

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.10
(ID # 17340)

MEETING DATE:

Tuesday, November 09, 2021

FROM : HUMAN RESOURCES AND SHERIFF-CORONER-PA :

SUBJECT: HUMAN RESOURCES: Approval of Worker's Compensation Carve-Out Program for the Law Enforcement Management Union (LEMU), All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the "Workers' Compensation Alternative Dispute Resolution Agreement Between County of Riverside and Riverside County Sheriff Law Enforcement Management Unit" (Attachment A).

ACTION:Policy


Brenda Dieckrichs, Assistant CEO / Human Resources Director

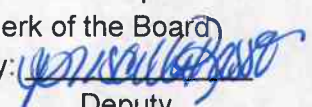

Dennis Vrooman, Assistant Sheriff

10/10/2021

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: November 9, 2021
xc: HR, Sheriff Coroner-PA

Kecia R. Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: N/A			Budget Adjustment: No	
			For Fiscal Year: 21/22	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

California State law permits employers and labor unions to create a carve-out program to address certain aspects of workers' compensation cases where disputes may arise. The County of Riverside engaged in negotiations to establish a workers' compensation carve-out program with the Law Enforcement Management Union (LEMU). The County of Riverside along with LEMU successfully petitioned the State of California for authority to negotiate a labor management agreement pursuant to Labor Code section 320.1.7 to achieve this. Management and Labor established a Joint Labor Management Group which crafted a worker's compensation carve-out program designed for LEMU members.

The workers' compensation carve-out program also referred to as an alternative dispute resolution (ADR) program is designed to expedite disputes related to workers' compensation issues, ensure prompt treatment for injured officers, decrease lengthy litigation, and improve the process in determining medical treatment plans. The new program provides a definitive plan to expedite the delivery of workers' compensation benefits to better serve the needs of the LEMU members. The expected benefits of implementing this program are the following:

- Streamlined medical care
- Reduction in the amount of lost time from work
- Reduction in delays encountered in the State's workers' compensation system
- Reduction of disputes and litigation
- Reduction of costs due to delays in the current system

The County and LEMU have collaborated on developing a better point of entry for medical treatment that will streamline authorizations and access to high-quality medical treatment. Most workers' compensation injuries involving public safety officers are orthopedic in nature. The ADR program will develop a better point of entry through creation of a panel of authorized orthopedic treating physicians that is expected to expedite recovery and reduce delays in treatment.

Additionally, the new ADR process establishes a list of independent medical examiners (IME) made up of qualified medical professionals who can address a variety of different medical specialties in the event of a dispute. The medical professionals have been selected based on their ability to be fair and impartial as well as their knowledge of peace officer related medical issues. In the event of a dispute related to the treatment of an injury or illness, an evaluation

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with an IME physician will occur under the new ADR process within 30 days. The IME physician will be required to issue a medical report within 30 days after the evaluation. The goal of the program is to expedite the medical process and resolve issues on average within 60 days. The current system can take between 6 to 9 months and sometimes even longer. This process will also be used in any dispute regarding whether an injury or illness is work related. LEMU and the County negotiated the list of the IMEs for the different specialties, such as orthopedics and internal medicine.

The program's criteria have been outlined and agreed upon by all parties and the program is now ready to be submitted to the State for review and approval prior to implementation. The County has worked closely with representatives of LEMU to design and establish an ADR program that satisfies the interests of both parties and will achieve approval of the California State Department of Industrial Relations, Division of Workers' Compensation and PRISM (the County's excess workers' compensation insurance provider).

Upon authorization by the Board of Supervisors to implement the ADR program, the Workers' Compensation Alternative Dispute Resolution Agreement Between County of Riverside and Riverside County Sheriff Law Enforcement Management Unit will be finalized and LEMU will submit the Program to the California State Department of Industrial Relations, Division of Workers' Compensation. Once it is approved by the State, we expect the ability to immediately implement the program. LEMU Membership voted and approved the agreement on September 8, 2021.

Impact on Residents and Businesses

There is no impact on residents and businesses.

