

2017

2015-2016 Legislative Summary

Assembly Committee on Insurance

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California State Legislature
Assembly Committee on Insurance

2015 - 2016
LEGISLATIVE SUMMARY

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Assembly
California Legislature



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December 1, 2016

To Assembly Members and All Interested Parties:

The following is a summary of all the bills that were referred to the Assembly Insurance Committee in 2015-2016. The bills are organized in numerical order and the final disposition is noted.

The summary of each bill is not intended to be a definitive or comprehensive statement of the provisions of the bill. For more detailed information about any bill, please go to the Assembly's web page at www.assembly.ca.gov. and click on "Legislation."

On March 2, 2016, the Committee held a joint oversight hearing with the Senate Labor and Industrial Relations Committee regarding the creation of the Workers' Compensation Drug Formulary. The background memorandum for that hearing is included.

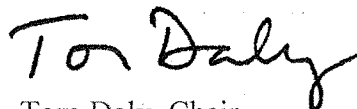
We have included a letter to Insurance Commissioner Dave Jones, regarding auto body repair cost regulations dated August 4, 2016.

Included as well is a letter dated June 10, 2016 to Insurance Commissioner Dave Jones, and a letter to Christine Baker, Director of Industrial Relations regarding workers' compensation fraud.

In addition, we have included a letter to Insurance Commissioner Dave Jones, regarding regulations regarding use of groups in Automobile Insurance Rating under Proposition 103, dated June 1, 2015.

For additional information regarding this summary, or other activities of the committee, please contact the committee staff at (916) 319-2086, or visit our website www.assembly.ca.gov and click on "Committees".

Respectfully,



Tom Daly, Chair



Melissa Melendez, Vice Chair



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Insurance

AB-269 (Waldron) - Basic property insurance: California FAIR Plan.

This bill would have reduced the FAIR Plan governing committee to 8 members (from nine) and would have added a second non-voting public representative (to be appointed by the Governor).

Status: *Died in Assembly Insurance Committee*

AB-305 (Gonzalez) - Workers' compensation: permanent disability apportionment: gender discrimination

This bill would have prohibited apportionment of permanent disability from being based on pregnancy or menopause if the condition is contemporaneous with the claimed physical injury. The bill would have also prohibited apportionment in the case of a psychiatric injury caused by sexual harassment, pregnancy, or menopause if the condition is contemporaneous with the claimed psychiatric injury. The bill would have also provided that the impairment ratings for breast cancer shall in no event be less than comparable ratings for prostate cancer.

Status: *Vetoed. See also AB 1643 (Gonzalez), below.*

Governor's Veto Message:

This bill prohibits the use of certain gender-related characteristics in the calculation of permanent disability benefits for injuries occurring on or after January 1, 2016.

The workers compensation system must be free of gender-bias. No group should receive less in benefits because of an immutable characteristic. However, this bill is based on a misunderstanding of the American Medical Association's evidence-based standard, which is the foundation of the permanent disability ratings, and replaces it with an ill-defined and unscientific standard.

AB-310 (Mathis) - Long-term care insurance.

This bill would have required the Insurance Commissioner to commission an annual study comparing the statutory requirements for long-term care insurance products in California with the statutory requirements governing long-term care insurance products as set forth in the Interstate Insurance Product Regulation Compact. The bill would have also required the commissioner to provide a report to the Legislature, on or before January 1, 2017, and each January 1 thereafter, until January 1, 2021, comparing the marketability and affordability of long-term care insurance products in this state with similar products in New York, Texas, and Florida.

Status: *Died in Assembly Insurance Committee*

AB-332 (Calderon) - Long-term care insurance.

This bill would have established the Long Term Care Insurance Task Force in the Department of Insurance composed of specified stakeholders and representatives of government agencies to examine the feasibility of a statewide long-term care insurance program. The bill would have required the task force to produce a report that would be submitted to the Insurance Commissioner, the Governor, and the Legislature by July 1, 2017. The bill would have required the department to produce, no later than July 1, 2018, an actuarial report based on the task force recommendations, to be shared with and approved by the task force.

Status: *Vetoed*

Governor's Veto Message:

This bill would establish a nine-member task force to explore the design and implementation of a statewide long-term care insurance program.

Since the federal government and a number of private organizations have undertaken essentially the same task, I don't think that this bill is necessary. Moreover, I'm hesitant to start down a path that may lead to a large and potentially costly new mandate.

AB-387 (McCarty) - Insurance: life and disability policies.

This bill permits the Insurance Commissioner to develop and publish procedural requirements, guidelines, and standard insurance contract language for the purpose of streamlining and expediting the Department's review of life and disability insurance policies. The bill also requires insurers to provide an expanded cover letter for proposed life and disability insurance policy forms that documents compliance with published guidance.

The bill further requires the Insurance Commissioner to request that a multistate regulatory support organization commission a study to examine and report on the extent to which California law relating to annuity, life, disability income, and long-term care insurance products differ from uniform standards developed by the Interstate Insurance Product Regulation Commission. The Insurance Commissioner is permitted to comment on the final study and submit the study to the Legislature upon its completion.

Increases the period of time that must elapse before a disability insurance policy form that is filed for review by the Insurance Commissioner is deemed approved from 30 to 120 days.

Status: *Chapter 691, Statutes of 2015*

AB-399 (Ridley-Thomas) - Unemployment insurance: classified employees.
This bill would have required the payment of unemployment benefits to a classified employee of a public school between academic years if the employee is not otherwise employed. The maximum duration of benefits would have increased from 4 to 8 weeks over a 4-year period.

Status: *Died in Assembly Appropriations Committee*

AB-438 (Chiu) - State government: workers' compensation: bilingual services.

Requires the Department of Industrial Relations and the Division of Workers' Compensation to make specified forms, notices, and fact sheets available in Chinese, Tagalog, Korean, and Vietnamese. Requires the Administrative Director of the DWC to make recommendations regarding any other documents that should be translated into languages other than English, and requires the DIR and DWC to submit the recommendations and any translated documents to the Legislature.

Status: *Chapter 515, Statutes of 2015*

AB-447 (Maienschein) - Property insurance: discrimination.

This bill would, with respect to real property that is rented to low-income tenants, prohibit an insurer from failing or refusing to accept an application for, or issuing a policy to an applicant for, that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, the level or source of income, or the receipt of government or public assistance by an individual or group of individuals residing or intending to reside upon the property.

Status: *Chapter 432, Statutes of 2015*

AB-459 (Daly) - Insurance: insurable interest: declaratory relief.

This bill would have allowed the an owner of a life insurance policy, who believed in good faith that the insurer may challenge the policy for lack of an insurable interest, to seek court action to determine if the life insurance policy was based on a valid insurable interest. The bill would have only applied to policies issued in California prior to January 1, 2010 and have a death benefit equal to or greater than \$1,000,000. The bill would have also protected the insured and the insured's family members from civil action if the court found that the policy lacked a valid insurable interest. The bill would have remained in effect until January 1, 2018.

Status: *Died in Senate Judiciary Committee*

AB-493 (Medina) - Insurance.

This bill would have prohibited the issuer of a home protection contract from charging a service fee or fees if no repair is made.

Status: *Died in Assembly Insurance Committee*

AB-499 (Cooley) - Insurance: earthquake: mandatory offer.

This bill makes technical and clarifying changes to the requirements for earthquake insurance renewal notices.

Status: *Chapter 549, Statutes of 2016*

AB-511 (Gipson) - Workers' compensation.

This bill would have expanded the expanded the number of peace officers who would have been entitled to the benefit of statutory "presumptions" that certain injuries or conditions are automatically work-related. Notably, the bill would have made all peace officers entitled to workers' compensation benefits for any cancer, heart condition, or back injury, regardless of whether the condition was actually work-related.

Status: *Died in Assembly Appropriations Committee*

AB-553 (Daly) - Insurance: corporate governance: insurance holding companies.

This bill requires insurers to annually prepare and submit a Corporate Governance Annual Disclosure (CGAD) that contains information relating to corporate governance structure, policies, and practices. Any documents, materials, or other information gathered by the Department of Insurance related to the CGAD are not subject to disclosure pursuant to the California Public Records Act, subpoena, or discovery. The bill also authorizes the Insurance Commissioner to act as group-wide supervisor for a financially troubled internationally active insurance group that is the subject of a supervisory college.

Status: *Chapter 213, Statutes of 2015*

AB-565 (Cooley) - Group disability insurance: required provisions.

This bill more closely aligns California law to national standards for group life insurance policies by permitting the insurer to limit the waiver of premium benefit period to a retirement proxy age no younger than age 65 and to exclude disabilities that develop after age 60. The bill also clarifies that the owner of a group life insurance policy may choose whether to offer coverage for adult dependents up to age 26, and clarifies that for dependent children over the age of majority the group policyholder is authorized to elect coverage at any age up to 26.

Status: *Chapter 440, Statutes of 2016*

AB-660 (Mathis) - Identity theft: unemployment insurance base wage file.

This bill would have required the department to review, at least once each year, the information in its unemployment insurance base wage file; to determine if multiple names are associated with a single social security number. The Employment Development Department would be required to establish a reasonable threshold for the number of names associated with a single social security number that would trigger further investigation and to report that information to the appropriate law enforcement official.

Status: *Died in Assembly Insurance Committee*

AB-686 (Daly) - Insurance: fraud prevention.

This bill would have expanded the scope of the law that prohibits a person from acting in the capacity of a "runner or capper," or to otherwise procure clients or patients for a fee to obtain services or benefits under workers' compensation coverage.

Status: *Died In Assembly Insurance Committee Insurance*

AB-688 (Gomez) - Disability compensation: paid family leave.

This bill would have eliminated the authority for an employer to require an employee claiming Paid Family Leave benefits to take up to 2 weeks of earned but unused vacation before the employee receives Paid Family Leave benefits.

Status: *Died - Assembly Insurance*

AB-704 (Cooley) - Escrow services: authorization to transact business.

Eliminates several unnecessary limitations and conditions that interfere with escrow companies' capacity to provide customer services in multiple counties outside of their principal place of business.

Status: *Chapter 370, Statutes of 2015*

AB-764 (Quirk) - Parking lots: design: insurance discount.

This bill would have required the Building Standards Commission, in collaboration with the State Architect and the State Fire Marshal, to consider standards, and to update standards as it determines necessary, for the installation of vehicle barriers in parking lots, to protect persons or property from collisions by motor vehicles. The bill would have also authorized an insurer to consider the installation of vehicle barriers in or on a commercial property parking lot as a safety measure and would authorize an insurer to provide or offer a discount on the property owner's insurance. The bill would have required that any discounts be determined to be actuarially sound and approved by the Insurance Commissioner, as required by current law, prior to their use.

Status: *Vetoed*

Governor's Veto Message:

This bill would require the Building Standards Commission to consider standards for installation of vehicle barriers in the design of any new building.

Local governments have jurisdiction over local commercial buildings and may impose additional building standards. I believe it would be more prudent to leave the matter of vehicle barrier installation to the building owners and local authorities.

AB-822 (Cooley) - Insurance: California Insurance Guarantee Association: insolvency.

Clarifies unintended consequences of recent case law and establishes a clear rule that there is a 1-year statute of limitations to file claims against the California Insurance Guarantee Association in cases where the original claim was against a now insolvent insurer.

Status: Chapter 85, Statutes of 2015

AB-908 (Gomez, Burke) - Disability compensation: family temporary disability insurance.

This bill increases the current 55% wage replacement rate for State Disability Insurance (SDI) and Paid Family Leave (PFL) programs to a minimum of 60% for most workers and to 70% for the lowest-wage workers. The bill eliminates a seven-day waiting period for PFL benefits and requires a study assessing the costs and benefits of modifying or eliminating the waiting period for SDI. The bill sunsets the increased wage replacement rates on January 1, 2022.

Status: Chapter 5, Statutes of 2016

AB-915 (Holden) - Public education employees: industrial accident or illness leaves of absence: travel restriction.

In general, employees who are receiving temporary disability benefits are not restricted in where they can travel while receiving those benefits. However, an obscure provision of law has allowed school districts and community college districts to refuse to allow K-12 and community college employees to travel outside the state while on temporary disability leave. This bill repealed that law, thereby treating these K-12 and community college employees the same as all other employees.

Status: Chapter 58, Statutes of 2015

AB-933 (Frazier) - Vehicles: DMV records.

As passed by the Assembly, this bill would have changed the way the DMV responded to requests from insurance companies and insurance agents seeking confirmation of policyholders' driving records. However, DMV voluntarily changed its policies in response to the bill, and the bill was later amended to address a non-insurance subject.

Status: *Died In Senate Rules Committee*

AB-944 (Obernalte) - Unemployment compensation benefits: hearing procedures.

Would have required Unemployment Insurance appeals to be conducted by telephone unless a party or representative requests otherwise.

Status: *Died in Assembly Insurance Committee*

AB-1072 (Daly) - Insurance: firefighters or police officers' benefit and relief associations.

This bill requires police and firefighter relief and benefit associations – organizations that look like insurance companies, and issue benefit contracts that look like insurance policies, but which are exempt from virtually all of the insurance laws of the state – to file an actuarial opinion with respect to long-term disability and long-term care benefit products that they sell to police and firefighter employees and their families.

The bill recognizes that information submitted by an organization pursuant to those provisions is proprietary and contains trade secrets.

It also requires the commissioner, if he or she determines that the laws governing these associations are inadequate to protect the interests of the members of the associations, to develop and deliver recommendations to the Assembly Committee on Insurance and the Senate Committee on Insurance regarding changes in the law necessary to protect the interests of members of the associations.

Status: *Chapter 503, Statutes of 2015*

AB-1124 (Perea) - Workers' compensation: prescription medication formulary.

This bill requires the Administrative Director of the Division of Workers' Compensation (AD) to establish a drug formulary on or before July 1, 2017. The AD must meet and consult with stakeholders prior to the adoption of the formulary and to update the formulary at least on a quarterly basis after the formulary is established. The bill also creates an independent pharmacy and therapeutics committee to review and consult with the AD in connection with updating the formulary.

Status: *Chapter 525, Statutes of 2015*

AB-1131 (Dababneh) - Insurance: electronic transactions.

This bill allows consumers who opt-in to receive notices and complete insurance transactions for life insurance products online. Notices and transactions that are less sensitive (e.g., renewals and minor policy changes) must comply with the standards contained in the Uniform Electronic Transactions Act. However, notices and transactions that are more sensitive (e.g., cancellations and non-renewals) must adhere to more stringent requirements including a requirement that the consumer acknowledge receipt of the document. The bill requires the Insurance Commissioner to report to the Legislature on the impact of authorizing electronic transactions and sunsets the ability to conduct electronic transactions on January 1, 2021.

Status: Chapter 638, Statutes of 2015

AB-1163 (Rodriguez) - Health care services plan and health insurers: agents and brokers: notice of contract changes.

This bill requires health care service plans to provide at least 45 days advance notice before making a material change to the terms and conditions of a contract with an insurance agent.

Status: Chapter 482, Statutes of 2015

AB-1170 (Alejo) - Workers' compensation.

This bill would have exempted agricultural employers, as defined, from the requirement to secure payment of workers' compensation and would have created the Pilot Program for the Care of Agricultural Workers. This bill would also have required the Administrative Director of the Department of Industrial Relations to evaluate the amount spent by agricultural employers on workers' compensation and the amount of money spent on workers' compensation medical coverage. The bill would have required that the amount that would otherwise have been spent by agricultural employers on workers' compensation medical coverage be placed in the Care of Agricultural Workers Fund. This bill would have required that the fund be used to provide essential health benefits for agricultural workers. This bill would have required agricultural employers to deposit additional moneys into the Care of Agricultural Workers Fund, as determined necessary by the administrative director to provide essential health benefits.

Status: Died in Assembly Insurance Committee

AB-1232 (Cristina Garcia) - Insurance Commissioner: administrative hearings.

This bill would have allowed insurance agents the option to have an administrative hearing conducted by either the Office of Administrative Hearings or an administrative law judge appointed by the Insurance Commissioner. The bill allows the Insurance Commissioner to make the choice of forum if the agent does not indicate a preference. The bill would have required the Insurance Commissioner to report to the Legislature on

the allocation of cases for 3 years.

Status: *Vetoed*

Governor's Veto Message:

This bill provides a person who has been denied a license as an insurance agent, broker, or solicitor an additional option to request a hearing from the Department of Insurance Administrative Hearing Bureau.

This bill would create a redundancy in government and removes an impartial body from the appeal process when no demonstrable problem has been proven to exist. The current process, which allows an applicant to request a specific hearing date from the Office of Administrative hearing, appears to be sufficient.

AB 1244 (Gray and Daly) – Workers' compensation fraud

This bill requires the suspension, and potentially the revocation, of the privilege of a health care provider to treat workers' compensation patients if the provider is found to have committed fraudulent practices in other health care systems, such as MediCal or medicare. The bill establishes standards and procedures to implement the requirements that the privilege to treat can be suspended or revoked.

Status: *Chapter 852, Statutes 2016*

AB-1245 (Cooley) - Unemployment insurance: electronic reporting and funds transfers.

This bill requires all employers to electronically file reports and unemployment insurance premiums with the Employment Development Department. Employers who fail to comply with this requirement are subject to a penalty of \$50.

Status: *Chapter 222, Statutes of 2015*

AB-1406 (Gordon) - Insurance: bail licenses.

This bill would have required each surety insurer to pay a fee of \$15 per bail bond transaction. The fees would go to the Bail Investigation and Prosecution Fund to fund the reasonable costs incurred in regulating sureties and bail agents. If the Bail Investigation and Prosecution Fund balance exceeded \$8,000,000, then the commissioner would have to reduce the amount of the assessment.

