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Workers Compensation Fraud Bill Introduced This Week Set for Late February Hearing

The Workers Compensation Insurance Fraud Reporting Act requires the Employment Development Department (EDD) to release, upon written request, to an authorized governmental agency, relevant information that the EDD may possess relating to any specific workers' compensation insurance fraud investigation. The Act authorizes an authorized governmental agency that is provided with information pursuant to those provisions to release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud. [AB 2046](#) (Daly, Dem-Anaheim) requires, rather than authorizes, upon request, an authorized governmental agency that is provided with information pursuant to those provisions to release or provide that information.

While in spot form, this measure will receive hearing February 28 by the Assembly Insurance Committee. The hearing will be informational in nature, meaning votes will not be taken. This will likely include a review of a State Auditor's report on the subject. The American Insurance Association will be testifying, but there is no agenda posted yet. The vulnerabilities for insurers are the recommendations that there needs to be more referrals from insurers and consequences for, in the Auditor's words, minimal compliance with fraud investigation and reporting obligations. The report calls for a public report on fraud efforts. Per the audit: "We believe a comparable public report that rates insurers' antifraud efforts could motivate insurers with minimal compliance to improve and could also better inform consumers about insurers' fraud fighting efforts – or lack thereof."

The second area for potential friction is whether explanation of benefits (EOBs) should be issued. As is the case with most of the recommendations, Department of Industrial Relations Director Christine Baker was vocal in opposition to such a requirement – both from a cost and effectiveness standpoint: "The Auditor's recommendation to require insurers to send millions of EOB notices fails to advance the intended goal of preventing fraud, because it focuses solely on approved treatment, for which controls – such as utilization review, independent medical review, and independent bill review – are already in place."

Department of
Insurance

Secretary of State

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Service Tax Introduced Again

This week, Senator Bob Hertzberg once again introduced a proposal to implement a tax on services, this time as SB 993. The bill would expand the Sales and Use Tax Law in order to put in place a tax on all services such as accounting, consulting, and legal services. SB 993 is the third time that Senator Hertzberg has introduced a bill proposing a tax on services, an idea that has been strongly opposed by the business community each time it has been put forward.

Senator Hertzberg states that the purpose of the service tax is to help provide California some relief from the cycles of boom and bust it faces by relying mainly on income and sales tax, revenue streams that can be hit hard by recessions or downturns in the economy. He also stated that this attempt to pass service tax legislation is different from previous iterations, as the funding it provides would be used to give relief to low and middle-income families that have been negatively impacted by changes in federal tax law. Additionally, the funds raised would be directed towards education, infrastructure, and workforce development.

While SB 993 states that the burden of collecting the tax falls upon the provider, it does not yet provide what that percentage will be or whether there will be different levels for different industries. While the bill does exempt businesses that gross less than \$100,000 per year, it is already facing opposition from broad swaths of the business community, and faces a long road towards receiving the two thirds approval it requires for passage.

Governor's Race Tightens - Senate Race Not Even Close

A new poll has found that despite the vast difference in funding in the race for California Governor, the margin between the two Democratic frontrunners is almost nonexistent. According to the poll by the Public Policy Institute of California, Lieutenant Governor Gavin Newsom and former Los Angeles Mayor Antonio Villaraigosa are nearly tied, with each candidate sitting at 23% and 21% respectively. Those numbers have not changed much since the last poll by the PPIC in November, only showing the gap between Newsom and Villaraigosa narrowing slightly.

With only 4 months until the June primary, these poll numbers seem to indicate that Newsom and Villaraigosa are the likely two candidates for the November election. The other Democratic candidates lagged far behind in the polls, with State Treasurer John Chiang lagging at 9% and former State Superintendent Delaine Eastin at 4%. The Republican candidates fare similarly, with Assembly Member Travis Allen at 9%, businessman Jon Cox at 7%, and former Representative Doug Ose at 3%. However, nearly a quarter of the voters questioned stated that they remained undecided, leaving a large number of votes unspoken for and the possibility for major swings in the standings as the primary draws near.