Additional Fiscal Information

The ADR program with LEMU is designed to expedite the delivery of workers' compensation benefits, reduce the number of lost workdays, reduce litigation, and potentially save money.

ATTACHMENTS:

Attachment A: Workers' Compensation Alternative Dispute Resolution Agreement Between County of Riverside and Riverside County Sheriff Law Enforcement Management Unit


Meghan Hahn, Senior Management Analyst 10/28/2021

**WORKERS' COMPENSATION
ALTERNATIVE DISPUTE RESOLUTION AGREEMENT
BETWEEN COUNTY OF RIVERSIDE AND
RIVERSIDE COUNTY SHERIFF LAW ENFORCEMENT MANAGEMENT UNIT**

This Workers' Compensation Alternative Dispute Resolution Agreement ("Agreement") is entered into by and between the County of Riverside ("County") and the Riverside County Sheriff Law Enforcement Management Unit ("LEMU") (collectively, "parties"). This Agreement is created pursuant to California Labor Code Section 3201.7(a)(3)(C).

Nothing in this Agreement diminishes the entitlement of a covered employee to compensation payments for total or partial permanent disability, total or partial temporary disability, or medical treatment fully paid by the employer as otherwise provided for in Division 4 of the California Labor Code ("Workers' Compensation Law"), nor to California Labor Code Section 4850 benefits. Nothing in this Agreement denies to any covered employee the right to representation by counsel at all stages during this alternative dispute resolution process.

Article I: Purpose

The purpose of this Agreement is:

To provide covered employees and retirees, as defined in Article III, paragraphs A-B below, claiming compensable injuries under Workers' Compensation Law, with an alternative dispute resolution process with the intent of expeditiously resolving disputes.

This purpose will be achieved by utilizing a point of entry medical treatment panel with a protocols of authorization--(See Attachment A), an exclusive list of agreed-upon medical providers ("Independent Medical Evaluators" or "IMEs") to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(a)(3)(C) and for Industrial Disability Retirement (Cal-PERS) claims pursuant to Government Code sections 21154 and 21156(a)(2).

Now, therefore, in consideration of the mutual terms, covenants and conditions herein, the parties agree as follows:

Article II: Term of Agreement

The parties understand that this Agreement shall become effective on or after August 1, 2021, only after it is approved by the County Board of Supervisors, executed by the parties, submitted to the Administrative Director ("Director") of the State of California, Department of Industrial Relations, Division of Workers' Compensation, in accordance with Title 8, California Code of Regulations, Section 10202(d), and accepted by the Director as evidenced by the Director's letter to the parties indicating approval of the Agreement. This Agreement shall remain in effect for at least one year from the date of the Director's letter of approval to the parties. Thereafter, it shall continue and remain in force from year to year unless terminated by either party as provided for below. Any claim arising from an industrial injury that is covered by this Agreement and sustained before the termination of this Agreement shall continue to be covered by the terms of this Agreement, until all medical issues related to the pending claim are resolved.

The parties reserve the right to terminate this Agreement at any time for any lawful, good cause, by mutual agreement, or by act of the Legislature. The terminating party must give at least 30 calendar days written notice to the other party of the intent to terminate, including an explanation of the good cause. The parties agree to meet and confer in good faith to try and resolve the issues underlying the proposed termination of the Agreement prior to the Agreement's termination. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the applicable California Labor Code provisions to the same extent as they were prior to the implementation of this Agreement, except as otherwise specified herein.

Article III: Scope of Agreement

A. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claimed by the following (referred to collectively as "covered employees"):

1. Active County employees who are members of LEMU;
2. Retirees of the County who are members of LEMU who claim a presumptive injury as defined by California Labor Code Section 3212 et seq., including Section 3213.2; and
3. Active County employees who are members of LEMU and who file a claim and subsequently retire before the claim is resolved. Such individuals are covered under this Agreement only for the purposes of petitions to reopen a pre-existing claim unless covered under A (2) of this paragraph.

