



School Insurance News Round Up (June 1, 2007)

LEGISLATIVE UPDATE (by Nancy LaCasse, School Services of California): Last week, the Budget Subcommittees wrapped up their work on the 2007-08 State Budget. The next step is the creation of a two-house bipartisan conference committee charged with working out any differences between the two houses. The Budget Conference Committee began its work on Friday, June 1, 2007, and is focused on completing actions in time for both houses to approve the 2007-08 State Budget by the June 15 constitutional deadline.

The Senate and Assembly Budget conferees include: Senators Denise Ducheny (D-San Diego), Dennis Hollingsworth (R-Murrieta), and Michael Machado (D-Linden) and Assembly Members John Laird (D-Santa Cruz), Mark Leno (D-San Francisco), and Roger Niello (R-Fair Oaks).

Appropriations Committee Deadline Approaches

Friday, June 1, was the deadline for the Appropriations Committees to meet and consider bills that have a fiscal impact. Additionally, on May 31, both the Assembly and Senate considered bills that had previously been sent to the Appropriations Committee "suspense file." As it stands now, more than 800 bills were considered by the Senate and Assembly Appropriations Committees' suspense files and the status of those bills are noted below.

The suspense file is considered "purgatory" for legislation. Close to 40% of the 800-plus bills remained on the suspense file following the actions last week, which are noted by the comment status: "Held in Committee." This means the bills are no longer active, unless rules are waived. SELF is positioned to make recommendations on bills that pass the Appropriations Committee and will report on those positions after the Executive Committee takes action.

Workers' Comp Bill Headed to the Senate Floor, Advocacy Urged

SELF members should be aware that SB 936, authored by the Senate President Pro Tem Don Perata, has passed the Senate policy and fiscal committee and will soon be heard on the Senate Floor. This bill would roll back reforms included in SB 899 (Poochigian, 2004) by increasing, over a period of three years, the number of weeks of benefit payments to permanently disabled workers for specified percentages of permanent disability. At the end of the three-year period, the number of weeks for each level of permanent disability would be doubled. This bill is seen as the vehicle for any major changes to workers' compensation that potentially could occur this year. Many business and industry groups, including the California Association of Joint Powers Authorities (CAJPA), are opposed to the bill. Until SELF takes a formal position, we will monitor the bill closely and report on any action taken. If the bill passes, it will be sent to the Assembly, where it must also pass a policy and fiscal committee and be heard on the Assembly Floor. It is important to note that the Governor vetoed a similar bill last year, and there is no reason to believe that he would not take the same action this year.

BILL UPDATE:

School Liability

AB 810 (Lieu): School Safety Plans

SUMMARY: This bill would require schools to make copies of their school safety plans available upon request to parents and to teachers other members of the school staff. Schools would also be required to notify parents, teachers, and other members of the school staff regarding revisions to the plan. As amended the bill would suspend a principal's credential for one year if the school plan wasn't in place. The bill would impose a state-mandated local program.

STATUS: HELD IN COMMITTEE 5/31/07

COMMENTS: This bill is sponsored by the United Teachers of Los Angeles. It is opposed by the Association of California School Administrators (ACSA) because "current statute outlines criminal behavior that results in and administrative credential being removed from an individual. Failure to provide a school safety plan pales in comparison to the criminal activities outlined."

ACSA also notes that current law requires school district and county offices of education (COEs) to approve all school safety plans and ensure compliance to the SPI. There are 1,054 school districts in the state and 58 COEs that must meet this requirement. In contrast, there are 9,553 schools in California that enroll K-12 students. Therefore, the SPI would receive over 9,000 notices of compliance under this measure."

AB 1659 (Lieber): Special Education Procedural Safeguards

SUMMARY: This bill would revise various rights and procedures required for special education due process hearings, including, among others, those relating to witness lists, hearing extensions, closing argument preparation, and telephonic pre-hearing conferences.

STATUS: HELD IN COMMITTEE 5/31/07

COMMENTS: AB 1659 would make a number of changes to the current special education requirements for both the California Department of Education and for local school districts. Specifically, the bill will change the timelines for pre-hearing conferences prior to fair hearings, requires greater notification to parents if services to students with special needs if at least 25% of those services are not performed, requires greater written notice to parents of assessment of students, allows advocate groups to file complaints against school districts without identification of specific students, and modifies the current due process hearing procedures.

This bill is supported by the California Teachers Association and advocacy groups and opposed by the Association of California Administrators on the basis that it adds significant new mandated requirements to both the Department of Education and local school districts.