Status: *Died in Assembly Appropriations Committee*

AB-1429 (Chiu) - Earthquake loss mitigation: grant programs.

This bill would have permitted California Residential Mitigation Program (CRMP), a joint powers authority of the California Earthquake Authority (CEA) and the Office of Emergency Services, to implement a grant program for the seismic retrofitting of small

multi-family buildings (between 5 and 10 units). These grants would only be available if the Legislature appropriated funds for that purpose.

Status: *Died in Senate Insurance Committee*

AB-1440 (Nazarian) - Earthquake loss mitigation: grant programs.

This bill would have permitted California Residential Mitigation Program (CRMP), a joint powers authority of the California Earthquake Authority (CEA) and the Office of Emergency Services, to implement a grant program for the seismic retrofitting of owner occupied, single family residences. These grants would only be available if the Legislature appropriated funds for that purpose.

Status: *Died in Senate Insurance Committee*

AB-1451 (Chávez) - Workers' compensation: public employees.

This bill would have extended the special peace officer and firefighter leave of absence entitlement to lifeguards employed year round on a regular, full-time basis by the City of Oceanside.

Status: *Vetoed*

Governor's Veto Message:

This bill adds full-time lifeguards employed by the City of Oceanside to the list of employees who are entitled up to one year of leave, paid at full salary without payroll tax deductions, if they suffer an illness or injury that arises out of their job duties.

Recent data indicates public employers' costs related to this disability leave benefit have increased at an alarming rate. These cost figures give me pause to extend this benefit further in state law. If the City of Oceanside wishes to offer full salary in lieu of temporary disability for one year to their regular full-time lifeguards, they are free to do so by means of the collective bargaining process. Eligibility for this benefit is best left to the City of Oceanside, not the state, to determine.

AB-1492 (Gatto) - Forensic testing: DNA samples.

This bill originally addressed an Insurance Code provision that bars the offer of "free insurance" as an inducement to make a purchase. However, that language was amended out of the bill, and language unrelated to insurance was added.

Status: *Chapter 487, Statutes of 2015*

AB-1511 (Santiago, Chiu) - Insurance: reports.

This bill initially addressed the procedure for filing reports issued by government agencies that relate to insurance, where those reports are mandated to be filed with the

Legislature. However, the bill was amended in the Senate to address a subject unrelated to insurance, and the report filing language was deleted.

Status: Chapter 41, Statutes of 2016

AB-1512 (Committee on Insurance) - Insurance: notice of lapse.

This bill clarifies the application of rules authorizing the designation of third party recipients to receive lapse notices in connection with employer-provided disability income insurance. Current law gives policyholders the right to designate a third-party who will receive a notice that the policy is about to lapse due to nonpayment of premium. This right must be detailed in the application form. The bill provides that there does not need to be this level of detail for disability income policies when the employer is providing the policy as a benefit, and is fully paying the premiums.

Status: Chapter 95, Statutes of 2015

AB-1513 (Committee on Insurance) - Workers' compensation: studies.

This bill initially addressed obsolete workers' compensation study requirements. However, it was amended in the Senate to address an unrelated subject, and the study provisions were deleted from the bill.

Status: Chapter 754, Statutes of 2015

AB-1514 (Committee on Insurance) - Employment Development Department Omnibus.

This bill is the Employment Development Department omnibus measure that contains a number of minor, non-controversial changes to the Unemployment Insurance Code.

Status: Chapter 224, Statutes of 2015

AB-1515 (Committee on Insurance) – Insurance Omnibus.

This bill is the annual Department of Insurance omnibus measure that contains a number of minor, non-controversial changes to the Insurance Code.

Status: Chapter 348, Statutes of 2015

AB-1542 (Mathis, Cooley) - Workers' compensation: neuropsychologists.

This bill would have provided that a person who is certified in neuropsychology by specified boards or organizations and was appointed as a qualified medical evaluator in neuropsychology before January 1, 2015, or who is a clinical psychologist licensed to practice in the state, holds a doctoral degree in psychology, and has at least 2 years of specified experience and training, may be appointed by the administrative director as a qualified medical evaluator in neuropsychology. The bill would also have provided that a medical doctor or osteopath who has successfully completed a residency program accredited by an organization that is a predecessor to the Accreditation Council for Graduate Medical Evaluation and is recognized by the administrative director would satisfy the residency training requirement. (See also AB 2086.)

Status: *Vetoed*

Governor's Veto Message:

This bill requires the Division of Worker's Compensation to appoint qualified clinical neuropsychologists as Qualified Medical Examiners.

This bill undermines the Division of Workers' Compensation's authority to apply consistent standards when it determines eligible medical specialties for the Qualified Medical Evaluator panel. The Division is not in the position to determine the validity of a physician's qualifications. That power resides with the physician's licensing board. If the Board of Psychology believes there is value in recognizing neuropsychology as a subspecialty, it should do so.

AB-1643 (Gonzalez) - Workers' compensation: permanent disability apportionment.

This bill would have prohibited apportionment of permanent disability from being based on pregnancy, osteoporosis, carpal tunnel syndrome, or menopause. The bill would have also prohibited apportionment in the case of a psychiatric injury if a prior psychiatric injury was caused by pregnancy, osteoporosis, carpal tunnel syndrome or menopause. The bill would have also provided that the impairment ratings for breast cancer shall in no event be less than comparable ratings for prostate cancer.

Status: *Vetoed*

Governor's Veto Message:

This bill prohibits apportionment in cases of physical injury based on pregnancy, menopause, osteoporosis, and carpal tunnel syndrome and requires that breast cancer not be less than the comparable impairment rating for prostate cancer.

I am vetoing this bill for many of the same reasons that I returned a similar measure, AB 305, last year. This bill is poorly drafted and reflects a seriously flawed understanding of both the workers' compensation system and the nature of physical disability that may result from a work-related injury. The bill would, among other provisions, mandate that impairment ratings for breast cancer be no less than the ratings for prostate cancer. It would also create broad gender-based exceptions to the core principle of apportionment: that employers are liable only for the permanent disability directly caused by their employee's work-related injury.

This measure seeks to draw a false comparison between disability ratings resulting from

prostate and breast cancers, notwithstanding that these organs neither perform analogous physiological functions nor do their treatments result in similar physical limitations. There is a wide disparity in impairment levels that may result among individual women diagnosed with breast cancer and individual men diagnosed with prostate cancer, and individuals of all genders diagnosed with any form of cancer, depending on the stage at which the cancer was diagnosed, the nature of the treatment, and the degree and process of recovery. The suggestion that these two very different conditions should be rated equivalently in all cases has no basis in medical fact and upends the goals of ensuring consistency, uniformity and objectivity in ratings supported by substantial medical evidence.

On the issue of apportionment, this bill creates broad, gender-based exceptions to the rule that employers are liable only for the percentage of permanent disability directly caused by a work-related injury. As written, the bill would prohibit apportionment to, and thus require employers to pay for, a permanent disability that actually resulted from pregnancy or menopause, or from osteoporosis or carpal tunnel syndrome where these are preexisting conditions or unrelated to work.

As I said last year, there is no place for gender discrimination in the workers' compensation system. Current law, however, already prohibits apportionment to risk factors, including gender, age, and family history. There is ample opportunity within the workers' compensation adjudicatory process for workers, their counsel, and others to raise any concerns or allegations of improper and impermissible gender discrimination in the medical evaluation or apportionment process.

California's workers' compensation system strives to treat all injured workers fairly and to ensure that all workers, regardless of gender, are adequately compensated for any permanent disability directly caused by work-related injuries. Rather than promoting equality, the statutory changes proposed by this measure would create new gender-based classifications and spur additional and costly litigation, undermining the successful reforms enacted in 2012 and the sustainability of the system.

I urge proponents of this bill to support efforts to educate medical evaluators on current laws prohibiting bias and to collaborate with my administration.

AB-1645 (Dababneh) - Mortgage guaranty insurance.

Several years ago, a law was enacted that temporarily repealed several obscure financial requirements that had been placed on mortgage guaranty insurers. The repeal of those financial requirements was "temporary" because that law contained a sunset provision. The sunset provision was added to that law so that the financial

requirements would automatically be reinstated if, in the intervening time period, it became apparent that the original requirements should not have been repealed. Since it is now clear that repeal of the obscure requirements was the proper course, this bill repeals the sunset provision, thereby retaining the financial rules adopted by SB 1450 (Calderon) in 2012.

Status: Chapter 62, Statutes of 2016

AB-1885 (Waldron) - Title and escrow services: authorization to transact business.

This bill would have extended the maximum amount of time permitted for an extension of the deadline to submit an audit to 90 days.

Status: Died in Assembly Insurance Committee

AB-1899 (Calderon) - Insurance: production agents: license examinations.

This bill requires the examination for a license as a life agent, life-only agent, and accident and health agent be provided in Spanish. This requirement sunsets on January 1, 2024. The Insurance Commissioner is required to evaluate the qualifying examination taken in Spanish and submit a report to the Legislature by March 1, 2023.

