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State Senate

State Assembly

**Department of
Insurance**

No Shortage Of Legislation On The Governor's Desk From This Legislative Session

AB 63 (Frazier, Dem-Discovery Bay) Provisional Drivers Licenses

During the first 12 months after issuance of a provisional license, existing law prohibits the licensee from driving between the hours of 11pm and 5am and transporting passengers who are under 20 years of age. Current law also provides limited exceptions to these restrictions under which a licensee is authorized to drive under specified circumstances. This bill, commencing January 1, 2020, expands the scope of the provisional licensing program by extending the applicable age range for the program to 16 to under 21 years of age.

AB 265 (Wood, Dem-Healdsburg) Prescription Drug Coupon Prohibition

This measure prohibits a manufacturer 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 health insurance, healthcare service plan, or other health coverage, including, but not limited to, a copayment, coinsurance, or deductible, for any prescription drug if a lower cost generic drug is covered under the individual's health insurance.

AB 401 (Aguiar-Curry, Dem-Winters) Remote Pharmaceutical Dispensing

Pharmacy law requires the State Board of Pharmacy to license and regulate the practice of pharmacy, including pharmacists, pharmacy technicians, and pharmacies. This bill requires the Board to issue a remote dispensing site pharmacy license to a supervising pharmacy of a remote dispensing site pharmacy if all the requirements for licensure are met for the purpose of increasing access to dispensing or pharmaceutical care services in the geographic area in which the remote dispensing site pharmacy is located.

AB 447 (Gray, Dem-Merced) Glucose Monitor Medi-Cal Coverage

The Medi-Cal program is, in part, governed by, and funded pursuant to, federal Medicaid program provisions. Current law provides for a schedule of covered benefits under the Medi-Cal program. This bill, to the extent that federal financial participation is available and any necessary federal approvals have been obtained, add continuous glucose monitors and

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related supplies required for use with those monitors to the schedule of benefits under the Medi-Cal program for the treatment of diabetes mellitus type 1 and diabetes mellitus type 2 when medically necessary, subject to utilization controls.

AB 569 (Gonzalez-Fletcher, Dem-San Diego) Employee Reproductive Health Discrimination

AB 569 amends provisions of labor law relating to the obligations of an employer to prohibit an employer from taking any adverse action against an employee or their dependent or family member for their reproductive health decisions, including, but not limited to, the timing thereof, or the use of any drug, device, or medical service. The bill also specifies that any contract or agreement, express or implied, made by an employee to waive this benefit is null and void.

AB 570 (Gonzalez-Fletcher, Dem-San Diego) Workers Compensation Disability Apportionment

Current law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. Current law also requires the physician to make an apportionment determination by finding the approximate percentage of the permanent disability that was caused by the direct result of injury arising out of and occurring in the course of employment, and the approximate percentage of the permanent disability that was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. This bill prohibits 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.

AB 1008 (McCarty, Dem-Sacramento) Job Candidate Conviction History Inquiry Prohibition

AB 1008 provides that it is an unlawful employment practice for an employer with 5 or more employees to include on any application for employment any question that seeks the disclosure of an applicant's conviction history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer. However, it does permit employers to conduct applicant background checks.

AB 1209 (Gonzalez-Fletcher, Dem-San Diego) Employee Gender Pay Differentials

This legislation requires, on and after July 1, 2019, and biennially thereafter, that an employer that is required to file a statement of information with the Secretary of State and that has 500 or more employees in California to collect information on gender wage differentials. The bill additionally requires the employer to submit the information to the Secretary of State, by July 1, 2020. It also requires the Secretary of State to publish the information described above on its website upon receiving necessary funding and establishing adequate mechanisms and procedures.

AB 1641 (Daly, Dem-Anaheim) New Innovative Product Surplus Line Insurance Authorization

Current law authorizes the Insurance Commissioner, by order, to declare permissible for placement for a home state insured with a nonadmitted insurer, exempt from requirements except the filing of a confidential written report, any type of insurance coverage or risk for which the Commissioner finds, after a public hearing, that there is not a reasonable or adequate market among admitted insurers. The Commissioner is required to maintain an export list showing all those exempt coverages and risks. This bill authorizes the Commissioner to declare exempt from the requirements for placement of insurance with a nonadmitted insurer the type of coverage that is for new, innovative products for which a reasonable or adequate market among admitted insurers has not had time to develop.

AB 1701 (Thurmond, Dem-Richmond) Original Contractor Subcontractor Labor Liabilities

This bill, for all contracts entered into on or after January 1, 2018, requires a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract.

