NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

State Assembly

Department of Insurance

Secretary of State

Affordable Care Act Repeal Underway

The week was dominated with both speculation and action on the possible immediate repeal of the Affordable Care Act, which appears to be the primary agenda item for the Republican-held Congress. Despite the repeated objections of Democratic Congress members over the fact that there does not yet appear to be a replacement plan for the sweeping healthcare law, Congress is moving forward with swift votes on a bill that would repeal it.

This week, President-elect Trump reiterated his plan to repeal and replace “Obama Care” at the first press conference he has held in over 100 days, without clarifying whether or not he will uphold his campaign promises to preserve Medicare or go forward with the ideas to preserve some of the most popular parts of the ACA. Additionally, the Senate also this week passed a measure that would serve as the first step towards formally dismantling the ACA, and which would allow for follow-up legislation and get around the threat of a filibuster by Senate Democrats. According to House Majority Leader Kevin McCarthy (R-Bakersfield), Republicans plan to get legislation to Trump voiding the Affordable Care Act and replacing parts of it by the end of February. Thursday's Senate procedural vote will set up special budget rules that will allow the repeal vote to take place with a simple majority in the 100-member Senate, instead of the 60 votes required to move most legislation.

Essentially this means that Republicans, who control 52 seats, can push through repeal legislation without Democratic cooperation. They're also discussing whether there are some elements of a replacement bill that could get through at the same time with a simple majority. But for many elements of a new healthcare law, Republicans are likely to need 60 votes and Democratic support. Increasing numbers of Republicans have expressed anxiety over obliterating the law without a replacement to show voters.

California certainly has the most to lose if the ACA is repealed. The state led the nation in the number of enrollments upon passage. Currently, 4.6 million Californians’ health coverage is funded by Obamacare. They either buy insurance plans through Covered California, or were able to join Medi-Cal, the state’s low-income health program, when the health law provided money to the state to expand the program in 2014. The California Finance Director says full unraveling of ACA could impact General Fund up to $17-20 billion and impact 4 million covered Californians. While California has its own statute to protect the ACA, the question is how would the state make up for that $17-20 million in funding? Speculations are abound about what will happen both on the federal and state level.

Official Legislative Information

Governor Brown Reveals State Budget Proposal

This week, Governor Jerry Brown introduced his budget proposal for the upcoming year, revealing a cautious spending plan bracing California for an upcoming deficit and an uncertain future under a new presidential administration.

Governor Brown has shown in previous years that he tends towards the more fiscally conservative side of Democratic values, and this budget is no different. Despite ongoing recovery and a continually growing economy, Governor Brown has prioritized careful spending and the creation of a rainy day fund that can only be used in times of economic difficulty. This has often put him into conflict with his Democratic colleagues in the State Legislature, many of whom wish to use those funds for programs and projects that were cut during the recession.

However during his budget presentation on Tuesday, Governor Brown stated that even though it appears as though California is still doing well financially, "The trajectory of revenue growth is declining." The state is projected to experience a $1.6 billion deficit by next summer, due to a large number of complex and conflicting factors. It is true that California's economy is still growing, with state revenue projected to be up by 3 percent next year thanks to increasing economic activity and a number of new taxes passed by voters, that growth is not as great as had been predicted in crafting the current budget. Spending was increased to match those projections, and costs were also higher than expected, meaning that if it continues on the current course the state will face a deficit.

In order to avoid such a deficit, Governor Brown's budget contains $3.2 billion in cuts to education, state building construction, college grants, and affordable housing. Educational spending will be reduced by $1.7 billion, taking it down to the minimum amount guaranteed by Proposition 98. This is a stark difference from the current budget, which allocated $3.6 billion in new optional spending and an additional $2.6 billion for the reserve. However those spending targets were not matched by tax revenues of all kinds, with revenue overall down by $5.8 billion from initial projections.

A notable presence in the budget proposal was the projected inclusion of $105 billion in support from the federal government to help fund California's Affordable Care Act exchange, Covered California. With the current actions being taken by Congress to swiftly dismantle the Affordable Care Act, it seems possible, if not likely, that that funding will be cut off, leaving California entirely responsible for Covered California's budget. The current budget proposal put forth by Governor Brown does not address that possibility or the enormous budget gap it would leave. Governor Brown stated that while he does not anticipate the funding being entirely cut off it is still a possibility that will have to immediately be addressed if it does happen. He also suggested that the Legislature should prepare for such an eventuality by spending wisely in the coming months, and reiterated the need for a rainy day fund. California's rainy day fund currently stands at $9 billion, enough to soften an economic downturn but certainly not an amount that could cover such a large break in funding.

There are two items of particular interest for the insurance industry in the budget proposal. For the overall Department of Industrial Relations Budget, including the Division of Workers' Compensation, the largest increase is within the Department of Labor Standards

Enforcement (DLSE) to provide more resources to the strategic enforcement effort to combat wage theft and other labor law violations, primarily in the janitorial, garment manufacturing, construction, agricultural, food processing, and restaurant industries. The majority of the funds for DLSE come from the Labor Enforcement and Compliance Fund which is funded through an employer assessment. There does not, at the present time, seem to be much concern from employers over the resources committee to the Department.