When it comes to the Senate race however, the numbers are much clearer. Senator Dianne Feinstein holds a clear lead across all demographic groups, holding 47% of the vote compared to Senate Pro Tem Kevin de Leon's 17%. Although a third of the voters questioned were still undecided, the poll also found that de Leon had extremely poor name recognition outside of Sacramento, with Feinstein even leading among Latino voters and in de Leon's

home of Los Angeles County. Two thirds of those polled stated that they had never heard of de Leon, giving the incumbent Feinstein a strong edge that will be hard to break before the election in November.

Roundup of Labor & Employment Measures Introduced So Far

[AB 1867](#) (Reyes D) – Employment Sexual Harassment Records may be heard in committee February 12. It requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing. The Chamber of Commerce will seek to amend down the measure, presumably to shorten the time period.

[AB 1870](#) (Reyes D) Unlawful Employment Practice Statute of Limitation may be heard in committee February 12. Current law, the California Fair Employment and Housing Act, makes employment and housing practices unlawful, including discrimination against or harassment of employees and tenants. Current law also authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. This bill extends the period to three years for which complaints alleging unlawful employment or housing practices may be filed with the Department. It is unclear, but will be learned by CalChamber, whether it is retroactive three years. The Legislative Women’s Caucus is not responding to arguments around litigation proliferation when statute of limitations are extended. The Chamber is working to refine their messaging.

[AB 1938](#) (Burke D) Familial Status Employment Discrimination was referred to the Labor Committee this past Monday. Current law prohibits an employer to make any nonjob-related inquiry, either verbally or on an application form, that expresses any limitation, specification, or limitation based upon a person’s race, religion, national origin, or gender. This bill, in addition, prohibits an employer or other covered entity from making a nonjob-related inquiry to, or expressing any limitation, specification, or limitation based upon a person’s familial status. This bill goes to discriminating against job applicants, particularly women, with children. The Chamber will seek an alternative to the Labor Code for this measure because of the litigation exposure in the Code.

[AB 1976](#) (Limón D) Employment Lactation Accommodation may be heard in committee March 3. Current law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee’s infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee’s work area for the employee to express milk in private. This bill instead requires an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes.

[AB 2016](#) (Fong R) Employee Complaint Detail Requirement may be heard in committee March 8. The Labor Code Private Attorneys General Act authorizes an aggrieved employee who complies with notice and filing requirements to bring a civil action to recover civil penalties that are otherwise assessed by the Labor and Workforce Development Agency. The

Act requires that the aggrieved employee give written notice to the Agency and the employer of the provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. This bill instead requires the notice to include a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation and an estimate of the number of current and former employees against whom the alleged violation or violations were committed and on whose behalf relief is sought. The Chamber is supportive.

The Chamber has not taken an oppose position on any bills yet.

Assembly Universal Healthcare Select Committee Holds Fourth & Fifth Hearings This Week

Collectively, on February 5 and 7, the Assembly Universal Healthcare Select Committee held 11 hours of final informational hearings on universal healthcare coverage options, but additional meetings could take place should its recommendations to the full Assembly command. The Select Committee's actionable recommendations will be published in early spring, providing a roadmap to a healthcare system that is universal in nature, the Co-Chairs have advised.

The February 7 hearing provided a number of organizations the opportunity to present their plans for achieving universal health coverage, specifically a single payer government-run mandated for all system. Co-Chair Jim Wood (Dem-Healdsburg) advised that changes to federal law to implement universal care is an uncertain, time consuming endeavor, that may require a subsequent federal Administration.

Michael Lighty, Public Policy Director, California Nurses Association, called for nothing short of guaranteed healthcare. [SB 562](#) (Lara, Dem-Bell Gardens), which requires single payer healthcare, eliminates barriers that exist today. Nationally, tax subsidies for private health insurers amount to \$342 billion per year. In America, 36% of Americans are underinsured. Data from 2009-2011 shows 24% of claims were rejected by health insurers. Lighty called for eliminating premiums, copayments, and deductibles, and allow going to providers of one's choice. Furthermore, California needs to create an independent healthcare authority to manage the channel of state and federal medical dollars, and obtain requisite federal waivers. Lighty endorsed consolidating all drug purchasing.