SB 2 (Atkins, Dem, San Diego) Real Estate Transaction Document Filing Fee

This measure makes legislative findings relating to the need for establishing permanent, ongoing sources of funding dedicated to affordable housing development. The bill imposes a fee of \$75 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, per each single transaction per single parcel of real property, not to exceed \$225.

SB 17 (Hernandez, Dem-Azusa) Prescription Drug Production Cost Disclosure

Current law requires healthcare service plans and health insurers to file rate information with the Department of Managed Healthcare (DMHC) and Department of Insurance (DOI) for health insurance policies in the individual or small group markets and for healthcare service plan contracts and health insurance policies in the large group market. This bill requires healthcare service plans or health insurers that file the above-described rate information to report to DMHC or DOI cost information regarding covered prescription drugs, including generic drugs, brand name drugs, and specialty drugs.

SB 33 (Dodd, Dem-Vacaville) Depository Institution Arbitration Agreement Waiver

Current law requires a court, on petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy; and, that a party to the agreement refuses to arbitrate the controversy, to order the petitioner and the respondent to arbitrate the controversy if the court determines that an agreement to arbitrate exists,

unless the court makes other determinations. SB 33 allows a person to waive forced arbitration in cases of alleged fraud committed by a state or federally chartered depository institution.

SB 63 (Jackson, Dem-Santa Barbara) Family Medical Leave Expansion

This measure prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, 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. The bill also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave.

SB 313 (Hertzberg, Dem-Van Nuys) Automatic Renewal & Continuous Service Offers

SB 313 requires a business that makes an automatic renewal offer or continuous service offer that includes a free gift or trial, to include in the offer a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial. The bill also prohibits a business from charging a consumer's credit or debit card, or the consumer's account with a third party, for an automatic renewal that is made at a promotional or discounted price for a limited period of time without first obtaining the consumer's consent to the agreement.

SB 430 (Insurance Committee) California Insurance Guarantee Association Reinsurance Authorization

The California Insurance Guarantee Association (CIGA) is authorized to fulfill its duties either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to CIGA and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by the Association. This bill authorizes CIGA, with the Insurance Commissioner's express approval, to reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other reinsurer approved by the Commissioner in order to limit or eliminate adverse development, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims.

SB 442 (Newman, Dem-Fullerton) Pool Safety Requirements

SB 442 requires, when a building permit is issued, that the swimming pool or spa be equipped with at least 2 of 7 drowning prevention safety features, including an enclosure that isolates the pool or spa from the private single-family home; removable mesh fencing in conjunction with a gate that is self-closing; an approved safety pool cover, among other options.

SB 649 (Hueso, Dem-San Diego) Wireless Telecommunications Build-Out

Current federal law recognizes the authority of a state or local government to manage public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by that government. Current federal law additionally provides that no state or local government has the authority to regulate the entry of, or the rates charged by, a commercial mobile service, but permits a state to regulate the other terms and conditions of commercial mobile services. This bill provides that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county.

SB 788 (Lara, Dem, Bell Gardens) Insurance Agent Licensing Information Disclosure

Current law requires the Insurance Commissioner, upon request of the Franchise Tax Board, to furnish the Board with information with respect to every licensee, including, but not limited to, the federal employer identification number if the entity is a partnership or the owner's name and Social Security number for all others. Current law also exempts the required information from the California Public Records Act (CPRA). This bill limits the CPRA exemption to an applicant's or licensee's federal employer identification or Social Security number.

Workers Compensation Legislation On The Governor's Desk

Fortunately, this legislative session was a relatively light year in the workers' compensation area. The following outlines the measures that are pending consideration by Governor Jerry Brown.

AB 40 (Santiago, Dem-Los Angeles) – This bill is supposed to facilitate the use of technology to access the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances. The bill has a delayed effective date of October 1, 2018. As the workers' compensation system moves to a prescription drug formulary, there will be more interest and pressure on the part of providers to use the CURES system. The functionality AB 40 brings to the system will help facilitate greater compliance with CURES. AB 40 is sponsored by the California Chapter of the American College of Emergency Physicians.

AB 44 (Reyes, Dem-San Bernardino) – An Applicant Attorneys' Association supported measure, this bill was in response to issues regarding claims practices following the San Bernardino domestic terrorism attack of December 2, 2015. The bill has been amended back

and forth, with committee amendments both in the Assembly and Senate deleting language that would have seriously altered the utilization review landscape for such injuries as well as extend temporary disability duration for these claims. The bill as amended requires a claims administrator to have a nurse case manager available to assist injured workers and providers in their efforts to secure appropriate treatment.

AB 61 (Holden, Dem-Pasadena) – This bill requires bill requires one of the Governor’s appointments to the State Compensation Insurance Fund (SCIF) Board to be a small business owner and to be a current SCIF policyholder for one year immediately preceding the appointment and continue in this status during the period of his or her membership.