Status: Chapter 560, Statutes of 2016

AB-1913 (Baker) - Veterans: Employment Development Department.

This bill would have required the Employment Development Department, upon request of the local county veterans service officer, to provide training to the county veterans service officer and his or her staff in providing assistance to veterans applying for unemployment insurance benefits. The Employment Development Department would also have been required to establish a system to refer veterans to county veterans service officers for purposes of determining eligibility for other veterans benefits.

Status: Died in Assembly Appropriations Committee

AB-1922 (Daly) - Workers' compensation policies.

This bill would have adopted a statutory exemption to recently adopted Department of Insurance regulations that mandated the filing of a broad range of workers' compensation documents that are entered into by insurers and large employers with respect to "large deductible" workers' compensation policies. The exceptions would have eliminated the need to file certain financial agreement between the insurer and policyholder that do not affect coverage if the employer is a "large employer," as defined.

Status: Vetoed

Governor's Veto Message:

This bill exempts large employers who purchase high deductible policies from workers' compensation insurance policy filing requirements.

I am supportive of efforts to increase the ability of insurance carriers to efficiently conduct their business. This bill, however, reverses Department of Insurance regulations that have been in effect less than six months. These regulations are designed to promote consumer protection and transparency. Let's allow time for them to work.

AB-2086 (Cooley, Mathis) - Workers' compensation: neuropsychologists.

This bill would have provided that a person who is certified in neuropsychology by specified boards or organizations and was appointed as a qualified medical evaluator in neuropsychology before January 1, 2015, or who is a clinical psychologist licensed to practice in the state, holds a doctoral degree in psychology, and has at least 2 years of specified experience and training, may be appointed by the administrative director as a qualified medical evaluator in neuropsychology. The bill would also have provided that a medical doctor or osteopath who has successfully completed a residency program accredited by an organization that is a predecessor to the Accreditation Council for Graduate Medical Evaluation and is recognized by the administrative director would satisfy the residency training requirement. The bill would have taken effect immediately as an urgency statute.

Status: *Vetoed*

Governor's Veto Message:

This bill requires the Division of Worker's Compensation to appoint qualified clinical neuropsychologists as Qualified Medical Examiners (QMEs).

I have the same concerns with this bill as with its predecessor, AB 1542, which I vetoed last year. The changes contemplated by this bill relate to legal evaluations, not medical treatment of injured workers as suggested by the declaratory text of the measure. If enacted, the bill would create a unique lower standard for a select group of providers with a direct financial interest in being appointed as QMEs in California's workers' compensation system.

In addition to increasing benefits and stabilizing costs, the 2013 workers' compensation reforms were intended to return medical treatment decisions to doctors and reduce the

excessive litigation relating to medical treatment disputes. Treatment of injuries by neuropsychologists where medically appropriate as determined by injured workers' physicians will be unchanged by a signature or veto of this measure. However, a signature would be a step backwards in the ongoing efforts to reduce unnecessary costs that do not benefit injured workers.

AB-2161 (Quirk) - Parking lots: design: insurance discount.

Authorizes an insurer to consider the installation of vehicle barriers as a safety measure and would authorize an insurer to provide or offer a discount on the property owner's insurance covering damage or loss to the covered commercial property or liability arising out of the ownership, maintenance, or use of the commercial property relative to the reduced risk of installation of the barriers. Requires that any discounts be determined to be actuarially sound and approved by the Insurance Commissioner prior to their use.

Status: Chapter 73, Statutes of 2016

AB-2197 (Cristina Garcia) - Unemployment insurance: classified employees.

The bill would have required that classified school employees be provided Unemployment Insurance Compensation benefits between academic years if they are not otherwise employed. The duration of benefits would have been up to 8 weeks phased in over a 4-year timeframe contingent on funds being appropriated for that purpose in the annual Budget Act.

Status: Vetoed

Governor's Veto Message:

This bill allows classified school employees to collect unemployment insurance benefits between school years.

This bill creates several conformity issues with the federal Unemployment Insurance laws, which could result in sanctions from the federal government, including the loss of significant tax credits for California's employers.

AB-2230 (Chu) - Workers' compensation: language interpreters.

This bill as passed by the Assembly addressed language interpreters in the workers' compensation system. However, that subject was deleted from the bill in the Senate, and non-insurance issues were amended into the bill.

Status: Chapter 314, Statutes of 2016

AB-2354 (Calderon) - Vehicle service contracts.

This bill adds to the definition of a "vehicle service contract" an agreement, that promises the replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen, and an agreement covering any of the vehicle's mechanical components, provided with or without separate consideration, that promises to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft, conditioned upon the use of a specific brand or brands of lubricant, treatment, fluid, or additive.

The bill also specifies that an agreement whereby an employer promises, or a third party contracted by the employer and acting on the employer's behalf provides, mileage reimbursement or routine vehicle maintenance or noncollision repairs, or any combination of these benefits, to the employer's employees for personal vehicles used in the employer's business is not insurance, and makes other technical and conforming changes to the Vehicle Service Contract Law.

Status: Chapter 386, Statutes of 2016

AB-2366 (Dababneh) - Long-term care insurance.

This bill clarified the requirement that an insurer offer the holder of a long-term care insurance policy any new LTC products developed by the insurer. The insurer is only required to offer the new product if it contains significant new benefits.

Status: Chapter 573, Statutes of 2016

AB-2407 (Chávez) - Workers' compensation.

This bill would have mandated that, if the employee's injury affects his or her back, a physician or other medical provider assess the employee's level of risk for chronic back pain and whether he or she meets the criteria for a surgical consultation, and would have set forth the treatments that may be deemed appropriate after the assessment.

Status: Died in Assembly Insurance Committee

AB-2449 (Eggman) - Insurance: bail licenses.

This bill would have increased the licensing fees charged to bail agents and would have required each surety insurer to pay a \$10 bail transaction fee. The revenue generated by these new fees would go to the Bail Investigation and Prosecution Fund to fund increased enforcement of the laws governing bail agents and sureties.

Status: Died in Assembly Insurance Committee

AB-2474 (Mullin) - Automobile insurance: personal vehicle sharing.

This bill would have changed the requirements for personal motor vehicle sharing services by eliminating the requirement for the service to install hardware on the shared vehicle and to allow the vehicle to be returned to a place mutually agreeable to the owner and user of the shared vehicle.

Status: *Died in Assembly Insurance Committee*

AB-2493 (Atkins) - Firefighters: disability.

This bill would have made all rank-and-file and supervisory firefighters employed by the Department of Forestry and Fire Protection, whose principal duties include active fire suppression or prevention services, entitled to an enhanced temporary disability benefit that peace officers and local government firefighters receive.

Status: *Vetoed*

Governor's Veto Message:

This bill grants to the Department of Forestry and Fire Protection firefighters up to one year of "4800 time" disability leave paid at full salary and tax-free. This policy results in higher take home pay than pre-injury wages.

As stated in my veto of AB 1451 last year, costs go up significantly when this benefit is extended to new classes of employees. The state now faces over \$200 billion in unfunded pension and health liabilities. Since 2011 the costs for all this has increased by nearly \$5 billion per year-a 59 percent increase.

In light of these huge commitments, I am reluctant to extend this disability benefit at all-let alone through legislation outside the bargaining process.

AB-2503 (Obernalte) - Workers' compensation: utilization review.

This bill requires a physician providing treatment to an injured worker to send any request for authorization for medical treatment, with supporting documentation, to the claims administrator for the employer, insurer, or other entity according to rules adopted by the administrative director.

Status: *Chapter 885, Statutes of 2016*

AB-2577 (Chu) - Workers' Compensation: respiratory illness: presumption.

This bill would have provided that in the case of specified active firefighting members, peace officers, and others, a respiratory illness or disease, including, among other

things, occupational asthma and chronic obstructive pulmonary disease, is presumed to arise out of and in the course of employment, unless the presumption is controverted.

Status: *Died in Assembly Insurance Committee*

AB-2588 (Chu) - Independent insurance adjusters.

This bill would have replaced the current requirement that an independent adjusting business be licensed by the Department of Insurance with a requirement that each individual engaged in the practice of independent adjusting be licensed. The bill would also have created a license requirement for apprentice independent adjusters and modified the rules governing the issuance of a California license to individuals licensed in other states.

Status: *Vetoed*

Governor's Veto Message:

This bill requires unlicensed individuals employed by entities with a "company license" to obtain their own separate independent insurance adjuster licenses.

I am not convinced that an overhaul of the current licensing system is warranted. If a need can be demonstrated that individual licensure of these individuals is necessary, I would be willing to consider such an approach.

AB-2591 (Dababneh) - Insurance: electronic transmission.

This bill allows consumers who opt-in to receive notices and complete insurance transactions for property/casualty products online. Notices and transactions that are less sensitive (renewals and minor policy changes) must comply with the standards contained in the Uniform Electronic Transactions Act. However, notices and transactions that are more sensitive (cancellations and non-renewals) must adhere to more stringent requirements including a requirement that the consumer acknowledge receipt of the document. The bill requires the Insurance Commissioner to report to the Legislature on these electronic transactions and sunsets the ability to conduct electronic transactions on January 1, 2021.

