NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

State Assembly

Department of Insurance

Single Payer Health Bill Moves Through Appropriations

Despite estimates that it will cost the state between $400 and $500 billion with no source of funding yet identified, the single payer health care bill SB 562 passed out of the Senate Appropriations Committee this week with a 5-2 vote. Amendments were added to the bill in the committee that make the bill contingent on a financing mechanism, but no such mechanism has yet been proposed or even addressed by the bill's author Senator Ricardo Lara.

Single payer healthcare has been a goal for many progressives in California for years, but as yet there have been no successful attempts to replace personal health insurance with a mandated state-run system. The price tag for SB 562 shows why it would be such a monumental undertaking to implement a single payer system, as it would cost more than the entire California budget. Opponents to the measure are arguing that the issue of how the system would be financed should have been addressed before the committee even voted on the bill, but as Senator Lara is also the chair of the Senate Appropriations Committee there was little chance of that happening.

The bill will be taken up on the Senate floor next week, where Senate President Pro Tem Kevin de Leon has promised that there will be "a nice full-fledged debate" on the issue. However Senator Lara's office has stated that they do not expect to have a financing plan before the bill hits the Senate floor, which means that the debate will continue without the full information on how it will be implemented. The California Nurses Association, which supports the bill and is leading a vocal lobbying effort for it by threatening to campaign against legislators that vote against the measure, is funding research at the University of Massachusetts Amherst on how it can be funded, but have not as yet come up with a solution.

Assembly & Senate Appropriations Committees Approve Impactful Legislation Before Deadline

Secretary of State

Official Legislative Information

Thursday and Friday of this week was the deadline for the Assembly and Senate Appropriations Committees to pass to their opposite chamber (or hold for next year) bills with fiscal implications to the state.

The Assembly Appropriations Committee approved 351 bills, amounting to 66% of its pending legislation. The following measures were passed.

AB 265 (Wood, Dem-Healdsburg) prohibits manufacturers of prescription drugs from offering any discount, repayment, product voucher, or other reduction in an individual's out-of-pocket expenses associated with his or her insurance coverage, including a copayment, coinsurance, or deductible, for any drug if a lower cost generic drug is covered under the individual's health plan.

AB 315 (Wood) requires pharmacy benefit managers to be licensed by the Department of Managed Health Care.

AB 570 (Gonzalez-Fletcher, Dem-San Diego) prohibits workers' compensation apportionment, in the case of a physical injury occurring on or after January 1, 2018, from being based on pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth.

The Senate Appropriations Committee approved the following legislation.

SB 2 (Atkins, Dem-San Diego) imposes a fee of $75 to be paid at the time of the recording of every real estate instrument, paper, or notice, per each single transaction per single parcel of real property, not to exceed $225.

SB 17 (Hernandez, Dem-Azusa) requires healthcare service plans that file information to report to the Department of Managed Healthcare and the Department of Insurance information regarding covered prescription drugs, including generic drugs, brand name drugs, and specialty drugs.

SB 63 (Jackson, Dem-Santa Barbara) provides an employee with 12 months of service to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement.

SB 325 (Mendoza, Dem-Artesia) extends the Department of Insurance Community Organized Investment Program repeal date from December 1, 2017, to January 1, 2022.

SB 347 (Jackson) requires any person using, operating, or renting a remote piloted aircraft and every commercial operator of a remote piloted aircraft to maintain adequate liability insurance or proof of financial responsibility.

SB 425 (Mendoza) authorizes the Insurance Commissioner to publish expedited policy forms and approval applications related to the Department of Insurance file review process for life and disability.

SB 569 (Monning, Dem-Carmel) requires the Insurance Commissioner, in the case of a declaration of a disaster and at the request of an insured, or the insured's legal representative, that is unable to identify the insurer for property located in the disaster area, to electronically provide the insured's name and property location information to insurers who issue fire insurance policies.

SB 617 (Bradford, Dem-Compton) requires the Division of Workers Compensation, with input from the Commission on Health and Safety and Workers Compensation, to issue a report to the Legislature, on or before January 1, 2019, comparing potential payment alternatives for providers to the current fee-for-service fee schedules.

SB 788 (Lara, Dem-Bell Gardens) requires the Insurance Commissioner to require either a social security number or an individual taxpayer identification number if the applicant or licensee is an individual applying for or renewing a production agency license.