This Agreement does not apply to any other retired individuals, nor does it apply to claims filed before the effective date of this Agreement, except to the extent such claims fall within paragraph B. Active employees and retirees with an existing claim filed prior to the effective date of this Agreement ("pre-existing claim") who have not already had a medical-legal evaluation by an Agreed Medical Evaluator or Qualified Medical Evaluator under California's workers' compensation system may request to resolve their claims under the provisions of this Agreement. Such requests must be made in writing to the County's Human Resource-Work Comp Division ("HR-WC").

The authority to decide whether to accept a pre-existing claim into the alternative dispute resolution program described in this Agreement will lie solely with, and depend on the mutual agreement of, both the County and the employee (or if the employee is represented, by the employee's legal representative acting on behalf of the employee). If a request is made to utilize the alternative dispute resolution program described in this Agreement for a pre-existing claim and that request is approved, the individual will be a "covered employee" under this Agreement, and all future disputes on said claim must be resolved according to the provisions of this Agreement. The scope of this Agreement does not apply to retirees that have a medical dispute that is outside the five-year statute of limitations or California Labor Code Section 5804.

B. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.

C. This Agreement is restricted to: 1) Establishing a point of entry medical treatment program with protocols of treatment authorizations to streamline medical treatment- (See Attachment A); 2) establishing an exclusive list of IMEs to be used for medical dispute resolution of covered employees, and 3) establishing a process for informal legal discovery in accordance with Article V. For purposes of this Agreement, a "claimed injury" is one for which either a Workers' Compensation Claim Form DWC-1 or an Application for Adjudication of Claim has been filed with the Workers' Compensation Appeals Board ("WCAB").

Article IV: Expedited Independent Medical Evaluator Process

A. This Agreement does not constitute a Medical Provider Network ("MPN"). However, all covered employees must utilize the County's MPN for treatment purposes during the time the County maintains and utilizes the MPN. All MPN physicians will have prior authorization for medical appointments consistent with California Labor Code Section 4600. The MPN is governed by California Labor Code Section 4616 et seq. Physicians who act as a covered employee's treating physician, or have provided treatment to the covered employee shall not act as the IME

in the covered employee's claim. Pre-designation of a physician must comply with the requirements set forth in California Labor Code Section 4600(d)(1)-(2)(C).

B. All covered employees with a disputed medical issue as described in Article IV, paragraph D below must be evaluated by an approved physician from the exclusive list of IMEs. Attached hereto as Exhibit A is the exclusive list of IMEs agreed upon by the parties. Should the covered employee claim injuries requiring more than one IME specialist, the covered employee shall be provided an IME appointment in each area of specialty. If the IME requires the opinion of an additional sub-specialist, the IME shall advise the claims examiner, who shall then select an approved medical provider in the requested specialty from the agreed-upon IME list. The IME may not refer the covered employee to the covered employee's treating physician for this purpose. The consulting sub-specialist's charges are subject to the Official Medical Fee Schedule promulgated by the California Division of Workers' Compensation administrative director.

C. The exclusive list of IMEs shall include the IMEs' respective specialties as agreed upon by the parties.

D. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim including, but not limited to, determination of causation, the nature and extent of an injury, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work (including transitional duty), future medical care, and resolution of all medical treatment disputes arising from utilization review, including the need for spinal surgery. The parties agree that the covered employee shall use the originally chosen IME for all subsequent disputes and injuries claimed arising under this Agreement. In the event that said IME is no longer available, the parties shall utilize the next specialist on the list pursuant to Article IV, subparagraph I(5) below.

E. The IME process described above will be triggered when either party provides the other with written notice of an objection in connection with any issues set forth in Article IV, paragraph D above. Objections from the County shall be sent to the covered employee with a copy to the covered employee's legal representative, if represented, and if the covered employee/legal representative gives notice to the County that the covered employee is represented. Objections from the covered employee or covered employee's legal representative shall be sent to the covered employee's assigned claims examiner with a copy to the County and County's legal representative, if applicable.

F. Objections shall be sent within 30 calendar days of receipt of a medical report addressing any of the issues set forth above. Delayed decisions based on legal issues shall not trigger the IME process. A subsequent acceptance of the claim and/or resolution of the disputed issue may eliminate the need for completion of the IME

process set forth in this Agreement.

