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Assembly California Legislature



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ASSEMBLYMEMBER, FORTY-EIGHTH DISTRICT

COMMITTEES
AGING AND LONG-TERM CARE
BUDGET
GOVERNMENTAL ORGANIZATION
WATER, PARKS, AND WILDLIFE
BUDGET SUBCOMMITTEE NO. 1 ON
HEALTH AND HUMAN SERVICES
JOINT LEGISLATIVE AUDIT

FEB 21 2019

February 21, 2019

The Honorable Rudy Salas
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

RE: Audit of the Department of Industrial Relations Division of Worker's Compensation

Dear Chairman Salas,

I am submitting a request for the California State Auditor's Office to investigate the Department of Industrial Relations (DIR) Division of Worker's Compensation (DWC) oversight and regulation of the Qualified Medical Evaluator (QME) program.

Historically, California's injured workers rely on the DWC to properly administer and regulate the Worker's Compensation system to ensure timely and appropriate delivery of benefits. QMEs are highly qualified independent physicians who examine injured workers and prepare written reports of their evaluations for the purpose of helping to resolve contested medical issues. QMEs are certified, by the DWC, for two-year terms. To be reappointed for subsequent two-year terms, they must take continuing education courses, and they must abide by certain DWC regulations.

Recent events show a disturbing trend in the DWC's mishandling of the important QME program. Specifically:

- The number of QME physicians has been steadily declining and has now reached an all-time, almost epidemic, low of approximately 2,500 physicians, relative to a previous high of 4,000 physicians back in 2006. Meanwhile, the demand for QME services continues to set record highs with over 135,000 evaluations requested in 2017 compared to less than 65,000 in 2006. The lack of QME physicians, especially in the face of surging demand for their services, has resulted in serious delays in injured workers being examined and getting access to medical treatment and other benefits.
- The DWC has failed to revise or update the QME fee schedule since 2006 which runs contrary to its statutory mandate under LC 5307.6. As a consequence, QME physicians have been leaving in droves and the QME system is woefully understaffed.



- Starting in approximately the summer of 2016, an attorney at DWC was permitted to craft and implement underground regulations which were used as a pretext to audit QME physicians, deny them reappointment, refuse to provide them administrative hearings which they were entitled to under the law, all to coerce QMEs to return moneys to insurance carriers which the QME physicians were rightfully entitled to. This resulted in numerous lawsuits against the DWC in which a judge agreed with the QME plaintiffs, that DWC was engaging in underground regulations. DWC then ceased enforcing the underground regulations. These actions have accelerated the plummeting number of QME physicians due to his countless denials of QME reappointments and due to QMEs leaving the system out of fear of wrongful persecution and harassment.
- Evidence obtained during and after the lawsuits mentioned above reveal that DWC has had a consistent dialogue with insurers about reducing QME compensation. Additional evidence indicates that DWC has unduly influenced the state's Independent Bill Review (IBR) vendor. E-mails obtained through a PRA request demonstrate that insurance industry insiders have encouraged DWC legal staff to influence the IBR vendor to adopt DWC's underground regulations in order to adjudicate billing disputes in favor of insurance carriers. Shortly after these e-mails were authored, the IBR vendor did, in fact, begin to implement the underground regulations which resulted in depriving QME physicians of rightfully earned fees.

I respectfully request that your office proceed with an audit of the DWC and DIR in order to address the following key issues:

1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.
2. Identify the number of QMEs and to the extent possible, determine whether there is a sufficient number of QMEs to meet the demand for QME services.
3. Review DWC's policies, procedures, and processes for appointing and reappointing QMEs and determine whether they comply with all relevant laws, rules and regulations and whether there were any inconsistencies in the QME appointment and reappointment process.
4. Review and evaluate DWC's QME appeals process and determine whether they comply with all relevant laws, rules and regulations. Specifically, determine the standards, if any, utilized by DWC to deny QMEs reappointment and whether administrative statutory hearings were provided to such QMEs who appealed their denial of a reappointment in a prompt manner, consistent with existing regulations.
5. Determine how DWC established its existing fee schedules for medical-legal expenses as well as its medical fee schedule and assess their reasonableness and fairness. Also, determine what procedures and mechanisms DWC has in place to review the fee schedules and modify the fees when necessary.
6. Evaluate DWC's policies and procedures for timely responding and investigating complaints from providers regarding improper medical-legal payment denials,

downcoding from insurance carriers, and refusal of insurance carriers to pay penalties and interest when required by statute.

7. Determine how DWC allocates its audit resources and determine whether there is disparity in resources allocated for audits of physicians versus insurance carriers.
8. Identify and assess any other significant issues related to the audit, including but not limited to:
 - Inappropriate communications between the DWC and the insurance industry which may have influenced DWC conduct vis a vis QME discipline, implementation of underground regulations, and the possible targeting of QME physicians who billed at rates unsatisfactory to the insurance industry.
 - Audit and analyze the nature and extent of communications between the DWC and the Insurance Industry in terms of the DWC collecting money on behalf of the Insurance Industry from QMEs for the benefit of the Insurance Industry and the distribution of those collected monies to specific carriers and/or self-insured employers.
 - Communications between the DWC, insurance carriers, and Independent Bill Review vendor Maximus which may have influenced the outcomes of IBR Rulings.

I am deeply concerned about California's injured workers and their access to important resources such as QME physicians. Through this audit, I hope we will better understand the root causes of what appears to be DWC's mismanagement of the QME program and provide us options for swift remediation.

I am hopeful that you will share these concerns and ask for your support of this important audit and investigation.

Sincerely,



Blanca E. Rubio
Assemblymember, 48th District