The California Department of Insurance has also requested a Special Fund expenditure of $586,000 for the 2017/2018 fiscal year and $570,000 fiscal year in order to create two positions in order address the lack of resources available for the review of complex predictive modelling. The use of models has increased greatly in recent years, spurred partially by the change to regulations in 2008 that allowed insurers to model their losses for earthquake losses and the fires that follow earthquakes. This caused many new modelled loss filings to be submitted, and as the review of models is a complex process there have not been enough staff available to adequately review them all. Expanding the CDI's budget will allow the department to train and hire staff to meet these needs without the use of outside consultants.

Questions About Insurance Intervention Process

Proposition 103, passed in 1988 as the "Voter Revolt to Cut Insurance Rates", was intended by its supporters to overhaul the way that insurance rates for home and auto insurance were regulated and instituted. One of the lesser-known provisions in this initiative, known as the intervenor process, allows for outside groups to not only challenge proposed insurance rates, but to also be reimbursed for the cost of doing so.

While this process did not initially draw a great deal of attention during the passage of the proposition, it has since become a large part of the process of establishing new insurance rates and has become a big business for many groups. The nonprofit group Consumer Watchdog routinely challenges new insurance rates, and in doing so has accrued nearly three quarters of the total $17.6 million of fees that has been given since 2003. This has led many to question whether or not the process actually helps keep rates lower for California consumers, or whether it has simply turned into a money-making process for outside groups.

Industry experts state that the intervenor process not only does not serve to lower insurance rates, it actually complicates the process so much that rates have increased as a result. The intervention of outside groups challenging proposed rates means that the negotiation process goes on longer and becomes more complicated than it would have otherwise, meaning that insurance rates end up higher than they would have been without the intervention. Bill Gausewitz, a former deputy insurance commissioner, stated that "They complicate the negotiations. I personally do not think anyone benefits from it except for the intervenors."

Consumer Watchdog, however, firmly believes that their role as intervenors has saved California ratepayers money. Supporters of the intervention process, which includes the office of the Insurance Commissioner, state that even though interventions only take place in less than 1 percent of rate filings they still play an important role in ensuring that consumers are fairly represented to insurance companies. While it is difficult to quantify the amount of money saved by consumers thanks to the intervention process, Consumer Watchdog claims that it has helped consumers to save $3.3 billion since 2003. Those who oppose intervention claim that there is no verifiable data to back these claims.

Staffing Overhaul in Speaker's Office

Major changes are coming to the structure of the state's Democratic caucus thanks to Assembly Speaker Anthony Rendon. Speaker Rendon has closed the Speaker's Office of Member Services, an office that provided support to Democratic Assembly members in the form of mail and communications. The Speaker has proposed to split the offices functions in two, separating out which parts are funded by the state and which are given campaign funds. The new state-funded office will be the "Democratic Office of Communications and Outreach," while campaign funds will be used to pay for the use of political staff.

The Speaker's Office of Member Services has long faced criticism from legislators, who often complained that it was slow-moving and did not adequately serve them. Others have felt that it was perhaps inappropriate for state money to be used for helping legislators to improve their image. The office was quite expensive to maintain, with the Democratic caucus spending $7.8 million in 2016 until it was dissolved in August. The director of the Speaker's Office of Member Services was paid $13,000 a month, and while he is no longer with the caucus, all of the other employees of the office will now need to reapply for other positions.

Biosimilar Naming Finalized

This week, the Food and Drug Administration finalized their guidance on the naming procedures for biosimilars. According to the guidelines, biosimilars must not only have a unique, non-proprietary name they must attach a meaningless, four-letter suffix that will be designated by the FDA.

These regulations differ from how Europeans and the World Health Organization name biosimilars, and has faced opposition from those who believe that it would be better to use meaningful suffixes in order to prevent consumer confusion and make it easier to determine the producers of the biosimilar. A proposed example of such a naming system for the first approved biosimilar for Sandoz's Zarxio would have been filgrastim-sndz, with the suffix representing the name of the manufacturer. The FDA however has announced under the new guidelines that the name will instead be changed to filgrastim-bflm.

Producers are allowed to submit 10 proposed suffixes for consideration by the FDA, with the final decision being made by the Administration. There are many rules that govern which suffixes may be submitted, such as that it must be unique, have no meaning, have at least three distinct letters, and not be able to be misinterpreted as an abbreviation or another drug's name. The FDA states that the suffixes are intended to minimize "inadvertent substitution," especially for those biosimilars that have not been found to be substantively different from each other. The issue of interchangeable biosimilars is still being decided, with the FDA stating that "FDA is continuing to consider the appropriate suffix format for interchangeable products."