NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

State Assembly

Department of Insurance

AHCA Advances Through House of Representatives

In a closely contested vote, the GOP-led initiative to repeal and replace the Affordable Care Act passed through the House of Representatives in a 217-213 vote. After several false starts and being forced to pull the bill from the floor in April, changes made to the bill to make it more palatable to the far-right group known as the Freedom Caucus garnered enough votes to move the bill. However major doubts still surround the bill as it moves towards the Senate, as several major Senators have already stated that they have no intention of passing the bill as it currently stands.

One of the most unpopular and controversial aspects of the revised AHCA is the removal of protections for patients with pre-existing conditions that were implemented with the ACA. As it stands, insurers would once again have the ability to deny coverage to consumers with any one of a long list of pre-existing conditions, ranging from cancer to acid reflux. Additional concern was raised over the fact that several of those conditions include items that opponents of the bill claim target women, as they include common medical procedures such as a caesarean section and conditions such as post-partum depression. These issues, combined with the fact that the initial version of the bill would have resulted in an estimated 24 million Americans losing their health insurance, has led to vocal and ongoing opposition to the bill.

In a surprising turn of events, a wide spectrum of health-related industries have come together to criticize the bill. Groups of hospitals, doctors, health insurers, and even consumer groups have all spoken out against the current version of the AHCA, with criticisms ranging from a desire to change the bill to calling for it to be scrapped altogether. The largest concern that these groups share lie in the deep cuts that will be made to Medicaid. While many health insurers have largely abandoned the individual market, a large portion of their business still comes from providing coverage through Medicaid, while doctors and patient groups worry about the lost access for the nation's most vulnerable groups.

While many are marking the passage of the AHCA out of the house as a major win for the President and the Republican Party, there are still many hurdles for the bill to cross before it becomes law. Several prominent Senators have stated that they intend to essentially start over by rewriting the bill and sending it back to the House for approval. The rushed nature of pushing the AHCA through the House meant the bill carried no score from the Congressional Budget Office and many Representatives admitted that they had not actually read it before

voting, leading to deep doubts in the Senate on its viability. It will be a long road ahead for the AHCA, with many twists and turns sure to come.

Assembly Jurisdictional Committee Approves Ability For Insurance Agents & Brokers To Take Advantage Of Interstate Banking Opportunities

This week the Assembly Banking Committee unanimously passed legislation, AB 1460, authored by Committee Chair Matthew Dababneh (D-San Fernando Valley). The bill is sponsored by two Norwood Associates clients, the Independent Insurance Agents & Brokers of California and InsurBanc. It allows for insurance premium deposit into trust accounts administered by banks located outside California.

This legislation updates 50 year old state law that currently requires use of depository institutions domiciled in California. An interstate banking option has long been used in other states; in fact, 47 states permit this business practice. As further assurance that antiquated state law in this area should be updated without concern, the specialized, insurance-focused banks are federally chartered, Federal Deposit Insurance Corporation-insured, and agree to use the California court system in the event of a customer grievance. All of these consumer protection provisions are captured in AB 1460.

AB 1460 has been referred to the Assembly Floor consent calendar, a designation designed for bills of noncontroversial nature. Getting to this assurance of noncontroversy requires having established legislator and staff relationships in place to advise of bill implements, which takes place well before hearing and full Assembly consideration.

Assembly Insurance Committee Votes On Several Bills; One With Unintended Consequences Goes Down

At Wednesday's Assembly Insurance Committee hearing, AB 221 (Gray, D-Merced) was considered. The author testified that it attempts to curtail small workers' compensation claims (under $25,000) fraud by requiring employee and employer medical care agreement. This bill was defeated on a 3-3 vote, despite Chair Tom Daly (D-Anaheim) recommending a yes vote. The legislation was opposed by two Democrats and one Republican. There were several staying off the bill.

Assembly Member Adam Gray introduced the measure in order to reduce the occurrence of lawyers cold calling workers, often farm laborers, to see if they have an injury. In many cases, these attorneys pitch them on the idea that they can get paid time off for relatively short periods for injury. They of course do not explain that whatever real or made-up injury needs to be work related. Some attorneys turnstile these cases to mount fees, and there is very little employer recourse.

