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State: Calif.

DIR Has Met Most Recommendations From 2019 Audits on QMEs, Hiring Practices: Top [2020-12-23]

The Department of Industrial Relations has fully or partially implemented more than 20 recommendations from a pair of 2019 audits that criticized the department for its handling of medical-legal issues and hiring practices, according to the California State Auditor's office.



State Auditor Elaine Howle

In November 2019, State Auditor Elaine Howle issued a [report](#) stating the DIR failed to ensure that California's workers' compensation system had enough qualified medical evaluators and that QMEs were filing quality med-legal reports. Earlier that year, Howle issued a separate [report](#) that found former DIR Director Christine Baker violated state employment laws by hiring and promoting her daughter.

The auditor's office recently updated the status of the QME audit, saying the DIR had at least partially implemented all nine recommendations from last year.

The auditor's office said the DIR had fully met a recommendation to ensure the Division of Workers' Compensation could appoint enough QMEs to keep pace with demand and create a plan to increase that number, should demand rise. The recommendation also required the DIR to describe how the DWC would "actively recruit" QMEs by prioritizing specialties with the greatest need.

"DWC's response indicates that it will expand the availability of its QME examination and publicize the availability of the exam through sending letters to physicians who have previously failed the exam, using its social media accounts, and advertising in the newsletter of a professional organization of industrial physicians in California," the auditor's office said in its updated report.

The DWC also submitted an analysis of QME demand and identified specialties that would require additional recruitment, the auditor's office said. The updated report confirmed that the DWC was contacting institutional medical providers as part of its outreach efforts, something DWC Administrative Director George Parisotto announced earlier this month.

"To the extent that DWC follows through with its plan and recruits the QMEs necessary to meet the demand it identified in its analysis, it will implement our recommendation," the auditor's office said.

The auditor's office said the DIR also has fully implemented a recommendation to ensure the DWC reviews the quality and timeliness of QME reports. The DIR has developed timelines for the review process and a methodology for selecting which reports, and how many, to review each year, the auditor's office said.

In its one-year response to the State Auditor, the DIR said it has assigned staff to track the timeliness of QME reports and has formed committees of physicians, judges and lawyers to review. The new policy enlists the committee members to meet four times per year, either in person or via phone, the DIR said.

There are currently six committees, and members met for the first time last month, the DIR said.

The DIR's original deadline to comply with the list of recommendations was April, but the division said the COVID-19 pandemic had initially delayed its efforts to meet the requirements.

The DWC, QMEs and other stakeholders for years have been discussing much-needed changes to the division's med-legal process.

The DIR held a public hearing Dec. 14 on proposed changes to the medical-legal fee schedule, which would give QMEs their first raise since 2006. QME advocates, however, have testified that the proposed changes either don't raise reimbursement rates enough or would upend a system that simply could be fixed as is.

The State Auditor's office said the DIR also has fully adopted processes for:

- Making annual reports to the DWC's administrative director on the status of QME reports.
- Creating written procedures and consistent processes for making sure comp judges and the Workers' Compensation Appeals Board notify the DWC when QME reports are rejected for "not meeting minimum standards."
- Implementing policies for tracking rejected QME reports and including the reports in an annual review.

The DIR said in its one-year response that DWC committees will submit report-quality summaries four times a year, and the reports will be given to the QME Discipline Unit each quarter. The Discipline Unit will draft a memorandum within 30 days of every quarterly meeting, and division attorneys will finalize the memorandums for a report to be submitted to the executive medical evaluator.

Each year, the executive medical evaluator will submit a final review summary to the administrative director as part of the annual process, the DIR said.

The DIR has only partially implemented recommendations to enact written rules for internally disciplining QMEs and installing timelines for taking action, scheduling hearings or responding to settlement options, the auditor's office said.

The auditor's office also said the DIR hasn't fully satisfied recommendations to enact policies for reinstating disciplined QMEs or how the process would unfold if investigations are pending.

The DIR insists the DWC has implemented specific written policies for reappointing QMEs, but the auditor's office said the guidelines fall short for now.

The DWC's process indicates doctors should be reinstated and notified of pending discipline "unless violations are of such a serious nature that denial is indicated" or if the California Code of Regulations prevents reappointment, the auditor's office said.

"However, those sections of regulations do not prevent DWC from reappointing a QME," the auditor's office said. "DWC should be expediting the investigations of QMEs up for reappointment, as well as following its reappointment regulations if it decides to deny reappointment. Again, DWC has two separate regulatory

processes: one for discipline and one for reappointment. Those processes should remain separate and be outlined appropriately in its policy."

Meanwhile, the DIR is still trying to collect salary paid to former Director Christine Baker's daughter, who allegedly made nearly \$130,000 despite no records indicating she actually performed any work, according to the auditor's office.

Last year, the State Personnel Board identified a series of hires under Baker that it said violated state civil service employment rules, and the Department of Human Resources assumed hiring duties at the DIR.

In March 2019, the auditor's office released a report stating Baker broke the law when she arranged her daughter's hiring and promotion.

Baker retired suddenly and without explanation in 2018. Then-Gov. Jerry Brown appointed her to a vacant seat on the state's Fraud Assessment Commission.

The auditor's office listed 12 recommendations in its report, most of which have been resolved or partially implemented.

In September, the DIR told the auditor's office that an SPB hearing on retrieving the ill-gotten salary took place in June, and the department was still waiting to learn a hearing officer's decision.

As of Tuesday, the recommendation remains partially implemented, according to the auditor's office.