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Business Coalition Heavily Involved In Fight Against Universal Single Payer Healthcare Bill

Next Monday, universal single payer healthcare legislation will be considered by the Senate Appropriations Committee as a special item of business. SB 562 requires all people to join a state government-run healthcare system. It is authored by Senate Appropriations Committee Chair Ricardo Lara, Dem-Los Angeles and co-authored by Senator Toni Atkins, Dem-San Diego. The legislation's main obstacle is that it costs \$250 billion and has no financing mechanism, which will require it to be referred to the Committee's Suspense Calendar. The good news is that Senator Lara appears to largely be using the bill as a way to generate attention to his underlying goal of becoming the next Insurance Commissioner. Also on a positive note, recent polling of young adults to seniors, when advised of the inflexibility of plan purchasing (being forced to only access government-run insurance) causes favorability to plummet. A government-run system would drive insurers out of California, and people's doctors with them.

Nevertheless, there is a large insurance, healthcare, and employer coalition, of which John and Erin Norwood are active participants, that is working hard to make sure it eventually stalls in the legislative process. Additionally, Governor Jerry Brown is expected to veto a measure along these lines because of his long record of fiscal prudence. The Governor's enacted \$5.2 billion transportation infrastructure bill appears to be the point at which he is willing to allow substantial, additional spending and tax increases this session.

Single payer is an issue that has been vetted unsuccessfully not only here in California, but has also recently failed in other states such as Vermont and Colorado. California has just completed another successful open enrollment season and the percentages of those who are uninsured have dropped to 7.1%, a record low in our state. It is important to note that licensed, certified health insurance agents contributed in large part to this success story, having helped millions of Californians find and keep affordable healthcare coverage.

Some of the major concerns with the bill is a potentially enormous employer payroll tax and the likely impact on federal dollars flowing to California, including with respect to impacts on

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MediCal. Its consequences could do incalculable harm to consumers. It must be kept in mind that the consumer is left virtually defenseless if a decision is made not to provide healthcare coverage for that individual. Currently, consumers who are denied coverage for a surgery, procedure, or prescription by a carrier can turn to their health insurance agent for help. There is no such leverage in a single payer format and the consumer is left to the mercy and sufferance of single payer management.

Finally, SB 562 is a distraction from what should be everyone's focus: the reshaping of policies, regulations, and laws that will assure the continued success of the federal Affordable Care Act in our state.

Workers Compensation Bills Moving, But Slowly

There has not been much action on key bills, at least officially, over this past week. Most of the remaining interesting bills are either on Senate Floor Third Reading or the Assembly Appropriations Committee Suspense Calendar.

SB 430 (Insurance Committee) was approved by the Senate Appropriations Committee and has been referred to Senate Third Reading. The bill allows the California Insurance Guarantee Association to reinsure its liabilities either through a policy of reinsurance or a transfer of liabilities also called a loss portfolio transfer. This legislation is sponsored by Norwood Associates' client, the California Insurance Guarantee Association.

SB 488 (Bradford, D-Inglewood) was amended to be voluntary insurer reporting of LGBT board members, and there are personal privacy protections in the bill for them. This is on Senate Third Reading and its Assembly counterpart, AB 601 (Ridley-Thomas, D-Los Angeles), is on the Assembly Appropriations Committee Suspense Calendar.

AB 553 (Daly, D-Anaheim) zeroes out the Return to Work Fund (RTWF) each year. This is not an insured benefit, but it is an additional \$120M assessed against employers. There is significant question whether the Governor will sign the bill for a number of reasons, including that the author may have upset some in the Brown Administration with his request that the California State Auditor review the efficiency of the state's workers' compensation fraud investigation process. In addition, the bill will have the net result of increasing the RTWF assessments on an annual basis. This legislation is on Assembly Appropriations Committee Suspense.