Status: *Chapter 617, Statutes of 2016*

AB-2710 (Cooley) - Insurance: California Insurance Guarantee Association: premium charges.

This bill provides that provisions denying CIGA a cause of action against insureds does not limit CIGA's right to pursue unpaid reimbursements owed by an employer pursuant

to a workers' compensation insurance policy with a deductible if the employer was obligated to reimburse the insurer for benefits payments and related expenses paid by the insurer or CIGA from a special deposit or from other CIGA funds pursuant to the terms of the policy and related agreements. This bill modifies the existing rules governing the assessment of member insurers and provides for the refund of excess premium charges. No longer requires an insurer to become insolvent in order for CIGA to collect premium payments from the member insurers and would require CIGA to collect premiums in order to secure funds for the payment of its administrative expenses.

Status: Chapter 137, Statutes of 2016

AB-2728 (Atkins) - Insurance: community development investments.

This bill would have extended the authorization of a tax credit and certification program by the California Organized Investment Network until January 1, 2018.

Status: Vetoed

Governor's Veto Message:

Governor's veto message: To the Members of the California State Assembly:

I am returning the following seven bills without my signature:

Assembly Bill 717
Assembly Bill 724
Assembly Bill 1561
Assembly Bill 2127
Assembly Bill 2728
Senate Bill 898
Senate Bill 907

Each of these bills creates a new tax break or expands an existing tax break. In total, these bills would reduce revenues by about \$300 million through 2017-18.

As I said last year, tax breaks are the same as new spending -- they both cost the General Fund money. As such, they must be considered during budget deliberations so that all spending proposals are weighed against each other at the same time. This is even more important when the state's budget remains precariously balanced.

Therefore, I cannot sign these measures.

AB-2848 (Brown) - Insurance.

This bill would have required the Department of Insurance to develop rules and regulations governing insurance policies including both life and long-term care benefits.

Status: *Died in Assembly Insurance Committee*

AB-2883 (Committee on Insurance) - Workers' compensation: utilization review.

This bill re-defines the scope of "employees" who are authorized to elect to waive workers' compensation coverage, and establishes the procedures that must be followed if these authorized employees choose to opt out of coverage. The bill also makes technical and clarifying changes to the provision excluding specified persons from the definition of employee.

Status: *Chapter 205, Statutes of 2016*

AB-2884 (Committee on Insurance) – Insurance Omnibus.

This bill is the annual Department of Insurance omnibus measure that contains a number of minor, non-controversial changes to the Insurance Code.

Status: *Chapter 304, Statutes of 2016*

AB-2885 (Committee on Insurance) - Insurance: low-cost automobile insurance program.

This bill would have made a number of minor, technical changes to the statutes governing the low-cost automobile insurance program.

Status: *Died on the Senate Floor*

AB-2886 (Committee on Insurance) - Disability benefits: appeals.

This bill extends the period to appeal a determination by the Employment Development Department regarding a State Disability Insurance claim from 20-30 days effective March 1, 2018. Any individual who submits an appeal prior to March 1, 2018 may be granted good cause extend the 20 day period to 30 days by the administrative law judge.

Status: *Chapter 276, Statutes of 2016*

AB-2887 (Committee on Insurance) - State Compensation Insurance Fund: out-of-state-risks.

This bill deletes a sunset clause on a provision of law that authorizes SCIF to cover out-of-state employees of an employer who is primarily a California employer.

Status: *Chapter 206, Statutes of 2016*

AJR-6 (Cooley) - California Earthquake Authority: postearthquake financing.

This resolution recognizes a need for federal legislation that would establish guarantees of post-earthquake financing for prequalified, actuarially sound state earthquake insurance programs, including the California Earthquake Authority, and would urge the President and Congress of the United States to enact that legislation.

Status: Chapter 83, Statutes of 2015

SB-335 (Roth) - Earthquake insurance.

This bill specifies that insurers must prorate earthquake insurance premium reductions based on seismic retrofitting to the date the inspection report is received by the insurer and deletes obsolete statutory provisions.

Status: Chapter 97, Statutes of 2015

SB-336 (Roth) - Earthquake insurance: rates.

This bill would have required the premium discount or credit for seismic retrofitting on California Earthquake Authority policies be at least 5%.

Status: Died in Assembly Insurance Committee

SB-426 (Leyva) - Annuities: cash surrender benefits.

This bill prohibits insurance companies from charging a surrender penalty on a death benefit and requires that the death benefit payment be at least equal to the annuity value upon death.

Status: Chapter 100, Statutes of 2015

SB-488 (Block) - Public insurance adjusters.

This bill more closely aligns California law with national licensing standards for public insurance adjusters. It includes enhanced consumer protections, better definitions for the conditions under which a public adjuster may contact consumers, and changes the notification requirement which allows consumers to cancel the services of a public adjuster in claims relating to a catastrophic disaster.

Status: Chapter 833, Statutes of 2016

SB-542 (Mendoza) - Workers' compensation: medical provider networks fee schedules.

This bill makes a number of technical and clarifying changes to the workers' compensation laws.

Status: Chapter 542, Statutes of 2015

SB-559 (Block) - Workers' compensation: public employees.

This bill would have extended the special leave of absence entitlement enjoyed by peace officers and firefighters to lifeguards employed year round on a regular, full-time basis by the City of Imperial Beach.

Status: *Died in Assembly Insurance Committee*

SB-560 (Monning) - Licensing boards: unemployment insurance.

This bill requires a Department of Consumer Affairs licensing board to submit personal information regarding licensees to the Employment Development Department, and authorizes the enforcement division of EDD to enforce the obligation to secure the payment of valid and current workers' compensation insurance.

Status: *Chapter 389, Statutes of 2015*

SB 563 (Pan) – Utilization review

This bill would have restricted the compensation options for utilization review entities by banning compensation based on denials or cost-savings. (Its provisions were amended into SB 1160, below.)

Status: *Died in Assembly Insurance*

SB-575 (Liu) – Long-Term Care Insurance.

This bill provides periodic notification of any available residual benefits to consumers with long-term care insurance that have lapsed. This notice makes it less likely that policyholders and their families will lose track of any residual benefits. Periodic notification is particularly important if the policyholder suffers from cognitive impairment.

Status: *Chapter 544, Statutes of 2015*

SB-585 (Leyva) - Insurance payments: interception.

This bill would have established a program requiring insurers making payments to payees with outstanding child support obligations to provide notice to the Department of Child Support Services. The bill would have authorized the Insurance Commissioner to impose a fine, not to exceed \$1,000, upon for each violation if an insurer violates the bill's requirement to provide claim data.

Status: *Died in Assembly Insurance Committee*

SB-602 (Monning) - Seismic safety: California Earthquake Authority.

This bill would have allowed the California Earthquake Authority to provide loans to homeowners for financing residential seismic retrofitting projects that meet approved

engineering guidelines. The bill provided that the loan would become a lien on the property and allow homeowners to make loan payments through existing property tax collection mechanisms. The lien would "run with the land," staying with the property upon sale.

Status: *Died in Assembly Appropriations Committee*

SB-623 (Lara) - Workers' compensation: benefits.

This bill provides that a person shall not be excluded from receiving benefits under the Uninsured Employers Fund or the Subsequent Injuries Benefits Trust Fund based on his or her citizenship or immigration status, and declares that these provisions are declaratory of existing law.

Status: *Chapter 290, Statutes of 2015*

SB-667 (Jackson) - Disability insurance: eligibility: waiting period.

This bill waives the 7-day waiting period for State Disability Insurance benefits if the individual has already served the 7-day waiting period for the initial claim and the individual files a claim for the same or a related condition within 60 days of the end of the initial benefit period. Requires the director to submit a report regarding the effect of the modified waiting period to the Legislature on or before January 1, 2020

Status: *Chapter 357, Statutes of 2015*

SB-696 (Roth) - Insurance: principle-based valuation.

This bill allows life insurers to use the "principle-based reserving" (PBR) methods developed by the National Association of Insurance Commissioners to establish the reserve requirements for certain life insurance products. The bill also allows the Insurance Commissioner to impose an annual assessment on each insurance company to pay for the costs of overseeing the implementation of PBR. The bill requires that the Insurance Commissioner certify that the oversight resources required to oversee PBR are available and sufficient before the law becomes effective.

Status: *Chapter 658, Statutes of 2015*

SB-897 (Roth) - Workers' compensation.

This bill would have allowed certain employees of local agencies, including police officers, firefighters, and sheriffs, an additional year of special leave of absence benefits without loss of salary when injured by a "catastrophic injury" at the hands of another.

Status: *Vetoed*

Governor's Veto Message:

This bill doubles from one to two years special leave benefits for police officers, firefighters, or sheriffs who are disabled by a qualifying catastrophic injury. This leave is

required to be provided at full salary and tax-free, resulting in take home pay that is higher than pre-injury wages.