Robert Pollin, Professor of Economics, University of Massachusetts, testified that universal care in California is within reach. SB 562 can be implemented. The cost to provide care within the current system is \$370 billion. This needs to increase by 10% to provide decent care for all. But, 18% in savings could be achieved by SB 562 through administrative savings, including three to four percent by reducing the cost of pharmaceuticals, reducing provider over care, and addressing fraud in the system. Cost savings would be in the \$36 billion range to the overall system, under SB 562. Pollin proposed raising \$105 billion via a gross receipts fee of two percent on large businesses. Revenue could also be raised with a 2.3% increase on sales. Another option is a payroll tax that exempts small businesses or be set at no more than two percent, which is 80% of the business community. Pollin suggested a 7.2% payroll tax fee on large companies.

Dale Fountain, Chair, Enact Universal Healthcare for CA, sponsor of a constitutional amendment to secure universal care, explained that the proposed ballot measure enables future enacted legislation on the subject to not have to be repeatedly approved by voters.

Stephen Tarzynski, President, California Physicians Alliance (CAPA), testified that single payer offers security and choice, as well as cost containment and quality care. A step by step, bill by bill process is the way forward, over the next three years. This should focus on stakeholder consensus as much as possible. A CAPA roadmap brings together over 100 health experts, labor representatives, and legislators. This would create a template for universal coverage. Two meetings have already been held. The roadmap should occur first in the next three to four years, in which no federal waivers would be needed. The second phase would take place after getting waivers. Public financing at the state level is necessary through new taxes, but this impact would be offset by lower patient premiums from 20% physician reimbursement reductions. On SB 562, CAPA supports, but it needs to be amended to ensure passage and contain a more realistic marketplace transition. Private insurers are responsible for 10%-25% of profit waste in the system. Medicare only has two percent administrative overhead.

Peter Finn, Principal Officer, Teamsters, reported healthcare cost and coverage is the most controversial negotiating point for labor unions. A basic Kaiser health plan is \$24,000 annually. Rate increases in the 15%-25% range have been announced by carriers recently.

Member Comments

Assembly Member Laura Friedman (Dem-Los Angeles) understood a two percent gross receipts tax to be less than companies are paying now for health insurance. The lack of an insurance regulation environment proliferates problems within the fee for service scheme. Flat fee physician contracts are preferable. Pollin advocated a broad tax base at low rates. A gross receipts tax lowers healthcare cost to 10-19 employees by 13%. For those with 20-99 employees, these would have lower costs by six percent. The recent federal tax cut would offset large business tax increases to implement single payer.

Assembly Member Marie Waldron (Rep-Escondido) raised the issue of initial single payer state agency administrative cost uncertainty, unaddressed reserves, and the loss of the private insurance market. Pollin acknowledged that the University of Massachusetts single payer study issued last May does not outline transitional or reserve costs, but a follow up will do so; it is anticipated that these will be manageable at 4.5% (\$15 billion) standard deviation. Assembly Member David Chiu (Dem-San Francisco) advocated his bill [AB 587](#), which creates an interagency coordination system for negotiating drug prices. Pollin went further by calling for local government to do the same. This could achieve 30% prescription cost savings; other countries are spending half of the US status quo.

Per Assembly Member Wood's interest area, the Assembly Appropriations Committee analysis says SB 562 needs \$200 billion; Lighty's study is in the \$115 range. Lighty said the Committee analysis does not fully document its estimates. In general, it does not include potential cost savings, including administrative cost reductions. The savings Lighty estimates would take about 10 years to realize; perhaps, five percent in year one.

In an additional round of Member comments, Assembly Member Chiu supported a percentage cap on a person's premium. Chiu went on to express the view that there is system waste caused by the manner in which insurance companies negotiate with providers and pharmaceuticals. Doctors, hospitals, and pharmaceuticals are not coming forward with universal care proposals. Assembly Member Waldron observed 92.4% of Californians have coverage, raising the question why the extensive legislative focus on single payer. This needs complicated federal waivers that the Trump Administration opposes.

Co-Chair Arambula concluded the state needs to find ways to subsidize the underinsured. The Family Glitch occurs when income is too high to receive federal subsidy sufficient to afford quality care, which the state should find ways to address. Assembly member Wood again advocated working on elements to universal care that can be accomplished this year.

Many California Nurses Association grassroots members commented in support of single payer. The Sergeant at Arms said the room was at capacity, so an overflow room was opened.

At the February 5 hearing, there was testimony from experts on local government tax allocations, accessing the Medicare Trust Fund, the Employment Retirement Income Security Act, and other federal law considerations.