instances where affected workers meet all of the following:

- **Peace Officer** - workers, as defined by Penal Code, must be a peace officer.
- **Cancer - caused disability** - worker has a disability, which is caused by the cancer.
- **Cancer developed or manifested during employment** - while worker was in service of employer or within the extended period provided by the Labor Code.
- **Exposed to carcinogen during employment** - exposed to one or more known carcinogens as defined by the International Agency for Research on Cancer or the Director of the Department of Industrial Relations.
- **Carcinogen linked to cancer** - carcinogen(s) to which worker was exposed must be reasonably linked to the disabling cancer as demonstrated by competent medical evidence.

Cases meeting conditions above are eligible for reimbursement, is a fifty (50) percent of costs defined below:

- Increased premiums - increased worker's compensation premiums paid by insured local agencies including local agencies covered by a joint powers agreement or other carrier.
- Self insured local agencies - actual administrative costs, as listed below, are eligible:

#### ***Administrative costs:***

- Salaries and employee benefits
- Cost of supplies
- Legal expense

- Clerical Support
- Travel and related expenses
- Amounts paid to adjusting agencies
- Overhead costs (departmental and agency-wide)

**Benefit Costs:**

- Medical expenses
- Necessary and reasonable travel and related expenses
- Permanent disability payments
- Life pension benefits
- Death benefits
- Temporary disability benefits or full salary in lieu of temporary disability benefits

## **COLA increases**

Cost of living raises are typically negotiated every three years. The percentage of increase is often given on a retroactive basis. As soon as the COLA percentages are known the CEO-RMD will review all employees that were receiving temporary disability during the effective dates of increases. Employees who were not at Max TTD at the time the COLA went into effect will have their TTD benefit recalculated. **Remember the two-year rule with respect to Max TTD increases.**

***When a County employee terminates – TD rates may not continue to be adjusted upward, check with counsel before making any changes.***

## **Computing Average Weekly Wage**

LC 4453

"In determining AWW, remember Overtime is included along with the market value of board, lodging, fuel and other advantages received by the injured employee as part of his or her remuneration which can be estimated in money, but such AWW shall not include any sum which the employer pays to or for the injured employee to cover any special expenses entailed on the employee by the nature of employment, nor shall there be included either the cost or the market value of any savings, wage continuation, wage replacement, or stock acquisition program or of any employee benefit programs for which the employer



pays or contributes to a person other than the employee or his family."

\* Do not include uniform allowance or flexible spending account funds.

AWW can be calculated in several ways - the injured employee is entitled to the better rate determined in each calculation.

1. Current hourly rate of pay in effect at time of injury multiplied by the current scheduled number of hours an employee works each week.
2. Wage history statement reflecting actual earned wages from date of injury going back 12 months then averaging those wages to determine the employee's average weekly wage. When reviewing 12 months of wage history Overtime is included.
3. Earning capacity is a prediction of what an employee's earnings would have been had he not been injured. Earnings need only be predicted for expected duration of temporary disability.

Employees may obtain his or her wage information from the Employment Development Department (EDD) upon written request or written release, without charge (Unemp. Ins. Code 1094). An employee may obtain his or her social security earnings records from the Social Security Administration (42 U.S.C. 405 (c)(3) & (c)(4); 20 CFR 404.803, 44.810.

If the injured employee is a seasonal employee (Park Aid, etc) then keep in mind En Banc decision FRE0147567 Maria Yolanda Jimenez vs San Joaquin Valley Labor and Superior National Insurance Company - permissible to pay TTD based on earning potential during season and during off season TTD at zero if no history of earnings or post 2004 injuries the minimum TD rate

## **Delaying a Claim**

Red flags to consider placing a claim on delay include:

- Repetitive Motion injuries filed by employees who have worked for the County for less than 6 months.
- Psyche Claims - good faith personnel action? If so, do we need to spend money on an AOE/COE or issue denial based on good faith personnel action? Has the employee worked for the County for 6 months or more?

- Claims filed after an employee receives a poor performance evaluation
- Unwitnessed incidents
- Occupational doctor states on report that the injury is non industrial
- Claims that are reported late

Anytime we are considering placing a claim on delay the reasons should be discussed with the claims examiner to make sure we are in agreement about the need to delay a claim.