I was concerned when told this bill was prompted by a City of Riverside police officer who nearly lost his health benefits while on temporary disability. In that case, the City chose to extend the officer's benefits. Upon closer review, I have not found any other city which terminates the health benefits of police officers while they are on temporary disability.

As noted in my veto of AB 1451 last year, this disability leave benefit drives up costs significantly. Many local agencies are under significant financial stress. They must consider employee benefit increases in light of competing demands for critical services and long term pension and health care debts.

In light of all this, I believe the decision on how to handle cases such as this is best left to the local jurisdiction.

SB-914 (Mendoza) - Workers' compensation: medical provider networks: independent medical reviews.

This bill deletes obsolete references to the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines as standards for independent medical reviews, and makes additional technical, nonsubstantive changes.

Status: Chapter 84, Statutes of 2016

SB-924 (Roth) - Insurance: annuity transactions.

This bill requires life insurance agents to ask if a consumer intends to apply for means-tested government benefits when collecting information to determine the suitability of a life insurance product.

Status: Chapter 148, Statutes of 2016

SB-1091 (Liu) - Long-term care insurance.

This bill defines "alternate plan of care" for the purposes of long-term care insurance policies. "Alternate plan of care" provisions allow for coverage of services not explicitly included in the long-term care policy. The bill requires that any "alternate plan of care" must be proposed by a qualified health care practitioner and must be agreeable to both the consumer and the insurer before it is implemented. An insurer that rejects a proposed "alternate plan of care" must provide a written explanation of the denial. The bill only applies to long-term care insurance policies issued on or after January 1, 2017.

Status: Chapter 589, Statutes of 2016

SB 1160 (Mendoza) – Workers’ compensation; utilization review and liens

This bill makes substantial changes in two areas of workers’ compensation law. First, subject to listed exceptions, the bill prohibits utilization review in the first 30 days after injury for accepted workplace injuries, where the treating physicians are either predesignated by the injured employee, a member of a medical provider network, or otherwise under the control of the employer. Second, the bill strictly limits the use, and financing of, liens as the basis to pay providers for medical treatment services for injured employees. The bill includes a number of conforming and implementing provisions to execute these primary purposes.

Status: Chapter 868, Statutes 2016

SB-1175 (Mendoza) - Workers’ compensation: requests for payment.

This bill requires, for medical services or medical-legal expenses provided on or after January 1, 2017, that requests for payment with an itemization of services provided and the charge for each service be submitted to the employer within 12 months of the date of service or within 12 months of the date of discharge for inpatient facility services. The bill also provides that requests for payment and bills for medical-legal charges are barred unless timely submitted, and requires the administrative director to adopt rules to implement the 12-month limitation period.

Status: Chapter 214, Statutes of 2016

SB-1302 (McGuire) - Basic property insurance: California FAIR Plan.

This bill increases the level of support insurance agents and brokers are required to provide to a homeowner who has been denied homeowner's insurance coverage and makes minor, technical changes to the statutes governing the California FAIR Plan.

Status: Chapter 543, Statutes of 2016

SB-1384 (Liu) - California Partnership for Long-Term Care Program.

This bill requires the California Partnership for Long-Term Care to allow insurers to offer long-term care policies at a lower-priced option in addition to the 5% inflation escalator policy currently issued, permits participating insurers to offer home care coverage only policies, and creates a task force to provide advice and assistance in implementing reforms to the California Partnership for Long-Term Care.

Status: Chapter 487, Statutes of 2016

SB-1451 (Mendoza) - State Compensation Insurance Fund: executive and management appointments.

This bill would have authorized the SCIF board of directors to appoint additional executive and management exempt positions deemed appropriate by the board. The bill would have limited the number of additional appointed positions to 8 senior management employees in the areas of underwriting, technology, claims, finance, and

actuary, and no more than 2 of those positions could have been filled with licensed attorneys.

Status: Vetoed

Governor's Veto Message:

This bill grants the State Compensation Insurance Fund Board authority to appoint and set the salary for up to eight additional senior management positions.

Under limited circumstances it has been necessary for state agencies to have salary setting authority for certain positions. I'm not convinced this authority is justified in this instance.

2015-2016

Appendix 1- 4

- Appendix 1 - Joint Oversight Hearing of the Senate Labor and Industrial Relations Committee and Assembly Insurance Committee on the Creation of the Workers Compensations' Formulary.**
- Appendix 2 - Letter to Insurance Commissioner, Dave Jones, regarding auto body repair and costs regulations.**
- Appendix 3 - Letters to Insurance Commissioner, Dave Jones and Director of Industrial Relations, Christine Baker regarding regulations regarding use of the groups in Automobile Insurance Rating under Proposition 103, dated June 10, 2016.**
- Appendix 4 - Letter to Insurance Commissioner, Dave Jones regarding regulations regarding use of groups in Automobile Insurance Rating under Proposition 103, dated June 1, 2015**

APPENDIX 1



ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

*Implementing AB 1124 (2015): A Joint Oversight Hearing of the Senate
Labor and Industrial Relations Committee and Assembly Insurance
Committee on the Creation of a Workers' Compensation Formulary*

March 2, 2016 at 10:00 A.M.
State Capitol, Room 437

1) Welcome and Introductory Remarks

Senator Tony Mendoza, Chair Labor & Industrial Relations Committee
Assemblymember Tom Daly, Chair Insurance Committee

2) By the Numbers: Workers' Compensation Formularies in Other States

Alex Swedlow, California Workers' Compensation Institute

3) Administration Update on the Implementation of the Formulary

Christine Baker, Department of Industrial Relations
George Parisotto, Acting Administrative Director Division of Workers'
Compensation
Dr. Ray Meister, Medical Director Division of Workers' Compensation

4) Stakeholder Perspectives on a Workers' Compensation Formulary

Bernardo de la Torre, Legislative Chair,
California Applicants Attorneys Association
Mitch Seaman, Legislative Advocate, California Labor Federation
Martin Brady, Executive Director, School Insurance Authority
Amy Durbin, Legislative Advocate, California Medical Association
Jeremy Merz, California Chamber of Commerce
Dr. Ray Tan, Director of Pharmacy, Zenith Insurance

5) Public Comment

**Implementing AB 1124 (2015):
A Background Paper on Creating a Formulary for California's Workers' Compensation**

*A Joint Hearing of the Senate Committee on Labor and Industrial Relations
and the Assembly Committee on Insurance*

March 2, 2016

Since 1913, California's workers' compensation system has attempted to provide an equitable balance between the needs of California's injured workers and employers. At the core of this balancing act is what is colloquially referred to as the 'grand bargain': injured workers receive necessary treatment (and an award if the injury is permanent), but lose the right to sue---meaning workers' compensation becomes the exclusive remedy for all workplace injuries. Employers, on the other hand, do not need to worry about workplace injury liability in the courts, but they are liable for the medical treatment for injured workers (as well as a permanent disability indemnity award if the injury is serious).

While the system generally succeeds in providing that equitable balance for most injured workers and employers, few stakeholders would argue that that the system is an unqualified success for all of California's injured workers. One area of significant strain and disputes is in the provision of pharmaceuticals in the workers' compensation system. *The purpose of this backgrounder is to give a brief overview of formulary systems and the requirements of AB 1124, which mandated the creation of a formulary for California's workers' compensation system.*

What is a Formulary?

A **formulary** is generally defined in the medical literature as a list of medications and related policies which is continually updated by experts, such as pharmacists and medical providers, and represents the most up-to-date knowledge of medical treatment and appropriate use of pharmaceutical products. Formularies are the norm in medical care delivery systems: Medicare and Medi-Cal have formularies, as do group health providers and single-payer healthcare systems internationally.

Formularies are used to place limits on the use of medications in order to avoid over-use, ensure that the use of medication matches the latest in medical literature, promote optimal outcomes, and cost-effectiveness. However, formularies are not simply arbitrary limits on drug use. Formularies must be broad enough to provide drug treatment options when they are available, and formulary decisions are guided substantially by the scientific evidence regarding the effectiveness of individual drugs (typically through a review by qualified professionals on a pharmacy and therapeutics committee).

Another potential area of savings is ensuring that the lowest cost version of a specific drug is utilized. For instance, the California Workers Compensation Institute (CWCI) looked at the range of pricing for three of the most commonly prescribed drugs in California's workers compensation system and found variations in prices for those drugs as follows:

- For hydrocodone with acetaminophen 10-325 the average wholesale price (AWP) ranged from \$0.58 per pill to \$3.58 per pill.
- For ibuprofen 800 mg the AWP ranged from \$0.04 per pill to \$5.46 per pill.
- For gabapentin 300 mg the AWP ranged from \$0.12 per pill to \$3.80 per pill.