G. The exclusive list of IMEs shall serve as the exclusive source of medical evaluations for all disputed medical issues arising from a claimed injury, unless otherwise agreed to by the parties in writing.

H. The parties hereby agree that from time to time the exclusive list of IMEs may be amended. For either party to propose adding an IME to the exclusive list of IMEs, the party must provide notice, in writing, to the other party of its request to add a physician to the list. The parties must mutually agree in writing to the addition of physicians to the IME list. A physician may only be deleted from the exclusive list of IMEs if that physician breaches the terms and conditions of his/her contract with the County or by written mutual agreement of the parties. The exclusive list of IMEs shall be reviewed quarterly, or as otherwise agreed upon, by both parties for proposed additions and/or deletions of IMEs. Any physician proposed for addition or deletion after the quarterly review or other agreed-upon period will be reviewed at the next scheduled review period.

I. Appointments

1. The County's HR-WC shall schedule any appointment(s) between the IME and covered employee and provide notice of the appointment(s) to the covered employee within 10 business days of the date of receipt of the objection. The notice of the appointment shall include the location, date, and time of the appointment.

2. The covered employee shall be responsible for providing the County's HR-WC with his/her work schedule prior to an appointment being made, so that appointments can be made, if possible, during a covered employee's non-working hours.

3. Compensation for attending medical appointments under this Agreement shall be consistent with California Labor Code requirements.

4. Mileage reimbursement to covered employees shall be in accordance with California Labor Code Section 4600(e)(2) unless transportation is provided by the County.

5. For purposes of appointments, the County's HR-WC shall select the IME(s) by starting with the first name listed on the exclusive list of IMEs within the appropriate specialty, and continuing down the list, in order, until the list is exhausted, at which time the County's HR-WC will resume using the first name on the list. Said list of IMEs shall be organized in alphabetical order by the IMEs' last names. IMEs that cannot meet the appointment timeframes designated in the Physician Contract shall be bypassed for the next available IME on the list.

6. The HR-WC will maintain a log of the:

- a. Number of disputed claims;
- b. Timeframe (number of days) for setting IME appointments;
- c. Timeframe (number of days) from IME exam to receipt of medical report;
- d. Dispute outcome; and
- e. Timeframe (number of days) from dispute to resolution.

7. The IME shall submit the medical reports within 30 calendar days following examination of the covered employee, pursuant to the terms of the IME's contract, unless a longer period of time is agreed to by the parties.

J. The County is not liable for the cost of any medical examination used to resolve disputes governed by this Agreement where said examination is furnished by a medical provider that is not authorized by this Agreement. Medical evaluations shall not be obtained outside of this Agreement for disputes covered by this Agreement, notwithstanding California Labor Code Section 4605.

K. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement, subject to legal challenges brought by the parties.

L. Either party who receives records prepared or maintained by the treating physician(s), or records, either medical or nonmedical, that are relevant to the determination of the medical issue, shall serve those records on the other party immediately upon receipt. If a party objects to the provision of any nonmedical record(s) to the IME, the party shall object within 10 calendar days of the service of record(s) to the other party. Objecting to the provision of nonmedical records may result in the denial of the claim on the basis that the IME did not have complete and accurate information. There shall be no objection to the provision of medical records to the IME, subject to the provisions of the California Labor Code.

M. The County's HR-WC shall provide to the IME records prepared or maintained by the covered employee's treating physician(s) and medical and nonmedical records relevant to the determination of the medical issue(s). The County's HR-WC shall prepare a list of all documents provided to the IME, and shall serve a copy of the list on the covered employee and/or on his/her legal or other representative.

N. Unless otherwise agreed upon by the parties in writing, all communications with the IME shall be in writing and shall be served on the opposing party. This provision does not apply to oral or written communications by the covered employee or, if the covered employee is deceased, the covered employee's dependent, in the course of the covered employee's examination or at the request of the IME in connection with the examination. This provision also does not apply to communications solely and exclusively about, and limited in their content to, scheduling the covered employee's IME evaluation, including arranging the exam date,

joint letter, or service of agreed upon records.