### **Honor Farm Inmates**

When the Sheriff's Office loans out HF Inmates they will typically have a signed contract stating how WC benefits for OJIs will be handled. Typically the County will administer the claim and then seek recovery from the outside agency. For example, if a HF Inmate is loaned to the City of Modesto and sustains an injury on the job the County will set up the claim and administer benefits. When the claim has been settled we will seek recovery from the City. When HF Inmates are utilized in other county departments the department benefiting from their labor and directing their work will be responsible for the claim.

Any time an HF inmate sustains an injury that causes the inmate to "lose time from work" TPA will need to obtain a wage statement to determine if the inmate has a payroll history or subject to the minimum TD rate for post 2004 injuries.

The County can always accommodate an inmate on Modified Duty.

### **Infection Control Issues**

Safety Representative fax 8-7334

Any employee at H S A who experiences a claim with needle sticks, TB exposure, mold exposure, chemical exposure or any exposure to bodily fluids, etc., copies of OJIs will be provided to the Safety Representative at H S A.



**Stan Works - Work Participants see CalWorks**

**Medical coverage for delayed claims with DOI 1/1/04...**

Employees who fail to complete a DWC-1 form, sign medical authorization and or fail to complete a supplemental questionnaire may have their claims denied for failure to cooperate with claims investigations. TPA should issue denial promptly to terminate medical care until employee cooperates with the investigation.

Delayed claims that need a panel QME decision - TPA should give the employee 10 days to select a panel QME failure of the employee to act in a timely manner will result in claims examiner selecting the panel QME for the employee.

**Med-Legal Evaluations**

Full time benefited employees who attend a Med Legal exam on a regularly scheduled workday will receive their full salary. Lost time will be coded as OJI on the employee's time card. Med legal exams include; AOE/COE evaluations and PD and or P&S status. The TPA will pay TTD via a voucher rather than issue a check, as the employee will be paid his regular salary as if the employee worked his or her regular work schedule. (*September 26, 2000 board order*). If the med legal evaluation is on a scheduled day off the TPA will need to issue a check to the employee.

At the time a med legal evaluation is scheduled, the TPA will send a mileage check and will pay TTD after the appointment has been attended by first checking to see if TTD should be paid via a voucher or a check.

**Modified Duty**

The County has a very proactive Temporary Modified Duty program and works to accommodate employees on Modified Duty whenever possible. This can be on a reduced work schedule or by allowing an employee to perform modified tasks for the entire work schedule.

The County will make every effort to communicate to TPA the dates and hours employees are being accommodated - if we are not able to get this information to you timely because it is out of our control, a letter to the employee delaying the TD is permissible under the LC without fear of penalty or any type of bad faith action to TPA - we ask employees on modified duty to fax us their time cards at the end of each week so that we do not have to wait for the payroll to actually be keyed.

### **NUR pay**

RN's may receive up to 6 months of full salary continuation in lieu of Temporary Disability. TPA will pay the correct TTD rate via a voucher and the County will pay the full salary to the nurse. For example if the TTD in place at the time of injury is \$533.33 a week and the nurse earns \$800 a week then the TPA will issue a voucher in the amount of \$533.33 a week to the County and the County will continue to pay the employee \$800 a week under pay type NUR.

Because NUR pay is not required in the Labor Code but a negotiated benefit for RNs employed with the County of Stanislaus, this benefit is still taxable; only the TD portion is non-taxable - see MOU.

### **Privacy Issues**

Claims that must have names excluded from the OSHA 300 log include:

1. An injury or illness to an intimate body part or the reproductive system;
2. An injury or illness resulting from a sexual assault;
3. A mental illness;
4. HIV infection, Hepatitis, or Tuberculosis;
5. Needlestick and sharps injuries that are contaminated with another person's blood or other potentially infectious material as defined by §1910.1030; or
6. Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on

the OSHA 300 Log (This does not apply to injuries. See the definition of "Injury and Illness" in §1904.46.) Note: This is a complete list.

## Presumptions

LC 3600 - 3214 cover various presumptions all of which are disputable and may be controverted by other evidence. If not controverted then they are presumed compensable. The injury or illness must first manifest during employment as a sworn peace officer and will extend beyond termination 3 calendar months for each full year of service not to exceed 60 months in any circumstance commencing with the last date actually worked in the specified capacity.

Check Labor Code sections to determine if presumption applies based on Penal Code section officer is sworn in under:

Sheriff, Deputy Sheriffs (PD 830...)