Insurance Industry-Sponsored Automobile Body Repair Labor Rate Survey Bill Stalls

Despite significant resources invested in priority bill AB 1679 (Burke, Dem-Inglewood) by the state's main personal lines trade association, the effort was dealt a severe setback today when the Assembly Appropriations Committee held the bill. Today is the deadline for the Committee to pass measures with fiscal implications; otherwise, bills cannot be acted on until next year and under tighter timelines than this year.

Current law requires any insurer that conducts an auto body repair labor rate survey to set a prevailing auto body repair labor rate in a specific geographic area and to report the results of that survey to the Department of Insurance (CDI), which is required to make the information available upon request. AB 1679 requires an insurer that uses a survey to report the results of the survey to CDI every 24 months. These results are to contain, among other information, the name and location of each repair shop surveyed, the total shops surveyed, and a description of the geographic area covered.

This measure is in response to recent CDI regulations that add to rising auto insurance costs by creating one survey method that utilizes very small geographic regional markets and allows auto body shops to report whatever labor rate they choose, with no penalty for false reporting. The regulations provide no guidance for insurers about what other survey practices may or may not be acceptable. AB 1679 offers alternative paths that are more likely to ensure that such surveys are consistent, accurate, and reliable, while still keeping costs reasonable for consumers.

AB 1679 would also eliminate consumer confusion during the car repair process. The CDI regulations limit the free flow of information between a consumer and their insurance company during the claims process, including information about the benefits of an insurer's direct repair program. The bill clarifies that insurers may share such information with all claimants, so consumers can make an informed decision based on the full range of options available for the repair of their car.

Current law ensures consumers are well informed about the choices and benefits available to them when their cars are being repaired. Most body shops strive to provide quality repairs, at a reasonable cost, which is a goal that insurance companies share. At a time when auto insurance costs are already going up, CDI's regulations will lead to higher premiums for everyone. Over the last 10 years, the hourly labor rate for auto repairs in California has increased by 15% making it the 9th highest rate in the country at $55.48/hour, according to Mitchell data. And, estimates indicate that Californians could see a $280 to $300 million increase in auto repair costs because of inflated labor rates.

Plenty Of Workers Compensation & Other Insurance Developments Of Legislative Interest

This week, AB 1565 (Thurmond, Dem-Oakland), amended on May 22, now only sets a wage floor for overtime exemption for executive, administrative, or professional employees. A relevant existing regulation sets a floor of two times the minimum wage as well as various duties that are taken into consideration for the exemption. The bill originally codified the duties test, which did not make sense. Basically, the bill reinstates the challenged US Department of Labor changes in the compensation test for overtime that was adopted by the Obama Administration and enjoined. It will accelerate the increase in the wage test for overtime, but by 2020 the two times minimum wage of $15 per hour will be greater than the floor established in this bill. (For employers of 26 and more, the two times minimum wage will exceed the AB 1565 floor in 2019.)

The California Chamber of Commerce is opposed to this measure and the California Labor Federation supports. If this passes, for 2017, the wage test would move from $41,600 per year for employers of 25 or fewer employees, to $47,476. For employers with 26 or more, the change is from $43,680 to $47,476. Also, if passed, employers (including brokerages and insurers) will need to be mindful that local minimum wages may exceed the statewide wage and the AB 1565 floor may be passed sooner. This is on Assembly Floor Third Reading.

SB 189 (Bradford, Dem-Inglewood) is now in the Assembly. It provides a workers' compensation coverage exemption for executives or partners that have 10% business equity. The insurance trade associations are having a hard time arriving at a solution, or alternatively are not convinced there is a need for a solution. As long as the process is getting all the people who want an exemption into the bill and have a healthcare add-on in order to get an exemption then everyone is better off without a bill.

Ownership interests held in trust should be back in the measure and if people want to enhance the fraud part of this there are ways to do so. Entities that are self-insured or who have no insurance legally after the exemptions should be told where to keep their waivers, and since likely the Department of Industrial Relations does not want them it is anticipated they need to be readily accessible upon audit.

Regarding SB 562 (Lara, Dem-Bell Gardens), which is the single payer universal government-run healthcare bill, the Senate Appropriations Committee analysis was a withering criticism of this proposal. Senator Ricardo Lara added an amendment to make its provisions contingent on funding and as such is out of the Senate Appropriations Committee on a 5-2 vote. Given the bill is scored at $400 billion, it will eventually stall in the legislative process.