SB 272 (Mendoza, D-Cerritos) allows the State Compensation Insurance Fund (SCIF) to hire additional executive officers. This is on the consent file for Senate Floor Third Reading. Related legislation, AB 61 (Holden, D-Pasadena), adds a small business person to the SCIF Board of Directors. It is unclear whether the Governor will sign the bill, but it seems to be moving along with little discussion. Some believe it sends the wrong message in terms of upgrading the governance of SCIF. The bill is on the Senate Floor Consent Calendar.

In other news, the Workers Compensation Insurance Rating Bureau is considering revising the experience rating formula again to take out the first \$250 in claims [medical-only (MO) and indemnity] to try to get people to report first aid claims. For statistical reporting purposes, first aid claims are MO claims. The proposal would be for a January 1, 2018 effective date and the Governing Committee has yet to decide on the proposal. It may be trading one form of abuse for another.

Of some note, there is State Budget 2017-2018 Trailer Bill language pending sponsored by the Department of Industrial Relations (DIR) regarding fraud and utilization review augmentations. The assessments will definitely go up for 2018. That being said, the pure premium continues to drop as losses are coming in lower than projections. This is also affecting loss development for prior years, and insurers are appearing to fund premium reductions with lowering reserves from those prior years. This is a potentially difficult environment if a soft market really kicks in while losses are dropping. In other words, the industry will overshoot the legitimate reductions in cost and the roller coaster will restart.

Lastly, virtually everyone now thinks that the new workers' compensation drug formulary will be effective January 1, 2018, which is a positive development provided that DIR does not delay actually adopting it. In other words, it does not really help if the formulary regulations are effective in November for a January 1 live date. There is concern that some who are interested in this are missing the point that the objective is to have sufficient time between the effective date of the regulations and the implementation date. One without the other just kicks the problem down the road.

California Supreme Court Rejects Mercury Case

This week, the California Supreme Court rejected a petition by Mercury Insurance Company and a coalition of insurance groups to review a ruling by Insurance Commissioner Dave Jones. The case revolves around a ruling issued by Jones in 2013 ordering Mercury to reduce their rates and prohibiting them from passing on \$2.8 million in advertising costs onto their customers in the form of higher premiums. Jones argued that this practice was in violation of Proposition 103, which established far-reaching regulations on auto insurance rates, because advertising did not provide any meaningful value or information to customers.

In their challenge to the ruling, Mercury and its associated insurance industry groups challenged the Commissioner's ruling, stating that they have the right to use their rates to determine their profits instead of using the formula created by the Commissioner. They took this challenge to a California Court of Appeals, who ruled this February in favor of Jones in affirming that insurance companies could not pass on their advertising costs, including the costs of sponsoring venues and advertising at sporting events. Mercury in turn

petitioned the California Supreme Court for a review of the case, but the Court rejected the petition this week and declined to hear the case, apparently settling the matter for good.

Commissioner Jones stated that “Once again we have successfully defended customers against the insurance industry’s crusade to undermine our consumer protection laws...Consumers should not have to pay for brand advertising that only benefits the insurance company and provides no meaningful information to consumers.” Mercury also issued a statement following the court’s ruling, saying that “We’re disappointed with the ruling, however, we accept the court’s decision and we will continue to provide California insurance consumers with some of the lowest rates in the state.”

Insurance Commissioner Appoints New General Counsel

This week, Insurance Commissioner Dave Jones announced that he had appointed Ken Schnoll as the new General Counsel for the Department of Insurance. Schnoll was previously a partner with Dentons US LLP, where he specialized in insurance regulation and health care issues. He has over 30 years of experience working with legal issues regarding insurance, including regulatory and transactional issues for health and property/casualty insurance.

Commissioner Jones stated that “Given all of the regulatory and legal issues that are a part of the Department’s ongoing regulation of insurance companies and insurance markets, Ken’s tremendous knowledge and expertise gleaned from 30 years’ experience in the insurance industry will serve us well.” Schnoll added that he is “looking forward to joining Commissioner Jones and his team to take on the tough issues facing California’s insurance market.” Schnoll is replacing the previous General Counsel John Finston, who recently left the Department to re-enter private practice.