Deputy Sheriff Custodial (PC831)

Deputy Sheriff Reserve (PC 830.6)

Criminal Investigators (PC 830.1) in the District Attorney's office.

Probation Officer (PC 830.5)

Probation Correction Officer (PC830.5)

- **Cancer (LC3212.1 PC 830.1, 830.2 and 830.37)**
- **Hernia (LC321)**
- **Heart trouble (LC 3212 & LC3212.5 PC830.1, 830.2, 830.3)**
- **Pneumonia (LC 3212 & LC3212.5 PC830.1, 830.2, 830.3)**
- **Tuberculosis (LC3212.6 PC830.1, 830.2, 830.3 & 831)**
- **Blood-borne infectious disease (LC3212.8 PC830 et seq)**
- **Biochemical substance exposure (LC3212.85 PC 830.1 - 830.5)**

- **Meningitis** *\*also applies to Probation officers in the Probation department.*
- **Lower back impairment for those officers that were required to wear a duty belt AND have worked in law enforcement for at least five years on a regular full time basis.** *"Duty belt - belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement." - Does not apply to DA Criminal investigators, Probation officers, or Probation Correction Officers.*

### **Probation Participants in Work Programs**

Probation has purchased a stand-alone policy to cover employees on probation who are participating in work programs - community service.

CIMA

216 Payton St

Alexandria, VA 22314-2813

Policy # CAM055

Probation department contact Mike Hamasaki (as of 5/11/06)

### **Qualified Injured Worker (QIW) Injuries pre 1/1/04**

An employee can be deemed a Qualified Injured Worker if he or she is Permanent and Stationary and have permanent work restrictions that cause them to be unable to perform their usual and customary job duties or if they are TTD for one year or more

When an employee is determined to be a QIW, the employee is P&S and the doctor prescribes permanent work preclusions, we first refer to the JTA for the job classification to determine if the employee is in fact QIW. If the work restrictions preclude the employee from performing the essential functions of his or her U&C of their job, then we look explore reasonable accommodations in his or her current job assignment. If that can be accomplished we have the department

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make the accommodation and sign the RU94 and make sure that the Rehab is shut down. If the doctor indicates the employee is a QIW and the doctor fails to give work restrictions we must work closely with the doctor to get this done ASAP as we will have to pay TTD outside the Rehab Cap until we can address permanent accommodation.

If the employee is a QIW based on the one year of TTD work with the doctor for P&S status and a treatment plan including prognosis so that we are not in a position to pay for Rehab and then ultimately have the employee return to work.

### **Injuries post 1/1/04 with Permanent Work Restrictions**

An employee that has been deemed to be MMI and the doctor has noted permanent work restrictions that could cause them to be unable to perform their U&C job duties we first refer to the JTA for the job classification to determine if an accommodation is necessary. If the work restrictions preclude the employee from performing the essential functions of his or her U&C of their job then we look first at reasonable accommodations in his or her current job assignment. If that can be accomplished we have the department make the accommodation and sign the DWC-AD 10133.53.

If the doctor fails to give specific work restrictions we must work with the doctor to have this done ASAP to enable us to explore reasonable accommodations.

If the employee has been TTD for one year we must work with the doctor for MMI status and a treatment plan including prognosis.

### **Reserve Peace Officer**

LC 4458.2

Reserve Peace Officers are not entitled to full salary continuation under LC 4850 but they are entitled to the Max TD rate in effect at the time of injury regardless of earning history.

### **Seasonal Employment**

Some Park Aids seasonal employees may also be seasonal employees in the Agricultural Commissioner's Office. If you have an

employee that is seasonal, Temporary Disability will need to be addressed. See En Banc decision case number FRE0147567 Maria Yolanda Jimenez vs. San Joaquin Valley Labor and Superior National Insurance Company. Calculate TD based on earnings during "seasonal" work and pay TTD based on earning potential during the season. Then in the off-season calculate TTD based on earnings during the off-season. VRMA will be based on the TTD rate during "seasonal" work. If TTD rate is \$246 or higher during the season, VRMA could still be payable at \$246 a week.

### **Settlement Authority**

Claims examiners have authority to settle claims up to \$5,000 without seeking authority from the County, but must notify County of all settlements of \$5,000 and below. All other settlement requests must be submitted to the County for approval.