O. Ex parte communication with the IME is prohibited. If a party or their legal representative communicates with the IME in violation of paragraph N and/or O of Article IV, the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from the next IME chosen from the exclusive list of IMEs pursuant to Article IV, subparagraph I(5) above. If a new examination is required, the party making the communication prohibited herein shall be liable for the cost of the initial medical evaluation.

P. If either party disputes a medical finding of the IME, they shall notify the other party of this dispute by way of written objection within 14 calendar days of actual receipt of the IME's report. All disputes of this nature shall be resolved either by way of supplemental report by the IME or by way of deposition.

Article V: Discovery

A. Covered employees will cooperate and provide the County's HR-WC with fully executed medical, employment and concurrent employment releases, disclosure statements, and any other documents and information reasonably necessary for the County to resolve the covered employee's claim, when requested, and subject to the limitations set forth in the California Code of Civil Procedure, Labor Code, and Peace Officers Bill of Rights. If the covered employee fails to return the executed releases and it is determined that the medical information is not sufficient for the IME to provide a comprehensive evaluation, the parties shall meet to resolve the issue(s) within 14 calendar days prior to setting a medical evaluation. This Article does not supplant or diminish the parties' rights to pursue or contest discovery issues pursuant to the remedies provided in the California Labor Code or by the WCAB.

B. This Agreement does not preclude a formal deposition of a covered employee or IME when necessary pursuant to the right of discovery in accordance with applicable provisions of law. The need for a formal deposition may delay the scheduling of an appointment with an IME until the deposition has been completed. Attorney's fees for depositions of covered employees shall be paid at a rate consistent with California Labor Code Section 5710. This rate of reimbursement for attorney's fees for depositions of covered employees is subject to an annual review to determine if adjustments to said rate of reimbursement should be made. There shall be no attorney's fees for depositions of IMEs or other physicians.

Article VI: Industrial Disability Retirement

A. The County and LEMU recognize that the ADR process can also be utilized to obtain a competent medical opinion as it relates to determining an employees' eligibility for an Industrial Disability Retirement (IDR), pursuant to California Government Code Sections 21154 and 21156(a)(2).

B. Pursuant to the guidelines outlined in Article IV of this Agreement, the County and the LEMU shall meet and confer to identify an agreed-upon listing of IMEs to serve as the competent medical examiner in reviewing an employees' eligibility for an IDR.

C. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim, including but not limited to determination of causation, the nature and extent of an injury, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work, including transitional duty, future medical care, and resolution of all disputes arising from utilization review, including need for spinal surgery pursuant to Labor Code section 4062(b).

D. Furthermore, the County and LEMU agree that IME reports will be admissible in any proceeding and/ or hearing involving an injured employee.

Article VII: General Provisions

A. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

B. This Agreement shall be governed and construed pursuant to the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county.

C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement.

D. If any portion of this Agreement is found to be unenforceable or illegal the remaining portions shall remain in full force and effect.

E. This Agreement may be executed in counterparts.

F. Notice required under this Agreement shall be provided to the parties as follows:

COUNTY:

LEMU:

The parties hereto have executed this Agreement in the County of Riverside, California.

RIVERSIDE COUNTY SHERIFF LAW ENFORCEMENT MANAGEMENT UNIT


BY: _____ DATE: _____

COUNTY OF RIVERSIDE

BY: Karen S. Spiegel DATE: NOV 09 2021

APPROVED AS TO FORM
COUNTY COUNSEL RIVERSIDE COUNTY, CALIFORNIA

BY: 
Deputy County Counsel

ATTEST:
KECIA R. HARPER, Clerk
By 
DEPUTY

COUNTY:

LEMU:

The parties hereto have executed this Agreement in the County of Riverside, California.

RIVERSIDE COUNTY SHERIFF LAW ENFORCEMENT MANAGEMENT UNIT

BY:  DATE: 10/25/2021

COUNTY OF RIVERSIDE

BY: _____ DATE: _____

APPROVED AS TO FORM
COUNTY COUNSEL RIVERSIDE COUNTY, CALIFORNIA

BY: _____
Deputy County Counsel