ACSA notes that, among many other new mandates the bill would "allow a formal complaint regarding an alleged violation of IDEA to be made against a school district without the identification of a specific student. Current law requires a complaint to be filed by an individual student and these complaints are then investigated by the California Department of Education on behalf of the student. By allowing advocate groups to file a complaint that alleges a systemic local agency wide or statewide policy practice violation would have a chilling effect on discussions between parent advocates and the district and could open the district to frivolous lawsuits."

Workers' Compensation

AB 338 (Coto): Workers' Compensation: Permanent Disability

SUMMARY: As amended, this bill increases the number of weeks that temporary disability benefits may be paid to an injured worker from 104 days to 156 weeks and makes other changes regarding benefits.

STATUS: ASSEMBLY FLOOR

ANALYSIS: This bill increases the length of time that temporary disability payments may be paid from 104 weeks to 156 weeks and allows these benefits to be paid within five years of the date of injury. In addition, this bill provides for an extension of the 156 weeks if certain conditions are met.

Fiscal Effect:

1. Information provided by the Department of Industrial Relations (DIR) indicates that extending disability benefits can lead to an increase in costs of three to five percent. Given that assumption, costs to the state could be between \$1.5 million and \$2 million per year.
2. Costs of up to \$100,000 in increased administrative workload for processing extension requests.

The sponsor of the bill is the California Labor Federation (AFL-CIO), the current two-year window in which a person can claim their 104 weeks of disability can unfairly penalize employees that return to work after an injury. This bill would extend that window to five years. In addition, extending the length of time employees can receive benefits from two years to three years, will assist the eight to 11% of workers that may not be able to return to work after the two years.

3. Workers' Compensation Coverage. The State of California, as an employer, and many cities and counties are self-insured for workers' compensation claims. Payments are treated in a pay-as-you-go manner. Therefore, any increase in costs has a direct impact on state and local funds. For non-self-insured employers, premiums are paid through a private insurer or the State Compensation Insurance Fund (SCIF). Increased costs for these employers would be evidenced through potentially higher premiums.

AB 812 (Hernandez): Workers' Compensation: Audits

SUMMARY: This bill would provide that if an employer fails to provide reasonable access to payroll records for a payroll verification audit, the employer shall pay a premium to the carrier or self-insurer not to exceed 3 times the carrier's then-current estimate of the annual premium on the expiration date of the policy. The employer shall also be liable for costs, as specified.

STATUS: SENATE LABOR AND INDUSTRIAL RELATIONS COMMITTEE

ANALYSIS: According to the author, in a competitive marketplace, some unscrupulous businesses will engage in various forms of fraud to reduce their costs and allow them to underbid legitimate businesses. One method is to under-report payroll to their workers' compensation carriers and inappropriately reduce their costs. The author notes that since the most significant component in pricing a workers' compensation policy is the number, salary, and classification of the employees, underreporting payroll or misclassifying employees may have profound effects on a company's workers' compensation costs.

The author and the bill's sponsor, the American International Group (AIG), also state that typically the initial workers' compensation premium is estimated based on the representation of the insured employer as to the payroll and the classification of the employees. At the end of the policy year, the workers' compensation carrier will audit the business' books and finalize the premium to reflect the actual company payroll. If a business refuses to allow the carrier to audit their books, it can protect its fraudulent activity. AIG states that this bill provides an incentive for employers to adhere to the contract and allow insurers access to their records to make certain the appropriate workers' compensation premium is being charged. Accurate data ensures that the employer is paying the appropriate amount of workers' compensation insurance and not gaining an unfair advantage on their competitors.

This bill is supported by the California Chamber of Commerce.

AB 1073 (Nava): Workers' Compensation: Medical Treatment Utilization Schedule

SUMMARY: This bill would also prohibit the limit on the number of chiropractic, occupational therapy, and physical therapy visits from applying to visits for post-surgical physical medicine and rehabilitative services.

STATUS: SENATE LABOR AND INDUSTRIAL RELATIONS COMMITTEE

ANALYSIS: According to the author, the goal is to ensure that injured employees who have to undergo surgery to repair their injuries are never left in a situation where appropriate physical medicine services such as physical therapy are unavailable due to the 24-visit cap.