When requesting settlement authority the following points should be addressed:

Type of settlement being requested: Stipulated Award or Compromise and Release.

If the request is to settle by **Stipulated Award**, is the request based on the treater's final report or are there QMEs involved is there a split being recommended? If a split is being recommended what are the strengths of each report if they were to stand on their own merit? What are the permanent work preclusions in each report? If there is a difference of opinion on the permanent work preclusions we need to make sure that an agreement can be reached on which restrictions we are to follow. When considering a split we must consider more than just the PD value.

There are several reasons to consider a Compromise and Release (C&R). Has the employee terminated their employment? If so a C&R should most likely be considered. If the employee is still working for the County there are still reasons to consider a C&R. We may want to cap our liability – odd are with us that the employee will not file a subsequent claim for the same body part or condition or the law has changed that would prevent a similar claim from being accepted, or we have strong medical evidence that should a new claim be filed it most



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likely would be determined that there is not a new injury, etc. Each case will have to be evaluated on it's own merits.

## **Temporary Disability**

We pay TTD when we have an accepted claim with medical certification taking an employee off work. Every effort shall be made to have the TTD payments made on the County's pay schedule. The first TTD check may be for less than 14 days to enable the future TTD payments to be made on the County pay schedule. Then continue to pay TTD every 14 days as long as we continue to have medical certification taking an employee off work. When we do not have a note taking an employee off work the TPA will send out the stop TD letter and tell the employee we do not have medical certification to pay TTD and assume they have RTW.

If for some reason the employee returned to work prior to the date of the medical certification on file and we have an overpayment, that is the County's responsibility - CEO-RMD will communicate to all departments to let us know whenever an injured employee RTW. The TPA will send an overpayment letter to the employee requesting reimbursement.

Because Temporary Disability is due when we have knowledge from any source that an employee has been taken off work from his or her accepted treating physician we will at times have to pay TTD based on a verbal from the employee's doctor's office. When it is necessary to call the physician to obtain work status, the claims assistant should be thorough in the data gathering;

1. Check the examiner's notes in the system to see if they have received a work status slip from the doctor.
2. If the TPA has not received current work status the claims assistant should call the doctor and request a verbal status followed up by a written work status to support the phone conversation.
  - a. The claims assistant should use a prescript form to complete while on the phone - date released to RTW with or without restrictions. If there are restrictions what are they, how long are they expected to be in place, date of next appointment, etc.

Temporary Disability	2002	2003	2004	2005	2006	2007	2008
Minimum	Actual Wages	\$126	\$126	\$126	\$126*	\$126	\$126
Maximum	\$490	\$602	\$728	\$840	\$840*	\$886.67	\$916.31

Post 1/1/04 – LC4656 (c) –temporary disability shall not extend for more than 104 compensable weeks within a period of two (2) years from the date of commencement of TTD payments. TTD shall not exceed 240 compensable weeks within a 5 year period from the DOI for specific serious injuries;

Acute and chronic Hep B or C, Amputations, Severe burns, HIV, High-velocity eye injuries, chemical burns to the eyes, pulmonary fibrosis or chronic lung disease.

### Wage Loss

Full week of wage loss. Employee has worked 4 hrs a day earning \$15 an hour:

$$(4 \times 5 = 20) \times (\$15) = \$300$$

(hours worked) X (hr rate of pay) = earned wages

$$8 \times 5 = 40 \times \$15 = \$600$$

(hours scheduled to work) X (hr rate of pay) = regular or potential earnings

$$\$600 - \$300 = \$300$$

Potential wages - actual wages = lost wages

$$\$300 \times 2/3 = \$200 \text{ TPD due for the week}$$

Because there is no TTD due in the same week there is no need to divide by 7 to determine a daily TPD benefit.

Wage loss and TTD in the same week must calculate wage loss on a weekly basis and then divide by 7 to determine a daily wage loss amount and then multiply that number by the number of wage loss days. Then pay TTD rate for the number of full days lost.

Hr rate of pay \$20 - AWW \$800 = Max TTD \$490. Employee lost partial day on date of injury earned wages for the week was \$560 (3 - 8 hrs days at \$20 an hr and then 1 - 4 hr day at \$20 hr) Employee is at Max TTD so max wages that can be considered are \$735 (\$490 X 1.5).