While sounding well founded, the bill as written creates a multitude of problems, particularly the $25,000 threshold risks being used as a lever in ways not expected. Setting such a level in statute will mean that claims for which no compensation should be paid will be pushed to

$24,999 with the threat of continued litigation. Opponents argue settlements are best addressed by agreement of the parties, and approval of the courts as occurs now, at whatever level is fairly negotiated. The threshold will alter behaviors in ways it is not possible to fully anticipate.

Opponents include the California Firefighters, California Peace Officers Research Organization, California Medical Association, California Society of Industrial Medicine & Surgery, California Labor Federation, and State Building & Construction Trades Council. Assembly Member Ken Cooley (D-Rancho Cordova) questioned why the Department of Insurance (CDI) has not weighed in as they are the experts in insurance fraud activity. Also, the Assembly Member wondered why large insurers were not supporting.

Another bill considered was AB 570 (Gonzalez-Fletcher, D-San Diego). This legislation prohibits backing out workers' compensation coverage in the event of injury related to pregnancy. The California Applicant Attorneys Association, who is the sponsor of this legislation, argues the bill has been narrowed from last year's vetoed bill. Opposition testimony came from the American Insurance Association and the California Coalition on Workers Compensation. The bill passed 11-1 with Republican Assembly Members Melissa Melendez (Murrietta) and Frank Bigelow (Jackson) voting in favor.

Regarding AB 1028 (Bocanegra, D-San Fernando), this expands workers' compensation coverage related to compensable injury to include peace officers employed by a school district. The bill passed 10-0 with Republican Assembly Member Bigelow voting yes. AB 1398 (Kalra, D-San Jose) requires insurers to return to the owner all moneys due for annuity contracts that are surrendered by the contract owner no later than 45 days after request. CDI is the sponsor. It was approved 13-0 with Republican Assembly Members Melendez, Bigelow, and Randy Voepel (R-Santee) voting aye.

AB 61 (Holden, D-Pasadena), requiring the State Compensation Insurance Fund to have a small business representative; AB 1696 (Insurance Committee) – Insurance Code Clean-Up; and, AB 1698 (Insurance Committee), which repeals low cost automobile insurance program reporting, were approved by consent.

Secrecy In Civil Litigation Threatened By Ill Conceived Legislation

AB 889 (Stone, D-Scotts Valley) seeks to essentially ban the use of protective orders during civil litigation by setting a nearly unattainable high standard upon which a court may grant a protective order during civil litigation. This bill requires disclosure of trade secret information with no protective order if it is in any way related to an alleged danger to public health or safety. The defending party would have the burden of proof that there is a specific and substantial overriding interest in maintaining the confidentiality of the information or records.

It is unclear how such a standard could possibly be reached. There is strong opposition because the bill leverages business into costly settlements for unmeritorious claims in order to protect confidential information. It also forces businesses defending allegations of danger

to public health or safety to file motions and petitions with the court to ensure confidential information is not made public or settle frivolous claims to do so. Additionally, settlement agreements do not contain information regarding dangers to public health and safety and should not be included in AB 889, which applies to confidential settlement agreements in addition to protective orders.

The insurance industry for one believe this is a must kill measure. This is clearly an avenue for trial lawyers to fish for class action lawsuit material. It is a problem also because it exposes company trade secrets. The bill is on the Assembly Floor where the insurance industry will do its best to try to get some legislators to stay off the bill, but there is concern it will be approved. One initial step is to try to obtain a high cost estimate that legislators can use as cover, should they need to vote for a pro jobs bill. Assembly Members Jacqui Irwin (D-Camarillo), Ian Calderon (D-City of Industry), and Marc Berman (D-Los Altos) voted in favor in committee, but mentioned they may not be able to later in the process if it is not amended. Another key step is a Chamber Job Killer designation.