Under existing law, an employer or insurer has the discretion in all circumstances to waive the 24-visit cap. However, the proponents of this bill argue that some reviewers are reasonable, and others are firm on the 24-visit cap. They further point out that due to the importance of post-surgery therapy in the success of the procedure, access to physical medicine therapy ought to be a matter of right, as opposed to the discretion of the reviewer. The opposition, on the other hand, makes the case that the discretion in current law is adequate, and working. They argue that the current cap was adopted as a result of significant abuse of these services, and that creating further exceptions to the cap will encourage abuse such as occurred in the past.

Opponents have suggested that the phrase "consistent with the medical treatment utilization schedule adopted by the Administrative Director" be added to the sentence that creates the exception to the cap. The sponsors have acknowledged that some standard ought to be adopted, but have not accepted this specific proposal.

AB 1212 (Núñez): Workers' Compensation: Permanent Disability

SUMMARY: This bill will require the Division of Workers' Compensation to revise the permanent disability rating schedule no later than January 1, 2009, based on empirical studies of ratings and wage losses.

STATUS: ASSEMBLY FLOOR

ANALYSIS: This bill is intended to address the fact that recent evidence shows that the current permanent disability rating scale (PDRS) is generating unintended low ratings. Despite the requirement that the rating scale be adjusted every five years, the author believes that the time has arrived for a more direct statement from the Legislature in terms of increasing the PDRS to an appropriate level. Waiting for two additional years before adjusting the scale could lead to unnecessary hardships for injured workers.

The State of California, as an employer, and many cities and counties are self-insured for workers' compensation claims. Payments are treated in a pay as you go manner. Therefore, any increase in costs has a direct impact on state and local funds. For non-self-insured employers, premiums are paid through a private insurer or the State Compensation Insurance Fund (SCIF). Increased costs for these employers would be evidenced through potentially higher premiums.

SB 906 (Runner): Workers' Compensation: Claims Processing

SUMMARY: This bill would authorize a pharmacy, health care provider, insurer, or self-insured entity that provides benefits or treatment for an injured worker under a workers' compensation claim to contract with an agent or assignee for the purposes of claims processing, assignment of claims, processing and receiving payments, or filing required reports on behalf of the pharmacy, health care provider, insurer, or self-insured entity.

STATUS: SENATE FLOOR

ANALYSIS: This bill clarifies that, under California law, third-party companies may enter into contracts with pharmacies, health care providers, insurance companies, and self-insured entities to provide

services including, but not limited to, billing claims processing and reimbursement, and the preparation and filing of required reports with respect to workers' compensation claims.

According to comments by Committee staff, it is not clear that the clarifying language of this bill is needed. Parties generally have the right to enter into contracts for the exchange of services, rights, or other things of value provided the services, rights, or things of value so contracted for are not in violation of law. Committee staff is unaware of any prohibitions barring the contracts referenced in this legislation. However, the sponsors of the bill allege that certain pharmacies and other businesses are reluctant to enter into contracts due to the absence of a specific authorization in workers' compensation law, even as these businesses may see some value in contracting for claims processing.

SB 936 (Perata): Workers' Compensation: Permanent Disability Ratings

SUMMARY: This bill increases the number of weeks of indemnity payments for the range of percentages of permanent disability ratings. The amount of these indemnity payments is based on a percentage permanent disability rating that is derived from a calculation involving evaluated bodily impairment, estimated future earnings losses, and an age and occupation adjustment. The bill increases, over a period of three years, the number of weeks of benefit payments to permanently disabled workers for specified percentages of permanent disability. At the end of the three-year period the number of weeks for each level of permanent disability, as specified, is doubled.

STATUS: SENATE FLOOR

COMMENTS: A bill similar to this bill, SB 815 (Perata), was introduced last year and was vetoed by the governor. Proponents, including employee groups argue that injured workers are being dramatically under-compensated for their industrial injuries. Opponents, including business groups believe it is unreasonable to make substantial changes to PD benefits until a full study of the ramifications of SB 899 (Poochigian) are analyzed.

SB 942 (Migden): Workers' Compensation: Employee Reinstatement

SUMMARY: This bill would provide that there is a rebuttable presumption that an employer has discriminated against an employee if, after the employee has been disabled from work as a result of injury or illness arising out of, or in the course of, employment pursuant to which the employee is eligible to receive workers' compensation benefits, the employer refuses to reinstate the employee to his or her regular position with full wages and benefits within five working days after receipt of a written statement by the employee's treating physician that the employee is able to perform the full requirements of the employee's regular position, notwithstanding the inherent risks of the position, without risk of further injury to the employee or other employees in the workplace.