735 (max wages to consider)  
-560 (actual earned wages)  
175 (lost wages to consider)  
X 2/3  
116.67 (weekly Wage Loss Benefit)  
/ 7 (determine daily wage loss benefit)  
16.66

In this case injury occurred on Monday - our pay period runs Sat - Fri so one day of wage loss and one day of TTD. Thurs \$16.66 TPD and Fri \$70 TTD. The next TTD date would be Sat - new pay period.

### **Waiting Period**

The first three days an employee has been taken off work due to a work related injury or illness will be considered the waiting period. The waiting period will be paid if the employee is off work 14 or more days or if the employee is hospitalized. The waiting period will be paid via a voucher if the employee was a full time benefited employee and the lost time occurred on a regularly scheduled workday. If the waiting period fell on a day off, or the employee was part time extra help (non benefited) then the waiting period would be paid via a check. Full time benefited employees are paid "free time" coded as OJI on their time card for the first three days lost due to a work related injury if the lost days fall on a regularly scheduled work day.

Example: Employee is injured at 1:00 pm on Monday (employee is full time with benefits and works M-F 8:00 - 5:00) the employee goes to the doctor and has been taken off work for the remainder of the week. Monday is the first day of the WP. TTD begins Thursday. The lost time on Monday is coded on the employee's time card as OJI and then lost time on Tue & Wed is also coded as OJI then Thursday the lost time is coded as WCI.

OJI - free time paid as a benefit similar to sick leave but does not impact the employee's leave accruals. If the employee is off work 14 or more days and the Waiting Period then becomes due and payable as a WC benefit the TPA will issue a TTD voucher based on the TD rate applicable for this employee. The voucher is used to reimburse the County a portion of the OJI time that was paid to the employee. E.g. the OJI paid for one lost day on an employee that has an hourly rate of pay of \$18.37 would be \$147 (8 X 18.37) the TTD amount due

for this lost day is \$70. The employee receives a gross amount of \$147 and the WC fund reimburses the county \$70.

WC is paid 7 days a week regardless of scheduled work days - if any portion of the WP falls on a non scheduled work day then when the WP becomes due and payable, that day is paid via a check to the employee as the employee would not have received any OJI for a non scheduled work day.

When a claim is set up it will be the CEO-RMD's responsibility to advise the TPA of how the WP should be paid, when and if the employee has lost 14 or more days from work. For example instructions to TPA could read:

Jane Doe DOI 4/18/02 Hr rate of pay \$20 - AWW \$800 = Max TTD \$490. Employee lost partial day on date of injury earned wages for the week was \$560 (3 - 8 hrs days at \$20 an hr and then 1 - 4 hr day at \$20 hr) Employee is at Max TTD so max wages that can be considered are \$735 (\$490 X 1.5).

735 (max wages to consider)

-560 (actual earned wages)

175 (lost wages to consider)

X 2/3

116.67 (weekly Wage Loss Benefit)

DOI: 4/18/02 employee taken off work through 4/25/02. WP - 4/18/02 to 4/19/02. 4/18 partial lost day - calculate Wage Loss based on earned wages for that day. 4/20 was a non-scheduled workday. Please make sure when issuing WP that 4/18 & 4/19 are paid via voucher and 4/20 is paid to the employee via a check.



Adopted: December 6, 1985  
Amended: March 4, 1988  
Amended: October 7, 1988  
Amended: October 6, 1995  
Amended: October 1, 1999  
Amended: June 6, 2003  
Amended: March 2, 2007

**ADDENDUM A  
WORKERS' COMPENSATION  
CLAIMS ADMINISTRATION GUIDELINES**

The following Guidelines have been adopted by the CSAC Excess Insurance Authority (hereinafter The Authority or the EIA) in accordance with Article 18(b) of the CSAC Excess Insurance Authority Joint Powers Agreement.

**I. CLAIM HANDLING - ADMINISTRATIVE**

**A. Case Load**

1. On or after July 1, 2007, the claims examiner assigned to the Member shall handle a targeted caseload of 150 but not to exceed 175 indemnity claims. This caseload shall include future medical cases with every 2 future medical cases counted as 1 indemnity case.
2. Supervisory personnel should not handle a caseload, although they may handle specific issues.