By driving prescribing to the lowest available cost of a specific drug, a formulary can realize significant savings **while providing the same treatment.**

Equally important, formularies allow medical providers and pharmacists to know what medicines will and will not be paid for, and for what conditions medicines are allowed, reducing friction and making it easy to provide medical services. **Formularies, therefore, hold the promise of both improving healthcare outcomes and reducing burdens for medical providers to provide care.**

California, however, does not have a formulary for its workers' compensation system. Not surprisingly, therefore, pharmaceuticals are significant point of friction in workers' compensation. For example, nearly half of all (42%) Independent Medical Review (IMR) medical disputes involve pharmaceuticals, dwarfing all other categories. These disputes delay medical treatment for injured workers, and are also time-consuming and expensive for both medical providers and payors.

Additionally, there are concerns with how pharmaceuticals are being utilized in the workers' compensation system. For example, between 2002 and 2013, the California Workers' Compensation Institute (CWCI) found that the prescribing of Schedule II Drugs, which include oxycodone, fentanyl and morphine, have grown to 7.3 percent of California workers' compensation prescriptions and 19.6 percent of California workers' compensation prescription dollars – a nearly 600% and 400% growth, respectively. As Schedule II pharmaceuticals like fentanyl can be more powerful than heroin, this growth is worrying for the long-term outcomes of California's injured workers, and raises concerns of dependence-causing drugs being improperly prescribed.

As was noted above, **a formulary has the potential to solve both issues. First**, a formulary provides a list of pharmaceutical products and when they can be used. This ensures that medicines are prescribed for medical, and not financial, purposes, and it ensures that the medicines are appropriately used. **Second**, when a medical provider utilizes the formulary, the payor knows why a particular medicine was used and why. This cuts down on medical disputes, ensuring that medical providers are paid and injured workers get the medicines they need.

Formularies in Texas and Washington:

Recent interest in a formulary for California's workers' compensation system intensified after a 2014 study by the California Workers Compensation Institute (CWCI), which projected savings between \$124 to \$420 million from California adopting a formulary similar to Texas or Washington. Both Texas and Washington adopted formularies in response to sustained, double-

digit growth in their workers' compensation prescription drug costs, and experienced significant declines in the use of opioids. However, both states have very different formularies.

Washington first launched its formulary in 2004 as a part of a larger initiative to control drug purchasing costs across state agencies. At its core, Washington has a short list of preferred drugs that can be prescribed or dispensed by a medical provider. If a medical provider wishes to prescribe something that is not on the list, he or she needs to seek prior authorization from the State of Washington. However, Washington also allows for physicians to write non-preferred drug class prescriptions if the physician has signed up to allow for drug substitution when medically appropriate.

Washington updates and maintains its formulary through the Pharmacy and Therapeutics Committee, which is composed entirely of physicians and pharmacists. The Committee looks at the safety, efficacy, and effectiveness of each drug and then makes a recommendation to the State of Washington. Public comment is also possible for interested stakeholders.

Texas, on the other hand, implemented its formulary in 2011. After looking at several formularies in other states, Texas decided to include all FDA approved drugs in its formulary. However, the guidelines for prescribing drugs were developed by Official Disability Guidelines (ODG), a private company that also developed Texas's medical treatment guidelines. ODG's drug guidelines classify each drug with either an 'N' or 'Y', with 'N' drugs requiring prior authorization. Updates to the formulary are automatically performed by ODG.

While both states developed very different formularies, they share several common traits. **First**, the legislatures in both states delegated the creation of the formulary to their respective workers' compensation administrative entities. **Second**, the final decisions for what drugs are pre-approved or not are decided by committees made up of pharmacists and medical providers. **Third**, the enacting statutes were largely conceptual and left the specifics to the regulatory process.

The Requirements of AB 1124 (Chapter 525, Statutes of 2015):

Last year, AB 1124 (Perea) was passed by the Legislature and signed by the Governor. The bill was the product of multiple stakeholder meetings attempting to find the appropriate balance between empowering the Division of Workers' Compensation (DWC) to create a formulary, yet also address stakeholder concerns on cost, drug access, and reducing medical dispute friction. The final version of the bill created a requirement for the DWC to create a formulary, effective July 1, 2017, but included several "safety valves". These included:

- Declaring the intent of the Legislature that the creation of the formulary be transparent, provide guidance on off-label dispensing, generic drugs, and pain management, as well as guidance on the use of the formulary to minimize administrative burdens and costs;
- Requiring that the formulary allows for variances if a preponderance of evidence suggests such a variance is medically necessary;

- Permitting the formulary to include a phased implementation for workers injured on or after July 1, 2017 to allow those workers to safely transition to medications on the formulary; and
- Requiring the DWC to meet and consult with workers' compensation stakeholders prior to the establishment of a formulary. The stakeholders include, but are not limited to, employers, insurers, private sector employee representatives, public sector employee representatives, treating physicians actively practicing medicine, pharmacists, pharmacy benefit managers, attorneys who represent applicants, and injured workers.

Following the example of Washington State, AB 1124 creates an independent Pharmacy & Therapeutics (P&T) Committee to update the formulary. The job of the P&T Committee is to review and consult with the Administrative Director on available evidence of the relative safety, efficacy, and effectiveness of drugs or a class of drugs in updating to the formulary. The Committee must consist of 7 members, including the Executive Medical Director of the DWC, and be a physician or pharmacist that is an expert in one of the following areas:

- a) Clinically appropriate prescribing of covered drugs;
- b) Clinically appropriate dispensing and monitoring of covered drugs;
- c) Drug use review; or
- d) Evidence-based medicine.

AB 1124 also requires the creation of a conflict-of-interest code for P&T Committee members and requires that the P&T Committee updates the formulary at least quarterly.

Ensuring the Appropriate Implementation of AB 1124:

Today's hearing is taking place a bit more than 15 months before a workers' compensation formulary must be effective in California. As such, it is an opportune moment for the Legislature to consider the progress of the DWC in creating a formulary that addresses the needs of the workers' compensation system's many stakeholders. Specifically, this oversight hearing will cover the following issues in detail:

- I. Looking at the experiences of other states to establish what California can expect with the creation of a formulary;
- II. Questioning the Administration on their progress in implementing a workers' compensation formulary, including their efforts in stakeholder outreach; and
- III. Hearing from a broad cross-section of stakeholders on the implementation of AB 1124 and the proposed formulary.

APPENDIX 2



ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

August 4, 2016.

The Honorable Dave Jones
California Insurance Commissioner
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Re: Auto body repair regulations

Dear Commissioner Jones:

We understand the Department of Insurance has been working on auto body repair regulatory proposals. It appears key stakeholders in the vehicle repair business – those making the repairs, and those paying for the repairs – have also been working together on these issues.

Therefore, we are proposing that the Department commit to not finalizing the draft regulations until January. With your commitment, we will block any last minute legislative attempt preempting the Department's regulatory process.

We believe this will allow stakeholders to have time to find an approach that serves consumers, avoids legal battles, and eliminates the risk of legislative action.

Please let us know at your earliest convenience if you agree with our recommendation.

Sincerely,

Tom Daly, Chair
Assembly Insurance Committee

Assemblymember Melissa A. Melendez
Vice-Chair

Assemblymember Frank Bigelow

Assemblymember Kansen Chu

Assemblymember Jim Cooper

Assemblymember Travis Allen

Assemblymember Ian C. Calderon

Assemblymember Ken Cooley

Assemblymember Matthew Dababneh

The Honorable Dave Jones

August 4, 2016

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Brian Dahle

Assemblymember Brian Dahle

Mike Gatto

Assemblymember Mike Gatto

Jim Frazier

Assemblymember Jim Frazier

Freddie Rodriguez
Assemblymember Freddie Rodriguez

APPENDIX 3



ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

June 10, 2016

The Honorable Dave Jones
Insurance Commissioner
State of California
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

Re: Workers' Compensation fraud

Dear Commissioner Jones:

Despite the expenditure of tens of millions of dollars annually over the past 2 decades, organized, sophisticated workers' compensation fraud appears to remain a deeply rooted, stubborn reality in the system. This fraud costs many hundreds of millions of dollars every year, and frequently results in substandard and even harmful treatment for injured workers. Solutions to the problem are not easy or obvious. However, it is clear that something is not working as well as it should.

To further the Legislature's efforts to understand and craft improvements to the anti-fraud program in workers' compensation, I am requesting that your Department provide me, by June 22, 2016, data and responses to the following:

1. Does the Department of Insurance (DOI) have dedicated staff or a program that analyzes workers' compensation claim and billing data for the purposes of identifying patterns or red flags to identify potential targets for further investigation of workers compensation provider fraud? If there is dedicated staff, what number and classification of staff are utilized and what is the total annual expenditure for those staff? If there is a formal program, describe the following:

- a. When was the program established?
- b. How does the program operate?
- c. What is the number and classification of PYs assigned full-time to this function?
- d. How many leads, for each of the past 4 years, that have resulted in a referral for investigation by Fraud Division peace officers or local law enforcement agencies.