AB 450 (Chiu, Dem-San Francisco) – This deals with regulating the conduct of employers relative to worksite enforcement actions by federal immigration officials. While this is an employment-related bill, it also prohibits an employer from reverifying immigration status except where required by federal law. This is relevant to workers’ compensation in that it prohibits inquiring into work eligibility for return to work purposes. This could affect either payments of supplemental job displacement benefits (vouchers) and access to the Return-to-Work Fund or increase the number of job offers to injured workers not eligible to work in the United States.

AB 570 (Gonzales-Fletcher, Dem-San Diego) – This bill prohibits 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. This is the latest in a long line of cases attempting to limit apportionment. Given the recent published Court of Appeal decision in *City of Jackson v. Workers Compensation Appeals Board* in which review was denied, this issue will yield to a broader legislative discussion next year. There is strong speculation this bill will get vetoed. The payer community has activated the Workers Compensation Action Network to develop grassroots opposition to the bill.

AB 715 (Wood, Dem-Healdsburg) – This bill requires the Department of Public Health to convene a workgroup to review existing prescription guidelines and develop a recommended statewide guideline addressing best practices for prescribing opioid pain relievers. As noted by the Department of Finance, this is duplicative of existing programs. There is a general interest in the payer community to stem the abuse of opioids in workers’ compensation medical treatment. This is a major part of the justification for the prescription drug formulary. While AB 715 attempts to add additional resources to fight this public health crisis, it perpetuates the problem that is seen throughout the US that somehow workers’ compensation medical treatment does not have to be included in the solution.

AB 978 (Limón, Dem-Ventura) – Requires an employer to provide, upon request, either a paper or electronic copy of the written Injury and Illness Prevention Plan (IIPP) to a current

employee or to his or her authorized representative, at no cost. An employer has 5 business days to honor the request. There is strong employer opposition to the bill from a California Chamber of Commerce coalition. Currently, the Occupational Safety and Health Standards Board is working on a regulation governing access to the IIPP.

AB 1048 (Arambula, Dem-Fresno) – This bill, beginning July 1, 2018, authorizes a pharmacist to dispense a Schedule II controlled substance as a partial fill if requested by the patient or the prescriber. The bill requires the pharmacy to retain the original prescription, with a notation of how much of the prescription has been filled, the date and amount of each partial fill, and the initials of the pharmacist dispensing each partial fill, until the prescription has been fully dispensed. The bill authorizes a pharmacist to charge a professional dispensing fee to cover the actual supply and labor costs associated with dispensing each partial fill associated with the original prescription.

Workers' compensation payers have uniformly said this is not a problem in practice. There have been some concerns expressed, however, that tracking partial fills and dealing with possible fee schedule issues related to dispensing fees may have to be addressed.

AB 1422 (Daly, Dem-Anaheim) – This legislation reconciles timeframes and procedures relating to practitioners who have been convicted of various types of fraud and whose liens for payment have been stayed. This addresses a conflict between two bills last year. There are additional definitions in the bill to further clarify what liens are subject to the stay.

SB 189 (Bradford, Dem-Compton) – This is intended to be a clean-up to last year's AB 2883 (Insurance Committee) legislation dealing with exclusions from workers' compensation for corporate officers and directors, general partners, and managers of limited liability companies. The bill adds new layers of complexity for waiving workers' compensation benefits for officers or directors of professional corporations and cooperative corporations, but also addresses the most pressing issues arising from AB 2883. The changes that SB 189 make to existing law apply on new and renewal dates after July 1, 2018 and not mid-term.

Specifically, it expands the scope of the exception from the definition of an employee to apply to an officer or member of the board of directors of a quasi-public or private corporation who owns at least 10% of the issued and outstanding stock, or 1% of the issued and outstanding stock of the corporation if that officer's or member's parent, grandparent, sibling, spouse, or child owns at least 10% of the issued and outstanding stock of the corporation and that officer or member is covered by a health insurance policy, and executes a written waiver, as described above. The bill further expands the scope of the exception to apply to an owner of a professional corporation who executes a document waiving rights under the laws governing workers' compensation, and stating that he or she is covered by a health insurance policy or a healthcare service plan.

SB 272 (Mendoza) – Authorizes the SCIF Board to hire additional executive officers, including a chief underwriting officer and a pricing actuary. Last year, Governor Brown vetoed a similar effort, SB 1451 (Mendoza). In his veto message the Governor said, “Under limited circumstances it has been necessary for state agencies to have salary setting authority for certain positions. I'm not convinced this authority is justified in this instance.” SB 272 deals with that issue and requires SCIF to submit its salary-setting criteria, including salary surveys, to the Department of Human Resources. Whether this is sufficient to address the Governor’s concerns is unknown.