**B. Case Review and Documentation**

1. Documentation should reflect any significant developments in the file and include a plan of action. The examiner should review the file every 45 calendar days. Future medical files should be reviewed every 90 calendar days. The supervisor shall monitor any significant activity on the file every 120 calendar days. An accomplishment level of 95% shall be considered acceptable.
2. File contents shall comply with Code of Regulations Sections 10101, 10101.1 and 15400 and be kept in a neat and orderly fashion. An accomplishment level of 95% shall be considered acceptable

C. Communication

1. Telephone Inquiries

Return calls shall be made within one (1) working day of the original telephone inquiry. All documentation shall reflect these efforts. An accomplishment level of 95% shall be considered acceptable.

2. Incoming Correspondence

All correspondence received shall have the date of receipt clearly stamped on the front side. An accomplishment level of 95% shall be considered acceptable.

3. Return Correspondence

All correspondence requiring a written response shall have such response completed and transmitted within five (5) working days of receipt. An accomplishment level of 95% shall be considered acceptable.

D. Fiscal Handling

1. Fiscal handling for indemnity benefits on active cases shall be balanced with appropriate file documentation on a semi-annual basis to verify that statutory benefits are paid appropriately. An accomplishment level of 95% shall be considered acceptable.

2. In cases of multiple losses with the same person, payments shall be made on the appropriate claim file.

**II. CLAIM CREATION**

A. Three Point Contact

The claims examiner shall conduct the three (3) point contact with the injured worker, employer representative and treating physician within three (3) working days of receipt of the notice of the claim. If a nurse case manager is assigned to the claim, initial physician contact may be conducted by either the claims examiner or the nurse case manager. In the event a party is non-responsive, there should be evidence of at least three documented attempts to reach the individual. An accomplishment level of 95% shall be considered acceptable.

**B. Compensability**

1. The initial compensability determination (accept claim, deny claim or delay acceptance pending the results of additional investigation) and the reasons for such a determination shall be made and documented in the file within fourteen (14) calendar days of the filing of the claim with the employer. An accomplishment level of 100% shall be considered acceptable.
2. Delay of benefit letters shall be mailed in compliance with Department of Industrial Relations' guidelines. An accomplishment level of 100% shall be considered acceptable.
3. The final compensability determination shall be made by the claims examiner or supervisor within ninety (90) calendar days of employer receipt of the claim form. An accomplishment level of 100% shall be considered acceptable.

**C. Reserves**

Using the information available at claim file set up, an initial reserve shall be established at the most probable case value. An accomplishment level of 95% shall be considered acceptable.

**III. CLAIM HANDLING – TECHNICAL**

**A. Payments**

**1. Initial Temporary and Permanent Disability Indemnity Payment**

- a. The initial indemnity payment shall be issued to the injured worker within fourteen (14) calendar days of the first day of disability. This shall not apply with salary continuation. An accomplishment level of 100% shall be considered acceptable.
- b. The properly completed DWC Benefit Notice shall be mailed to the employee within fourteen (14) calendar days of the first day of disability. An accomplishment level of 100% shall be considered acceptable.
- c. Self imposed penalty shall be paid on late payments in accordance with Labor Code Section 4650 and Section III. A. 7 of this document. An accomplishment level of 100% shall be considered acceptable.

2. Subsequent Temporary and Permanent Disability Payments

- a. Eligibility for indemnity payments subsequent to the first payment shall be verified, except for established long-term disability, and issued in compliance with Labor Code Section 4651. An accomplishment level of 100% shall be considered acceptable.
- b. Self imposed penalty shall be paid on late payments in accordance with Labor Code Section 4650 and Section III.A.7 of this document. An accomplishment level of 100% shall be considered acceptable.

3. Final Temporary and Permanent Disability Payments

- a. All final indemnity payments shall be issued timely and the appropriate DWC benefit notices sent. An accomplishment level of 100% shall be considered acceptable.
- b. Self imposed penalty shall be paid on late payments in accordance with Labor Code Section 4650 and Section III.A.7 of this document. An accomplishment level of 100% shall be considered acceptable.

4. Award Payments

Payments on undisputed Awards, Commutations, or Compromise and Releases shall be issued within ten (10) calendar days following receipt of the appropriate document. An accomplishment level of 95% shall be considered acceptable.