AB 40 (Santiago, Dem-Los Angeles) is sponsored by the American College of Emergency Physicians and is intended to improve the interoperability of the Controlled Substance Utilization Review and Evaluation System (CURES) with automatic adjudication programs used by hospitals and others. It has broad support. The California Medical Board is also supportive.

Relative to SB 641 (Lara), which prohibits the release of data obtained from CURES to a law enforcement agency, while not an official position, it appears that the California Department of Justice opposes the bill and would not mind if insurers and employers joined in. They feel it is too restrictive to allow law enforcement to access the database only if there is a search warrant. There is already opposition from a number of sources per the Senate Public Safety Committee: Consumer Attorneys of California, California Teamsters, and Consumer Watchdog. The issue is access to prescribers records; it appears that everyone would agree that patient records should only be accessed through a warrant based on probable cause. The bill passed unanimously by the Senate Appropriations Committee.

Insurance Commissioner Recommends Workers Compensation Rates Be Lowered By 16.5%

Insurance Commissioner Dave Jones adopted and issued a revised advisory pure premium rate, lowering the benchmark to $2.02 per $100 of payroll for workers' compensation insurance, effective July 1, 2017. This is 16.5% less than the average pure premium rate of $2.42 California insurers filed as of January 1, 2017. Commissioner Jones adopted the Workers Compensation Insurance Rating Bureau (WCIRB) recommendation to lower the advisory pure premium rate mid-year. Mid-year pure premium rate adjustments are not the norm-new data reflecting a significant change in underlying workers' compensation costs required before the commissioner will issue a mid-year adjustment.

Jones issued the mid-year advisory pure premium rate two weeks after a public hearing and review of the testimony and evidence submitted. His adoption is only advisory, as the commissioner has no rate authority over workers' compensation. "A reduction in the pure premium rate reflects a reduction in the cost to insurers of providing workers' compensation insurance, which benefits California's business economy if insurers lower their pricing," said Jones.

The mid-year pure premium advisory rate reduction is based on insurers' cost data indicating workers' compensation insurers' medical costs were lower in 2016. Insurers' net costs in the workers' compensation system continue to decline as a result of recent reform laws enacted by the Legislature and Governor Jerry Brown. The WCIRB claims the downward medical loss development is in part driven by continued acceleration in claim settlement, decreasing indemnity claim frequency, and lower than projected loss adjustment expenses.

The WCIRB's pure premium advisory rate filing demonstrated workers' compensation insurers continue to charge premiums, which are close to the estimated cost of providing benefits and adjusting expenses. The rates actually charged to employers; however, are on average lower than the rates filed by insurers. The WCIRB will evaluate workers' compensation insurance costs again in the summer and fall of this year when it files its 2018 pure premium rate benchmark recommendation with the Department of Insurance. That filing will provide an opportunity to assess whether medical costs continue to be lower and what changes, if any, there are in other costs in the system.

Senate Governance & Finance Committee Moves Tax Increase Measure Without A Vote

A bill proposing multiple tax hikes on state employers was sent directly to the full Senate without a vote on Monday by a Senate fiscal committee. SB 567 (Lara, D-Bell Gardens) was identified as a job killer by the Chamber of Commerce because it will significantly increase taxes on California businesses, which already have one of the highest tax burdens in the country. It bypassed a vote or discussion by the Senate Appropriations Committee because the committee chair (also the bill’s author) determined there are not significant state costs associated with the three major tax increases the legislation proposes.

SB 567 targets family-owned businesses that transfer the business upon death to other family members. Under the bill, the family members who inherit the business / property would be forced to pay capital gains on the property that has appreciated in value, if the family member(s) have an adjusted gross income of $1 million or more. This change would take California out of conformity with federal law, and place another layer of taxes on a small group of Californians paying the highest personal income tax, at 13.3%.

The top one percent of income earners in California pay half of all income taxes received, according to recent data from the Legislative Analyst's Office. These top income earners upon which the General Fund is so reliant, are also the same individuals who would be exposed to the SB 567 tax increase, and who have the most resources to move to another state to avoid even higher taxes.

SB 567 also seeks to eliminate the current deduction allowed for compensation paid to executive officers for achieving performance-based goals. This proposal would harm all corporations, but more specifically, those companies incorporated in California. While Chief Executive Officer compensation is an ever-popular debate topic, SB 567 fails to recognize the enormous responsibility placed on these individuals to maintain or improve the success of a company that creates jobs for hundreds or thousands of workers, and value for thousands of shareholders, including pension funds.