2. Does the DOI and Division of Workers' Compensation (DWC) have a formalized relationship that coordinates data held by DWC and investigatory authority held by DOI for purposes of identifying and investigating organized workers' compensation fraud? If so, describe the relationship.

3. What percentage of DOI Fraud Division resources that are dedicated to workers' compensation fraud is devoted to:

- a. Investigation of referrals of suspected fraud from insurers or self-insured employers.
- b. Investigation of providers that have already been sanctioned for fraud or identified by other law enforcement or government agencies.
- c. Investigation of organized fraudulent activities based on suspicions referred by an outside governmental or non-governmental entity.
- d. Investigation of organized fraudulent activities based on leads generated by the Fraud Division.

4. For each of the past 4 years, what percentage of investigative resources dedicated to workers' compensation fraud have been devoted to:

- a. Claim fraud committed by individual claimants.
- b. Premium fraud committed by employers.
- c. Provider fraud.
- d. Other types of fraud (please identify what other types of fraud has been investigated).

5. For each of the past 4 years, what percentage of referrals to local prosecutors related to workers' compensation fraud has been based on:

- a. Claim fraud committed by individual claimants.
- b. Premium fraud committed by employers.
- c. Provider fraud.
- d. Other types of fraud (please identify what other types of fraud has been investigated).

6. Of the referrals noted in question 5, provide data concerning whether or not local prosecutors filed criminal or civil cases, and to the extent possible, the results of those filings.

7. Provide data concerning referrals to local prosecutors that have received funding via the DOI local assistance program, and referrals to local prosecutors that do not receive funding. Provide data comparing filing rates and results between the two classes of local prosecutors.

The Honorable Dave Jones

June 10, 2016

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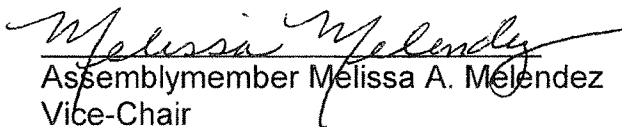

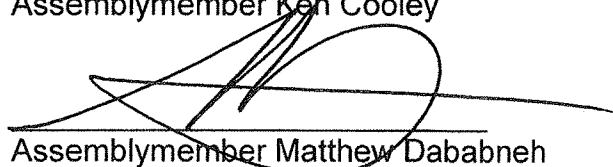
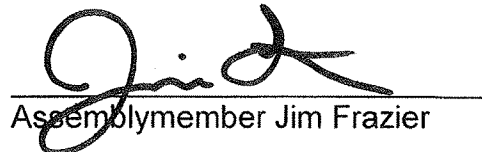
8. Does the DOI review or evaluate fraud detection, investigation, and prosecution strategies used in other state and federal insurance programs to determine if any of those strategies would be effective in workers' compensation? If so, are those reviews periodic or ongoing?

Thank you for your prompt attention to this request.

Sincerely,



Tom Daly, Chair
Assembly Insurance Committee
Assembly District 69


Assemblymember Melissa A. Melendez
Vice-Chair
Assemblymember Frank Bigelow
Assemblymember Kansen Chu
Assemblymember Jim Cooper
Assemblymember Brian Dahle
Assemblymember Travis Allen
Assemblymember Ian C. Calderon
Assemblymember Ken Cooley
Assemblymember Matthew Dababneh
Assemblymember Jim Frazier

Assembly
California Legislature



CHIEF CONSULTANT
MARK RAKICH
PRINCIPAL CONSULTANT
PAUL RICHES
COMMITTEE SECRETARY
TRACY AINSWORTH ELWELL

ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

June 10, 2016

Ms. Christine Baker
Director, Department of Industrial Relations
State of California
1515 Clay Street, 17th Floor
Oakland, CA 94612

Dear Director Baker:

Despite the expenditure of tens of millions of dollars annually over the past 2 decades, organized, sophisticated workers' compensation fraud appears to remain a deeply rooted, stubborn reality in the system. This fraud costs many hundreds of millions of dollars every year, and frequently results in substandard and even harmful treatment for injured workers. Solutions to the problem are not easy or obvious. However, it is clear that something is not working as well as it should.

To further the Legislature's efforts to understand and craft improvements to the anti-fraud program in workers' compensation, I am requesting that your Department provide me, by June 22, 2016, data and responses to the following:

1. Does the Division of Workers' Compensation (DWC) have dedicated staff or a program that analyzes workers' compensation claim and billing data for the purposes of identifying patterns or red flags to identify potential targets for further investigation of workers compensation provider fraud? If there is dedicated staff, what number and classification of staff are utilized and what is the total annual expenditure for those staff? If there is a formal program, describe the following:

- a. When was the program established?
- b. How does the program operate?
- c. What is the number and classification of PYs assigned full-time to this function?
- d. How many leads, for each of the past 4 years, that have resulted in a referral for investigation by the Department of Insurance (DOI) Fraud Division peace officers or local law enforcement agencies?

Ms. Christine Baker

June 10, 2016

Page 2

2. Does the DWC and DOI have a formalized relationship that coordinates data held by DWC and investigatory authority held by DOI for purposes of identifying and investigating organized workers' compensation fraud? If so, describe the relationship.

3. Whether or not there is a formalized analytic program for evaluating data, for each of the past 4 years how many cases have been referred by DWC to DOI for investigation by the DOI Fraud Division? Break out referrals to DOI by whether the referral was related to individual claimant fraud, organized provider fraud, or other fraud (and identify what other fraud was involved.)

4. Does the DWC review or evaluate fraud detection, investigation, and prosecution strategies used in other state and federal insurance programs to determine if any of those strategies would be effective in workers' compensation? If so, are those reviews periodic or ongoing, and, if relevant, what were the results?

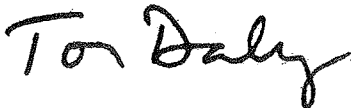
5. Does the DWC have an ongoing program to validate and/or improve the quality of claim and payment data reported by insurers and self-insured employers?

6. Do other governmental entities (primarily DOI and local prosecutors) involved in fraud detection, investigation, and prosecution have full access to DWC data sources? If so, how frequently is that access utilized? If not, is there a statutory obstacle to providing access?

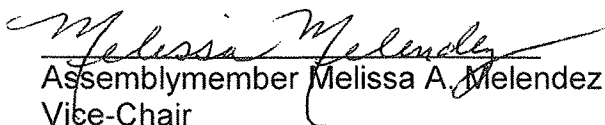
7. Does the DWC have any ongoing effort to develop a metric or metrics for the amount fraud that is occurring in the workers' compensation system, and development of system to use those metrics to evaluate the effectiveness of anti-fraud efforts?

Thank you for your prompt attention to this request.

Sincerely,



Tom Daly, Chair
Assembly Insurance Committee
Assembly District 69



Assemblymember Melissa A. Melendez
Vice-Chair



Assemblymember Travis Allen



Assemblymember Frank Bigelow



Assemblymember Ian C. Calderon

APPENDIX 4

Assembly
California Legislature



CHIEF CONSULTANT
MARK RAKICH
PRINCIPAL CONSULTANT
PAUL RICHES
COMMITTEE SECRETARY
TRACY AINSWORTH ELWELL

ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

June 1, 2015

The Honorable Dave Jones
California Insurance Commissioner
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Re: REGULATIONS REGARDING USE OF GROUPS IN AUTOMOBILE
INSURANCE RATING UNDER PROPOSITION 103

Dear Commissioner Jones:

As members of the Assembly Insurance Committee, we have become aware of a Department of Insurance proposal to regulate affinity group automobile insurance rates. Because we all have countless constituents who face losing their group discounts on their automobile insurance, we are writing to express our concerns about the merits of these proposed regulations.

For well over 20 years the Department has implemented the language of Proposition 103. Specifically, Insurance Code Section 1861.12 which provides, in part: "*Any insurer may issue any insurance coverage on a group plan, **without restriction as to the purpose of the group, occupation or type of group.***"

Currently, as Insurance Commissioner, you already have the authority to refuse to grant approval of a rate filing that does not meet the requirements of the law, and we would be concerned to learn that you have approved any group plans that do not comport with Section 1861.02.

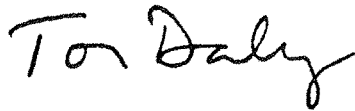
We fear that the proposed regulations could lead to costly litigation with no discernable consumer benefit. We foresee substantial risk of major disruptions to many of our constituents' discounts that you have already approved.

We understand that you may not agree with all of the policy judgments that were enacted by the voters in Proposition 103. There may be provisions in this 27-year old initiative statute that not all of us would adopt today. However, that is no justification to embark on this ill-conceived rulemaking effort.

The Honorable Dave Jones
June 1, 2015
Page Two

In summary, we urge you to reconsider moving forward with this proposed regulation because it is contrary to law, will result in unnecessary litigation expenses, and would be highly disruptive to our constituents insurance discounts as authorized by Proposition 103.

Sincerely,

A handwritten signature in black ink that reads "Tom Daly". The signature is written in a cursive, flowing style with a large, stylized "T" and "D".

Tom Daly, Chair