5. Medical Payments

- a. Medical treatment billings (physician, pharmacy, hospital, physiotherapist, etc.) shall be reviewed for correctness, approved for payment and paid within sixty (60) working days of receipt in accordance with Labor Code Section 4603.2. An accomplishment level of 100% shall be considered acceptable.
- b. The medical provider must be notified in writing within thirty (30) working days of receipt of an itemized bill if a medical bill is contested, denied or incomplete in accordance with Labor Code Section 4603.2. An accomplishment level of 100% shall be considered acceptable.



- c. A bill review process should be utilized whenever possible. There should be participation in a PPO and/or MPN whenever possible.

6. Injured Worker Reimbursement Expense

- a. Reimbursements to injured workers shall be issued within fifteen (15) working days of the receipt of the claim for reimbursement.
- b. Advance travel expense payments shall be issued to the injured worker ten (10) working days prior to the anticipated date of travel. An accomplishment level of 95% shall be considered acceptable.

7. Penalties

- a. Penalties shall be coded so as to be identified as a penalty payment. An accomplishment level of 100% shall be considered acceptable
- b. If the Member utilizes a third party administrator, the Member shall be advised of the assessment of any penalty for delayed payment and the reason thereof, and the administrator's plans for payment of such penalty, on a monthly basis.
- c. If the Member utilizes a third party administrator, the Member, in their contract with the administrator, shall specify who is responsible for specific penalties.

B. Medical Treatment

- 1. Each Member shall have in place a Utilization Review process in accordance with Labor Code Section 4610. An accomplishment level of 100% shall be considered acceptable.
- 2. Disputes regarding spine surgery shall be resolved using the process set forth in Labor Code Section 4062(b). An accomplishment level of 100% shall be considered acceptable.
- 3. Nurse case managers shall be utilized where appropriate. An accomplishment level of 95% shall be considered acceptable.

4. If enrolled in a Medical Provider Network, the network shall be utilized whenever appropriate.
5. All medical only cases shall be reviewed for potential closure or transfer to an indemnity examiner by the ninetieth (90) calendar day following claim file set up. An accomplishment level of 95% shall be considered acceptable.

C. Apportionment

1. Investigation into the existence of apportionment shall be documented. An accomplishment level of 100% shall be considered acceptable.
2. If potential apportionment is identified, all efforts to reduce exposure shall be pursued. An accomplishment level of 100% shall be considered acceptable.

D. Disability Management

1. The third party administrator or self administered entity shall notify a designated Member representative immediately upon receipt of an employee's permanent work restrictions so that the Member can determine the availability of permanent modified or alternate work. An accomplishment level of 100% shall be considered acceptable.
2. If there is no response within 20 calendar days, the third party administrator or self administered entity shall follow up with the designated Member representative. An accomplishment level of 100% shall be considered acceptable.
3. Members shall have in place a process for complying with Government Code Section 12926.1 which requires an interactive process with the injured worker when addressing a return to work with permanent work restrictions.

E. Vocational Rehabilitation/Supplemental Job Displacement Benefits

1. Vocational Rehabilitation – Dates of injury prior to 1/1/04: Benefits pursuant to Labor Code Section 139.5 shall be timely provided. An accomplishment level of 100% shall be considered acceptable.
2. Supplemental Job Displacement Benefits – Dates of injury 1/1/04 and after: Benefits pursuant to Labor Code Section 4658.5 shall be

timely provided. An accomplishment level of 100% shall be considered acceptable.

3. Claims Administrator shall secure the prompt conclusion of vocational rehabilitation/SJDB and settle where appropriate. An accomplishment level of 95% shall be considered acceptable.

#### F. Reserving

1. Reserves shall be reviewed at regular diary and at time of any significant event, e.g., surgery, P&S/MMI, return to work, etc., and adjusted accordingly. This review shall be documented in the file regardless of whether a reserve change was made. An accomplishment level of 95% shall be considered acceptable.
2. Indemnity reserves shall reflect actual temporary disability indemnity exposure with 4850 differential listed separately. An accomplishment level of 100% shall be considered acceptable.
3. Permanent disability indemnity exposure shall include life pension reserve if appropriate. An accomplishment level of 100% shall be considered acceptable.
4. Future medical claims shall be reserved in compliance with SIP regulation 15300 allowing adjustment for reductions in the approved medical fee schedule, undisputed utilization review, medically documented non-recurring treatment costs and medically documented reductions in life expectancy. An accomplishment level of 100% shall be considered acceptable.