The current deduction was created to allow companies to incentivize CEOs to achieve important performance goals for the benefit of the company, employees, and shareholders. The Internal Revenue Service already has strict guidelines on this deduction to prevent any abuses.

Eliminating this deduction for California publicly traded companies unfairly penalizes companies incorporated in California. Moreover, the proposed change is retroactive, meaning companies who will be harmed by the elimination of this deduction will not even have an opportunity to mitigate any tax exposure it creates. California already has the highest personal income tax and sales tax rates in the country, and one of the highest corporate tax rates as well. Californians just approved various tax increases and extensions on the November 2016 ballot.

Assembly Democrats Announce Budget Priorities

This week, Assembly Democrats released their priorities for the upcoming state budget, which has been titled the "Protect & Persist Budget." The budget creates $1.2 billion in new General Fund Commitments while maintaining $1.6 billion for previous budget commitments. According to projections it would create a total of $10.2 billion in total reserves for the state, with $1.7 billion in the Regular Reserve and $8.5 billion in the Rainy Day Fund.

The budget focuses on several social interest areas, ranging from healthcare to education, as well as ongoing issues such as transportation and the housing crisis. Under this proposal, the Earned Income Tax Credit would be expanded to self-employed individuals and those who earn less than $22,300. Proposition 56, the tobacco tax passed by voters in 2016, would be implemented to expand health coverage and access for things such as dental care and family planning, as well as reinstating Medi-Cal coverage for dental and eye care. Both affordability and access to college are addressed by expanding access to scholarships by middle class students and redirecting and expanding funding for the UC and CSU system.

Infrastructure needs are also addressed in the proposal, including the implementation of the transportation bill SB 1. $2.8 billion provided by the bill would go towards transportation funding, including $1.7 billion for local improvement projects. Additionally, following the crisis at the Oroville Dam and the increased focus on dam safety, the process for evaluating dam safety would be strengthened and new emergency action plans and flood maps would be addressed. Affordable housing, an issue that has been long talked about but not solved, would continue to be addressed through the $400 million set aside in last year's budget.

Budget Conference Committee will begin to meet next week, where the Assembly and Senate versions of the budget bill will be reconciled. The final budget must be passed by the Legislature by midnight of June 15th.

Congressional Budget Office Releases Report on AHCA

This week the Congressional Budget Office released its analysis of the American Health Care Act passed by the House of Representatives earlier this month. The report found that while the health plan would result in a $900 billion tax cut for wealth Americans, it would also double the number of Americans without health insurance over the course of the next decade. Additionally, those who still had health insurance would see the costs rise dramatically while the coverage provided by those plans lessens.

Throughout the process of attempting to repeal and replace the Affordable Care Act, President Donald Trump and the Republicans leading the effort have repeated that their alternative plan will reduce costs for consumers while ensuring that no one loses coverage. However the CBO analysis has found that 23 million people will lose their health insurance over the next ten years under the AHCA, bringing the uninsured rate to 18% nationwide. Additionally, consumer protections such as preventing insurance companies from denying coverage to those with preexisting conditions as well as enforcing a basic set of benefits in all plans have been removed from the AHCA.

The cost for healthcare for those who would still have health insurance would also increase, as deductibles go up and the benefits provided become fewer. Costs would be increasingly shifted towards the consumer as fewer healthcare costs are covered by insurance, driving up the out-of-pocket costs for things such as pregnancy and mental health care by what could be thousands of dollars. According to the CBO report, a 64-year-old single American earning $26,500 a year would see an increase in insurance costs from $1,700 to $13,600 per year.

The CBO analysis, along with the intense backlash from much of the public and pressure from both the healthcare and insurance industries, leave the AHCA's future in uncertain territory. Some Senators have spoken of scrapping the bill entirely and starting over with their own version, which would then have to go back to the House of Representatives for approval.

However since the Republican majority in the Senate is much slimmer in the House, gaining the full support of every Republican promises to be a daunting task. Many of the most unpopular amendments to the AHCA were made to gain the support of the House's most conservative members, and any changes to those provisions would likely fracture them once again. As it stands, the bill does not have an optimistic outlook, but it remains to be seen what will happen once the Senate reconvenes after the Memorial Day break and begins work in earnest. Stay tuned.