The bill would make it a misdemeanor for an employer to refuse to reinstate an employee to his or her pre-injury position pursuant to these provisions. The bill would provide that it shall also be a violation of those provisions for an employer to require an employee to perform additional physical duties that were not required of the employee prior to his or her injury or illness as a condition for returning to employment. This bill would impose a state-mandated local program.

STATUS: SENATE FLOOR

ANALYSIS: This bill is supported by the unions and opposed by the insurance sector and the California Association of Joint Powers Authorities (CAJPA). The author and the supporters believe this bill supports the important principles of the injured workers rights to return to work and to pre-designate. In addition, this bill is said to be a preventative measure – that strengthening anti-discrimination measures and attaching fines to violations will deter potential discrimination. There have been no studies known to the staff of the committee documenting the incidence of the two forms of discrimination as described in the bill. However, the committee and sponsors have received anecdotal reports of this discrimination.

The Commission on Health and Safety and Workers' Compensation (CHSWC) has reported to the committee that they have conducted a series of round-table discussions on this matter. CHSWC states

that employer, injured worker, and insurance company representatives agreed in these meetings that the current trigger for eligibility for supplemental job displacement benefits, allowing eligibility when the injured worker does not return to work within 60 days of the termination of temporary disability, effectively deprives some injured workers of the right to retraining benefits who should not be so deprived. It may be apparent that (1) an injured worker is not going to be able to return to the previous job sometime before the termination of TD, and/or (2) with the most serious injuries, the two-year limit on TD may cause a worker to pass the deadline for SJDB before his or her condition has reached maximum medical improvement (i.e., permanent and stationary).

Joint Powers Agencies

AB 1463 (Eng): Public school employers: Joint Powers Agencies

SUMMARY: This bill would expand the definition of "public school employer" or "employer" to include joint powers agencies created as an entity separate from the parties to the joint powers agreement with separate employees that meet certain additional criteria. The bill, by requiring those newly created joint powers agencies to engage in collective bargaining with their separate employees, would impose a state-mandated local program.

STATUS: ASSEMBLY FLOOR

ANALYSIS: This bill provides collective bargaining rights to employees of joint powers agencies (JPAs) operating in California school districts. The expanded rights do not apply to JPAs providing insurance services.

Other

AB 70 (Jones) Flood Liability

SUMMARY: This bill provides that a local entity is subject to joint liability with the state to the extent it increases the state's exposure to liability for flood damages by approving new developments in a previously undeveloped area.

STATUS: ASSEMBLY FLOOR

COMMENTS: This bill only applies to new developments placed in previously undeveloped areas that are protected by state flood control projects. The sharing of liability does not apply to existing or future development in areas already developed or designated in land use plans for development. According to author, this bill seeks to achieve two major objectives: 1) it will create a fairer and more equitable system of shared liability between state and local entities, 2) it will encourage local governments to consider flood risks in all planning decisions and take reasonable steps to mitigate the risks of such planning decisions.

SB 339 (Scott) Mutual Fund Investments

SUMMARY: Existing law provides that an insurer may make excess fund investments in shares of an open-end diversified investment company, as defined, under specified conditions. This bill would revise and recast the conditions applicable to an investment company in which a domestic incorporated insurer may make excess fund investments.

STATUS: ASSEMBLY INSURANCE COMMITTEE

ANALYSIS: This bill is intended to add an additional layer of flexibility to the laws governing the investment of excess funds. This bill's sponsor, the California Association of Professional Liability Insurers, contends that the existing laws in this area are outdated and inappropriate for the existing investment marketplace. There are, for example, many types of sound investments that exist now, but that did not exist the last time the excess funds statutes were amended (e.g., mutual funds, closed-end funds, and ETFs). According to this bill's sponsor, "closed-end funds and ETFs are not new, and in fact today represent over \$10 trillion of invested assets in the United States. Domestic insurers in New York are permitted such investments, as are domestic insurers whose state law is based on the National

Association of Insurance Commissioners Model Investment Act. We believe this bill is necessary to keep California domestic insurers competitive. They need the flexibility to invest in these investment products, so long as there are appropriate statutory safeguards in place."

This bill's author also notes that California's law relating to grant and annuity society investments was recently amended to authorize investments in stock and bond funds, closed-end funds, and ETFs. SB 1088 (Scott), Chapter 381, Statutes of 2004, authorized grants and annuities societies to invest up to the lesser of 100 percent of the certificate holder's net worth or 50 percent of its Article 3 investments in investment companies regulated under the Federal Investment Company Act of 1940.