#### G. Resolution of Claim

1. Within ten (10) working days of receiving medical information indicating that a claim can be finalized, the claims examiner shall take appropriate action to finalize the claim. An accomplishment level of 95% shall be considered acceptable.
2. Settlement value shall be documented appropriately utilizing all relevant information. An accomplishment level of 95% shall be considered acceptable.

#### H. Settlement Authority

1. No agreement shall be authorized involving liability, or potential liability, of the Authority without the advance written consent of the

Authority. An accomplishment level of 100% shall be considered acceptable.

2. The third party administrator shall obtain the Member's authorization on all settlements or stipulations in excess of the settlement authority provided in any provision of the individual contract between the Member and the claims administrator. An accomplishment level of 100% shall be considered acceptable.

#### **IV. LITIGATED CASES**

The claims administrator and Member shall establish written guidelines for the handling of litigated cases. The guidelines should, at a minimum, include the points below, which may be adopted and incorporated by reference as "the guidelines". An accomplishment level of 95% shall be considered acceptable.

##### **A. Defense of Litigated Claims**

1. The claims administrator shall promptly initiate investigation of issues identified as material to potential litigation. The Member shall be alerted to the need for in-house investigation, or the need for a contract investigator who is acceptable to the Member. The Member shall be kept informed on the scope and results of investigations.
2. The claims administrator shall, in consultation with the Member, assign defense counsel from a list approved by the Member. (Note: If a Member is a County, to comply with Government Code Section 25203, the Member's list should be approved by a two-thirds vote of the governing board.)
3. Settlement proposals directed to the Member shall be forwarded by the claims administrator or defense counsel in a concise and clear written form with a reasoned recommendation. Settlement proposals shall be presented to the Member as directed so as to insure receipt in sufficient time to process the proposal.
4. Knowledgeable Member personnel shall be involved in the preparation for medical examinations and trial, when appropriate or deemed necessary by the Member so that all material evidence and witnesses are utilized to obtain a favorable result for the defense.
5. The claims administrator shall comply with any reporting requirement of the Member.

## B. Subrogation

1. In all cases where a third party (other than a Member employee or agent) is responsible for the injury to the employee, attempts to obtain information regarding the identity of the responsible party shall be made within ten (10) calendar days of recognition of subrogation potential. Once identified, the third party shall be contacted within ten (10) calendar days with notification of the Member's right to subrogation and the recovery of certain claim expenses. If the third party is a governmental entity, a claim shall be filed with the governing board (or State Board of Control as to State entities) within six (6) months of the injury or notice of the injury.
2. Periodic contact shall be made with the responsible party and/or insurer to provide notification of the amount of the estimated recovery to which the Member shall be entitled.
3. The file shall be monitored to determine the need to file a complaint in civil court in order to preserve the statute of limitations.
4. If the injured worker brings a civil action against the party responsible for the injury, the claims administrator shall consult with the Member about the value of the subrogation claim and other considerations. Upon Member authorization, subrogation counsel shall be assigned to file a Lien or a Complaint in Intervention in the civil action.
5. Whenever practical, the claims administrator shall aggressively pursue recovery in any subrogation claim. They should attempt to maximize the recovery for benefits paid, and assert a credit against the injured worker's net recovery for future benefit payments.

## V. EXCESS INSURANCE

- A. Claims meeting the definition of potential excess workers' compensation claims as defined by Memorandum of Coverage, Conditions Section IV, shall be reported to the Authority within five (5) working days of the day on which it is known the criterion is met. Utilize the Excess Workers' Compensation First Report Form available through the EIA website. An accomplishment level of 100% shall be considered acceptable.
- B. Subsequent reports shall be transmitted to the Authority on a quarterly basis, sooner if claim activity warrants, or at such other intervals as requested by the Authority, in accordance with Underwriting and Claims Administration Standards. Utilize the Excess Workers' Compensation

Status Report Form available through the EIA website. An accomplishment level of 95% shall be considered acceptable.

- C. Reimbursement requests should be submitted in accordance with the Authority's reporting and reimbursement procedures on a semi-annual basis or earlier if significant expenses are incurred prior to the next reimbursement cycle. Utilize the Excess Workers' Compensation Claim Reporting and Reimbursement Procedures available through the EIA website.
- D. A closing report with a copy of any settlement documents shall be sent to the Authority