



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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August 11, 2011

To: Mayor Michael D. Antonovich  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Don Knabe  
Supervisor Zev Yaroslavsky

From: William T Fujioka  
Chief Executive Officer

## **SACRAMENTO UPDATE**

This memorandum contains a pursuit of County position on legislation regarding temporary disability benefits; a change of a County position on legislation related to workers' compensation benefits; and an overview of a report issued by the Legislative Analyst's Office (LAO) titled *Reducing Prison Overcrowding in California*.

### **Pursuit of County Position on Legislation**

**AB 947 (Solorio)**, which as amended June 28, 2011, would increase the cap on the payment of temporary disability benefits from up to 104 weeks to up to 240 weeks for injured workers who require additional medical treatment.

Existing law establishes a workers' compensation system which provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. Existing law further provides for the payment of indemnity benefits if the occupational injury causes temporary or permanent disability which prevents the worker from returning to his or her job. In the case of temporary disability payments, the benefit is two-thirds of the weekly loss in wages due to disability for up to 104 weeks within 5 years.

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AB 947 would recast the provisions to permit aggregate disability payments for a single injury causing temporary disability that occurs on or after January 1, 2012, to be extended for no more than 240 compensable weeks within five years from the date of the injury. The bill also prohibits the extension of additional temporary disability benefits if the need for the additional treatment was caused by the willful failure of the worker to seek recommended medical treatment necessary to reach a permanent and stationary condition.

The California State Association of Counties (CSAC) indicates that the expansion of temporary disability included in AB 947 ignores the significant improvements made by the 2004 workers' compensation reforms and further imposes more costs on local public employers at a time when local governments are struggling to provide even the most basic of services to their residents.

The Chief Executive Office (CEO) Risk Management indicates that AB 947 would significantly roll back the 2004 workers' compensation reforms contained in SB 899 (Chapter 34, Statutes of 2004), which among other things, capped temporary disability payments at 104 weeks. According to CEO Risk Management, AB 947 would increase temporary disability benefits costs by approximately 50 percent of the current savings resulting from the 2004 reforms. The County's costs were \$33.0 million per year before the 2004 reforms and reached \$22.0 million in FY 2010-2011, a reduction of \$11.0 million per year. CEO Risk Management estimates that AB 947 would result in an estimated increased County cost of up to \$5.0 million annually.

In addition, significant administrative and litigation costs could also be incurred for the adjudication of what are likely to be very subjective medical findings and opinions. These additional administrative and litigation costs could bring the total annual cost increase to as much as \$6.0 million.

The Chief Executive Office opposes AB 947. Therefore, consistent with existing Board policy to oppose legislation that mandates or authorizes compensation or benefit changes without approval of the Board of Supervisors, **the Sacramento advocates will oppose AB 947.**

AB 947 is sponsored by the California Applicants' Attorneys Association and supported by the California Labor Federation. The measure is opposed by CSAC, the California Association of Joint Powers Authorities, the California Special Districts Association, Allied Managed Care, the Alpha Fund and Acclamation Insurance Management Services.

The bill is scheduled for a hearing on August 15, 2011 in the Senate Appropriations Committee.

### **Change in Pursuit of County Position on Legislation**

**County-opposed SB 457 (Calderon)**, which would require the Workers' Compensation Appeals Board to allow a lien on workers' compensation benefits for certain medical expenses in excess of the Official Medical Fee Schedule (OMFS) was amended on June 28, 2011.

The amendments clarify that a payor may conduct a utilization review of the medical expenses and that medical and other costs must be reasonable. The Chief Executive Office Risk Management staff and County Counsel indicate that discussion with the author has clarified that the liens described in this bill relate to those for denied claims only. Thus the use of the OMFS will continue for liens filed on accepted claims, thereby ensuring the continuation of substantial claim savings for the County. Therefore, **the Sacramento advocates will remove opposition to SB 457 and take no position on this measure.**

### **LAO Report on Reducing Prison Overcrowding in California**

On August 5, 2011, the LAO released a status report titled *Reducing Prison Overcrowding in California*. The report concludes that the State's current efforts to comply with the Federal three-judge panel ruling to reduce State prison overcrowding within two years will not be successful. Current efforts to reduce prison overcrowding include: 1) transferring prisoners to out-of-state and in-state contract facilities; 2) limited prison construction; and 3) shifting responsibility for certain low-level offenders from the State to counties.

The Legislative Analyst's Office indicates that the Public Safety Realignment, enacted in the FY 2011-12 State Budget Act, would significantly reduce prison overcrowding upon full implementation; however, the State may fall several thousand inmates short of meeting requirements established by the Federal three-judge panel.

The Legislative Analyst's Office recommends that the Governor and the Legislature: 1) ask the court to extend the deadline for meeting the reduction targets, which the U.S. Supreme Court indicated in their decision would be reasonable; 2) reconsider AB 900 jail construction plans to include building more high-security beds, where the overcrowding is most acute, rather than dormitory beds and program space for inmate healthcare; 3) maintain out-of-state and in-state contracted facilities until such time as bringing those inmates back into regular state facilities does not contribute to

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overcrowding; and 4) extend the California Department of Corrections and Rehabilitation's flexibility to use out-of-state prisoner transfers. This would require the re-authorization or extension of the sunset date of the State law which expired on July 1, 2011. According to the LAO, the above recommendations would allow the State to address the prison overcrowding issue most efficiently given the State's current fiscal situation.

The complete LAO report may be accessed at:  
[www.lao.ca.gov/reports/2011/crim/overcrowding\\_080511.pdf](http://www.lao.ca.gov/reports/2011/crim/overcrowding_080511.pdf)

We will continue to keep you advised.

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MR:IGEA:sb

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