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John A. Norwood  
*Counselor at Law*

Erin Norwood  
*Publisher*

*Contributors*  
Brittany Trudeau  
Ted Wait

#### [Contact Us](#)

[info@nalobby.net](mailto:info@nalobby.net)

Capitol Place  
915 L Street, Suite 1110  
Sacramento, CA 95814

(916) 447-5053  
(916) 447-7516 fax

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## Legislature Approves Audit of Workers Compensation Anti-Fraud Program

Yesterday, the Joint Legislative Audit Committee (JLAC) met to consider approval of an audit of the state workers' compensation system anti-fraud policies and practices requested by Assembly Insurance Committee Chair Tom Daly (D-Anaheim). Elaine Howle, State Auditor advised that the audit could commence next month. The audit calls for review of the coordination between the Department of Insurance (CDI), Department of Industrial Relations (DIR), and local district attorneys with respect to allocation of Fraud Assessment Fund dollars.

What would have otherwise been an otherwise less than newsworthy hearing was altered by the fact that the proposed audit drew concerns, if not straight out opposition from the Department of Industrial relations and all out opposition from the Insurance Commissioner. Reportedly, Insurance Commissioner Dave Jones was meeting personally with members of the committee on the Senate side in an attempt to keep Chairman Daily from gaining the sufficient number of Senate votes to get the audit approved.

Assembly Member Daly is specifically interested in the resource split between investigation and prosecution. Another aspect of the audit will assess why CDI is having difficulty retaining fraud investigators, so the recruiting process will be scrutinized. Also, the auditors will do their best to obtain data, which has proven difficult to secure in the past, on common fraud occurrences. This will be a large audit, according to Howle, approaching 7-8 months and 2,900 hours and will need a three year period.

Senate Insurance Committee Chair Tony Mendoza (D-Artesia) supported the audit, which was important given his influential chairmanship of the Senate Insurance Committee. The California Labor Federation supported the audit as did the California Coalition on Workers Compensation. Key insurance industry representatives, the American Insurance Association and Association of California Insurance Companies, commented in support as well.

Christine Baker, DIR Director, mentioned the recent workers' compensation working group recommendations adopted by the Legislature and Governor, which are currently being implemented as well as a RAND report on the subject that will be out in two to three weeks. DIR is implementing recent, key anti-fraud laws and has an information sharing arrangement in place with CDI. DIR will also ask for more funding for this area during budget negotiations. In light of the pending RAND report, Director Baker suggested waiting to approve the audit

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request so as not to create overlap and redirection of personnel resources. Baker argued that providing audit responses will take away from anti-fraud efforts in place.

JLAC Vice Chair Richard Roth (R-Riverside) found answers regarding overlap of the RAND report and the audit before the Committee to be insufficient, as it appears the two are substantially different. The Vice Chair added that \$50 million to \$60 million is provided for the Fraud Assessment Fund annually, making it a viable area to review, including with respect to fund use by local DAs. Another aspect to consider is whether one agency should be conducting investigations exclusively. Roth was also interested in getting a better understanding of the entity that steers the multi-agency effort.

Baker advised that the Fraud Assessment Commission serves in the capacity raised in the latter point, and is responsible for making recommendations to CDI and DIR for areas to pursue. Robert Herell, CDI Deputy Legislative Director, commented that 40% of fraud funds go to CDI, which is used for investigations. Investigative findings are provided to local DAs. Funding provided to DAs is audited by CDI. On retention of CDI peace officers, the Department has long been trying to close the pay 10%-20% pay disparity between their officers and the Department of Corrections and Department of Justice.

The Los Angeles and Santa Clara District Attorneys' Offices contended annual reporting by DAs across the state already capture the data and narrative sought by the audit.

Assembly Member Daly closed by commending DIR for their progress fighting workers' compensation fraud, but urged support for audit of the multi-agency workers' comp anti-fraud effort. The Committee approved the workers compensation anti-fraud audit by a wide margin. The audit was approved unanimously by the Committee.

## **Senator Ricardo Lara Announces Details of Healthcare Bill**

This week, state Senator Ricardo Lara released further details of SB 562, a bill that would create a single-payer healthcare system in California. Under the proposal, the state would create and run a healthcare system for every resident of California that would negotiate prices with providers of care and other services.

SB 562 would enact a complete and sudden overhaul of how insurance functions in the state, virtually eliminating private insurance as all Californians would be required to enroll in the single-payer program. Private insurance companies would be prohibited from offering services that are already offered by the state's plan. The plan created by SB 562, also called the Healthy California Act, would offer coverage for all medical care including inpatient, outpatient, and emergency care as well as areas not typically covered such as dental, vision, and mental health care. Additionally, it would also get rid of copays and deductibles entirely, and eliminate the requirement for a referral to see specialists.

The system would be run by a nine-member board that would be appointed by the Governor and Legislature who would not receive a salary, as well as an advisory committee made up of doctors, nurses, consumers, and others who would provide guidance on policy. One thing that has not been addressed by Senator Lara or his plan as of yet is how the state would pay

for such an undertaking, although some suggestions have been floated. Lara's office stated that California would seek federal waivers for Medi-Cal, Medicare, the Children's Health Insurance Program, and the Affordable Care Act to help cover the cost of the program. However Governor Jerry Brown has already expressed skepticism on the viability of this payment plan as well as with single-player healthcare in general, stating that it seems like fixing a problem with another problem.