SB 489 (Bradford, Dem-Compton) – This signed bill extends the timeline for hospitals and emergency physicians to bill for emergency medical treatment for injured workers from 30 days to 180 days under the provisions added by SB 1160 (Mendoza) last year relating to services for which no prospective utilization review is allowed.

Despite The Additional Heavy Tax Burden Imposed By This Legislative Session, It Could Have Been Even More Harmful

With the gasoline tax increase, the cap-and-trade (C&T) extension, which is really a tax increase because it raises revenue for the government to spend, and now the document tax to fund housing issues, this legislative session probably produced the most tax levies since the 1935 Legislature created both a state income tax and a vehicle license fee. Yet to be determined is whether this willingness to raise taxes has repercussions at the upcoming election. The test will not be so much whether individual legislators are returned to office, as most incumbents are safe. Rather, the test will come with the recall effort against Senator Josh Newman (Dem, Fullerton), since that election is focused on his gas tax vote; and, a gas tax repeal initiative if either of the two proposed measures make the ballot.

An earlier University of California Berkeley Institute of Governmental Studies (IGS) poll showed disdain for the gas tax with 58% opposed. However, in a recent IGS poll, when voters were asked to rank 20 priority issues in the order of importance when they choose whom to support for the next governor, the gas tax landed tied for 12th place on the poll. That number is likely to change when the gas tax collection begins in November and Californians become more aware of the new law. It should be noted that the general issue of “tax policies” ranked tied for 6th in the same poll with 51% of the respondents classifying tax policies as a priority. Incidentally, the high-speed rail project, which is kept alive by funding from C&T, finished last in the priority list with only 17% tabbing it as a priority.

There is another way of looking at the tax increase wave in the Legislature; it could have been worse. Many legislators instinctually reach into taxpayers’ pockets to solve any

problem. Fortunately, not all these tax funded problem solutions are finalized. As evidence are the California Chamber of Commerce Job Killer bills. The CalChamber lists nine measures, that is a third of all the bills labeled as job killers. It should be noted that it is a two-year legislative session and some pending tax measures could get considered next year.

Most Workers Comp Medical Reviews Side With Physician Decisions

In the first half of 2017, more than 91.3% of all utilization review (UR) physicians' modifications or denials of treatment that were reviewed by an independent medical review (IMR) doctor in California were upheld, a study released Thursday by the Oakland-based California Workers Compensation Institute (WCI) revealed. The IMR process was established by the Legislature to resolve medical disputes. California law requires workers' compensation claims administrators to have a UR program to assure that care provided to injured workers is backed by clinical evidence outlined in medical guidelines adopted by the state.

Most treatment requests are approved by UR, the WCI reported, but in 2012 state legislators adopted IMR to give injured workers a chance to get an independent medical opinion on treatment requests that UR physicians deny or modify. WCI identified 86,066 IMR decision letters issued in the first half of this year in response to applications submitted to the state after a UR physician modified or denied a medical service request. The WCI analysis of the decisions made this year found that after reviewing the patient's records and other information provided to support the request, IMR physicians upheld the UR doctor's modification or denial of the service 91.3% of the time – nearly identical to the 91.2% uphold rate in 2016, according to the study.

As in prior years, pharmaceutical requests accounted for almost half of the 2017 IMR decisions. Opioids represented 28.8% of all 2017 prescription drug IMR decisions even though doctors have consistently upheld the UR decision in 90% of the opioid requests, the study showed.

Senators Begin To Reveal Interest In Replacing Outgoing Leader

With the highest ranking Senate leader, Senate President Pro Tempore Kevin de León (Dem, Los Angeles), terming out at the end of next year, movement for his powerful job is intensifying. Senator Connie Leyva (Dem, Chino) became the first to formally announce her intention to run for the Senate's top position, stating that it is time for woman to take on the responsibility.

The agenda-setting role of the Senate leader comes with several responsibilities, including quarterbacking elections for Senate Democrats. The Senate President Pro Tem is also central



to budget and policy negotiations with the governor and Assembly speaker. Other Democrats considered possible successors to de León include Senators Bob Hertzberg (Dem, Van Nuys), Toni Atkins (Dem, San Diego), and Holly Mitchell (Dem, Los Angeles). Atkins and Hertzberg are both former Assembly Speakers. Senators Nancy Skinner (Dem, Berkeley) and Ben Allen (Dem, Santa Monica) also have been mentioned, both progressive representatives of their party. Only Senator Hertzberg is considered politically moderate.

Senator Leyva is the former president of the California Labor Federation, and is committed to the liberal legacy of Senate President de León.