The author argues people should have access to this information. As long as companies can hide ongoing dangers to public health and safety that are discovered during the course of litigation, constituents will continue to be harmed by products that they mistakenly expect to be safe, Assembly Member Stone maintains. Protective orders and secrecy agreements have hidden numerous public dangers that have resulted in numerous injuries and deaths, including defective car tires, illegally shortened guard rails, explosive fertilizers, and strangling window shade cords, among others, proponents say. Florida, Louisiana, Texas, Virginia, Arkansas, North Carolina, Nevada, Oregon, South Carolina, Washington, and Montana have enacted similar laws. The first was enacted 27 years ago.

Bill To Allow Waiver Of Forced Arbitration Advances

A wide cross section of industry continues to oppose SB 33 (Dodd, D-Vacaville) because it unfairly attacks the use of arbitration agreements in consumer contracts with "financial institutions" as broadly defined. The bill allows waiver of forced arbitration in financial services fraud events. While it is likely preempted by the Federal Arbitration Act, it will negatively impact financial institutions with unnecessary and costly class action litigation that does not ultimately benefit the consumer.

Despite the American Insurance Association, Association of California Insurance Companies, and the Association of California Health & Life Insurance Companies strongly opposed, the Personal Insurance Federation of California (PIFC) removed its opposition stating that it appreciated the author’s willingness to compromise. PIFC was able to change the definition of “relationship” between consumer and financial institution to “purported contractual relationship,” which does not do anything to make the bill better.

Issues that remain include: the bill’s focus on arbitration, rather than fraudulent contractual formation; it applies to "financial institutions," but still includes hospitals, insurers of all types including health, and potentially anyone significantly engaged in commerce. SB 33 was passed out of Senate Judiciary Committee on May 2 and referred to the Senate Appropriations Committee.

Ban the Box Legislation Moves Forward; Author Listening To Industry Concerns

This week, the Assembly Labor Committee voted to approve AB 1008 (McCarty, D-Sacramento), which makes it unlawful for employers to ask prospective employees about any criminal events in their life before conditional employment offer. The liberal leaning committee approved the bill along party lines, which is now in the Assembly Appropriations Committee.

The Chamber of Commerce is working with the author to water down the measure, with the ultimate goal of allowing employers to perform criminal background checks after first interview. While Assembly Member Kevin McCarty has made the unusual offer to consider all industry suggestions, no agreement of a satisfactory nature has been reached to date. The Chamber does believe there is promise for a compromise. There is a substantial, active industry coalition in place that will continue to compel accommodation by the author as this bill moves through the legislative process.

Workers Compensation Drug Formulary Regulations Heard May 1

Prescription drug formulary regulations were the subject of a rulemaking hearing on May 1. The major news is that the Department of Industrial Relations is considering a January 1, 2018 effective date rather than July 1, 2017 date. There is support from many stakeholders for a delay. The primary issue areas being deliberated are the transitional language on claims with dates of injury prior to the effective date of the formulary, how pharmacy benefit networks will operate within the system, and certain definitions of procedures that were considered unclear. The next iteration will be more substantive.

City of Jackson v. WCAB Update

This is a case involving apportionment to genetically predisposed conditions. In this case, it was a degenerative disk disease. The Qualified Medical Evaluator supplied considerable documentation of her opinion that the worker's injury could be apportioned to his predisposition to this disease. The Workers Compensation Appeals Board granted reconsideration and said a doctor cannot apportion to "impermissible immutable factors."

The Court of Appeal reversed and said: "Precluding apportionment based on 'impermissible immutable factors' would preclude apportionment based on the very factors that the legislation now permits, i.e., apportionment based on pathology and asymptomatic prior conditions for which the worker has an inherited predisposition."

Since this is a published opinion it will likely be the subject of a Petition for Review by the California Supreme Court. Whether it gets granted remains to be seen. This is a strong opinion based on a good record for the defense. It is also something that will certainly get the Senate Labor Committee's attention when AB 570 (Gonzales Fletcher, D-San Diego), which

prohibits apportionment in cases of physical injury from pregnancy, is heard. There is no AB 570 Senate Appropriations Committee hearing date so far.