The Legislature has considered several attempts at creating a single-payer healthcare plan in the past, with very little success. Each previous iteration of single-payer healthcare was vetoed by the governor, failed in the Legislature, or decided against by the voters. However Senator Lara believes that with the failure of the Republican Party's attempt to repeal the Affordable Care Act and no meaningful action being taken on healthcare reform at the federal level, now is the time to attempt to pass single-payer healthcare in California. "We have the chance to make universal healthcare a reality now. It's time to talk about how we get to healthcare for all that covers more and costs less," Lara stated. Lara has also recently announced that he will be running for Insurance Commissioner in 2018, a fact that will likely contribute to his push for single-payer healthcare.

## Legislative Action on Workers Compensation Bills & Update on Work Comp Prescription Drug Formulary Regulations

In a short week with the Cesar Chavez state holiday tomorrow, there was a fair amount of legislative activity on workers' compensation legislation. The following outlines the bills amended this week.

**[AB 61 \(Holden, D-Pasadena\)](#)** adds a small business representative to the State Compensation Insurance Fund Board. The author is trying to do something for his district to address small business complaints regarding workers comp, but this is also a step in the wrong direction regarding governance.

**[AB 182 \(Waldron, R-Escondido\)](#)** creates the Heroin and Opioid Public Education Act. As amended, it deletes the specific references to the Coalition for a Drug Free California and Drug Enforcement Administration. That would make sense if the bill is indeed going to move forward.

**[AB 247 \(Garcia, D-Coachella\)](#)** creates a lead advisory taskforce to address issues regarding childhood lead poisoning. The bill has been amended three times, each of which appear to be technical amendments to refine the bill. It is now in the Assembly Appropriations Committee, given it passed the Assembly Environmental Safety and Toxic Materials Committee on a 7-0 vote.

**[AB 1512 \(McCarty, D-Sacramento\)](#)** sets up and funds the Opioid Prevention and Rehabilitation Program Fund within the Department of Public Health (DPH) by adding a tax on opioids. DPH already has a robust program, including participation by the Division of Workers Compensation, on education and awareness. It does not appear that the bill is necessarily tied into that program directly. This is not a criticism but it would be more helpful

if all agencies that participate in the Opioid Misuse Workgroup could do more within their own area of oversight.

**AB 1565 (Thurmond, D-Richmond)** is now a bill defining exempt positions for overtime purposes in executive, administrative, or professional employees. The bill sets the wage floor at the greater of \$3,956 per month or two times the minimum wage, whichever is greater. Current Wage Order No. 4 applicable to these classifications of employment, puts the floor at two times the statewide minimum wage. Once the statewide minimum goes to \$11.50 per hour that will be higher than the \$3,956 monthly salary when converted to an hourly rate.

It will be interesting to see how this moves forward. The Wage Orders are tied to regulations under the federal Fair Labor Standards Act, but California has been essentially ahead of the federal government, even under the prior Administration, so essentially codifying Wage Order No. 4 does not seem to make much sense.

**AB 1584 (Gonzalez Fletcher, D-San Diego)** originally was a spot bill on health insurance. The bill now requires a person who has been granted a producer license to provide the insured with contracts, policies, certificates, riders, and any other required notices written in Spanish, if Spanish was principally used in the negotiation of the contract.

The basic issue here is who should be responsible for this. If there is going to be a law requiring policies and notices to be provided in Spanish if that was the principal language used in the negotiation of the contract, then these documents need to be translated consistently between carriers. That, in turn, would likely require carriers to get these forms approved by the Department of Insurance under existing procedures. This becomes really complicated in a commercial policy, especially policies that have ancillary agreements.

On the workers' compensation regulatory front, the prescription drug formulary will be the subject of its first hearing on May 1. It is anticipated that there will be considerable comment on the proposal. From materials presented to the Commission on Health and Safety and Workers Compensation it appears that there will be at least one 15-day comment period on anticipated revisions following the May 1 hearing date. The workers' compensation community appears to be generally supportive of the formulary. There are concerns being expressed regarding the process as defined in the regulations that should be followed to guide injured workers off of longterm use of opioids (weaning). In addition, there is a need to clarify the role of pharmacy benefit networks relative to issues such as drug lists and limitations on physician dispensing.

## **Congress Rolls Back Privacy Protections**

This week, the House of Representatives voted to approve a measure passed by the Senate that removed Obama-era regulations preventing internet service providers from selling browsing and history data without consumers' approval. It is expected that President Trump will sign the bill, marking a new era in internet privacy regulations.

The rule in question that will be overturned by this new law was created in October and stated that internet service providers needed to seek permission from their customers before

they used or sold their internet history in any way. This would include selling browsing data to other companies for advertising purposes, a tactic that is employed by sites such as Facebook and Google that use browsing information to target ads at specific consumers. However the FCC ruling argued that while it is possible to choose not to use free services like Facebook and Google, it is much more difficult for customers to change their internet service provider, especially when the industry has become more consolidated in recent years.

Supporters of this measure argue that internet service providers are being held to different standards than other companies that have the same practices, making it confusing and contradictory in how they do business. Those who oppose it say that it is an assault on privacy and that it prioritizes big companies over the rights of the consumer. The bill narrowly passed through the House with a vote on close party lines, with no Democrats supporting it and 15 Republicans breaking from their party to vote against it.

It is not yet known how this de-regulation will affect consumers directly, or whether there will still be options for them to opt out of tracking of their data. The bill will now move to the President's desk awaiting signature.