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May 16, 2003

To: Supervisor Yvonne Braithwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

**STATE LEGISLATIVE UPDATE**

**Pursuit of County Position on Legislation**

**SB 228 (Alarcon)**, as amended on May 12, 2003, would 1) prohibit fees for workers' compensation medical services from exceeding 120 percent of the Medicare fee schedule for all medical services, including outpatient surgical services and pharmaceutical services, 2) facilitate the development of a fraudulent claim schedule and medical fee schedule reporting system and an electronic adjudication management system, subject to funding, and 3) reduce from 60 to 45 days the period in which an employer must pay bills for workers' compensation services and require employers to accept or reject liability for a workers compensation claim within 60 days, instead of the current 90-day period.

The Administrative Director of the Workers Compensation Division is required under current law to adopt and update an official medical fee schedule for services provided under workers' compensation including an outpatient surgery fee schedule for services not performed under contract. Current law also requires bills to be paid for treatment of workers' compensation cases within 60 days and that employers determine their liability for claims within 90 days. If no decision is made within 90 days, the claim is presumed to be work-related.

CAO Risk Management staff indicates that SB 228 would make beneficial changes to workers' compensation law that would result in cost savings exceeding $1 million per year. However, the provision shortening the time period for determining employer liability for workers' compensation claims would offset these savings and increase costs substantially. Complex workers' compensation cases often involve investigation into the circumstances of the claim, including obtaining copies of existing medical records and completion of comprehensive medical evaluations, sometimes from several physicians in different specialties. The statutory presumption of employer liability for claims would be more likely to occur within the shortened time frame. Additionally, reducing the claim review period could result in more denied claims due to the lack of information to make an informed

decision, resulting in more litigation. **Therefore, our Sacramento advocates will support SB 228, if it is amended to retain the existing 90-day time frame for determining employee liability.** A support if amended position is consistent with current Board policy to support reforms to workers' compensation and disability retirement which would ensure an efficient, equitable and cost-effective system.

SB 228 is currently in the Senate Committee on Appropriations with no hearing date set. The bill has been double-joined with two other workers' compensation bills, SB 354 (Speier) discussed below, and SB 229 (Burton). SB 229 (Burton) as amended on May 12, 2003, stipulates that if a small employer provides its employees with health insurance the State cannot raise the employer's workers' compensation premium rates.

Support and opposition to SB 228 are unclear at this time due to the recent amendments. Supporters formerly included: California Insurance Commissioner, Alliance of American Insurance, American Insurance Association, California Applicants' Attorneys Association, California Grocers Association, California Labor Federation (AFL-CIO), California Chamber of Commerce, Insurance Agents and Brokers Legislative Council, Liberty Mutual Group, and National Federation on Independent Business. Opposition included the California Society of Industrial Medicine and Surgery, Coalition of Physician and Surgery Centers, and Visionquest Industries.

**SB 354 (Speier)**, as amended on May 12, 2003, would 1) increase the maximum fine for violation of fraud provisions of workers compensation law and/or the insurance code from $50,000 to $100,000, 2) limit chiropractic care to no more than 15 one-hour visits unless the employee receives authorization from a medical doctor, and 3) prohibit physician referrals to surgical outpatient centers where the physician or his/her family has a financial interest.

Existing law does not limit chiropractic care by time or number of visits and precludes referral by a physician to various types of medical facilities if the physician or his/her family has a financial interest in the entity or facility receiving the referral. Surgical outpatient clinics are not currently included on the list of prohibited medical facilities.

CAO Risk Management staff indicates that increasing the fine for conviction of workers' compensation fraud is a beneficial change, but it would not result in significant savings for the County. However, the provisions that establish reasonable controls over chiropractic care and prohibit physician referrals to self or family-owned outpatient surgical centers would save the County an estimated $3 million per year. Support for SB 354 is consistent with current Board policy to support reforms to workers' compensation and disability retirement which would ensure an efficient, equitable and cost-effective system. **Therefore, our Sacramento advocates will support SB 354**.

SB 354 passed the Senate Committee on Labor and Industrial Relations on March 24, on a 6 to 0 vote and was referred to the Committee on Appropriations. No hearing date has been set. It has the support of the State Department of Insurance, Alliance of American Insurers, American Insurance Association, American Insurance Group, Automotive Aftermarket Services, California Medical Association, California Restaurant Association, Farmers Insurance, Liberty Mutual, Insurance Agents and Brokers Legislative Council,

Safeway, Inc. It is opposed by California Applicants' Attorney's Association (oppose unless amended) the American Chiropractic Association, Affinity Chiropractic and numerous Doctors of Chiropractic Medicine.

**Status of County Interest Legislation**

**County-opposed AB 1324 (Steinberg**) which would provide that if a dependent of a public safety member contracts a blood-borne disease as a result of exposure to the employee, and elects to receive workers' compensation for medical care expenses, the dependent would not be eligible to bring civil action against the employer. AB 1324 passed the Assembly Appropriations Committee on a 21-to-3 vote on May 14, 2003 and now goes to the Floor.

**County-opposed AB 1151 (Dymally)**, which originally would have overturned the decision in *Terrell R*., was amended on May 13, 2003. AB 1151 now declares legislative intent that nothing in the *Terrell R*. decision shall be held to change the standards of liability and immunity for injuries to children in protective custody that existed prior to that decision. Our County advocates, County Counsel, Department of Children and Family Services staff, and the County Welfare Directors Association fought hard to have this bill amended favorably. Because the objectionable provisions of AB 1151 have been removed from the bill, **our Sacramento advocates will drop opposition to AB 1151 and take no position.**

**County-sponsored AB 1469 (Negrete-McLeod)**, which would authorize the court to grant a continuance not to exceed ten days if a report is not provided to the parties within a reasonable time before the dependency hearing, passed the Assembly Floor on May 15, 2003 by a vote of 47-22. The measure now proceeds to the Senate where it is expected to be referred to the Senate Judiciary Committee.

We will continue to keep you advised.

DEJ:GK
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County Counsel
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Legislative Strategist
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations