



Legislative and Industry Updates – October 2016

Governor Brown has reviewed hundreds of bills during this last session, and provided his final veto or approval on key bills impacting the FASIS Workers' Compensation Program. The following information regarding the Governor's final decisions is provided.

LEGISLATIVE ACTIVITY

AB 1643 (Gonzalez) Gender Bias - VETO

Introduced in the last session as AB 305 and vetoed by the Governor, with the message: "The workers compensation system must be free of gender-bias. No group should receive less in benefits because of an immutable characteristic. However, this bill is based on a misunderstanding of the American Medical Association's evidence-based standard, which is the foundation of the permanent disability ratings, and replaces it with an ill-defined and unscientific standard."

The issue was reintroduced as AB 1643 a "gut and amend" bill. Current Workers' Compensation law indicates an employer is responsible only for the percentage of the permanent disability directly caused by the injury arising out of, and occurring in the course of, employment. The author of this bill once again promotes a bill that would defeat the "practice of penalizing women" in the Workers' Compensation system. AB 1643 was strongly opposed by CAJPA.

The Governor's VETO message reads in part – "I am vetoing this bill for many of the same reasons that I returned a similar measure, AB 305, last year. This bill is poorly drafted and reflects a seriously flawed understanding of both the workers' compensation system and the nature of physical disability that may result from a work-related injury. The bill would, among other provisions, mandate that impairment ratings for breast cancer be no less than the ratings for prostate cancer. It would also create broad gender-based exceptions to the core principle of apportionment: that employers are liable only for the permanent disability directly caused by their employee's work-related injury.

This measure seeks to draw a false comparison between disability ratings resulting from prostate and breast cancers, notwithstanding that these organs neither perform analogous physiological functions nor do their treatments result in similar physical limitations. There is a wide disparity in impairment levels that may result among individual women diagnosed with breast cancer and individual men diagnosed with prostate cancer, and individuals of all genders diagnosed with any form of cancer, depending on the stage at which the cancer was diagnosed, the nature of the

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treatment, and the degree and process of recovery. The suggestion that these two very different conditions should be rated equivalently in all cases has no basis in medical fact and upends the goals of ensuring consistency, uniformity and objectivity in ratings supported by substantial medical evidence.”

SB 897 – Labor Code 4850 Extension (Roth) - VETO

SB 897 introduces the extension of salary continuation benefits to Safety Officers relating to Labor Code 4850 for “catastrophic” injuries at the hands of another. Unfortunately, the definition of catastrophic injury is non-specific. Additionally this bill was opposed as it increases the costs for Safety employees and allows up to 100% of two years’ salary replacement benefits, tax free.

Original concerns were expressed that the bill would extend the period of time a Safety Officer could receive a combination of salary continuation and Temporary Disability benefits to three years from the two-year cap (104 weeks) currently available. However, the bill had been clarified to indicate the payment of salary continuation would be included in the 104 week Temporary Disability (TD) cap.

The remaining opposition to the bill focused on two areas:

- The payments of salary continuation for up to two years, tax-free will have a significant financial impact on public entities.
- The determination of catastrophic injury “at the hands of another” is open to litigation, again leading to significant financial exposure for public entities.

Staff provided additional, clarifying information to the Director of the Department of Industrial Relations regarding the impact of SB 897 and CAJPA’s continued strong opposition to this bill.

The Governor’s VETO message reads – “This bill doubles from one to two years’ special leave benefits for police officers, firefighters, or sheriffs who are disabled by a qualifying catastrophic injury. This leave is required to be provided at full salary and tax-free, resulting in take home pay that is higher than pre-injury wages.

I was concerned when told this bill was prompted by a City of Riverside police officer who nearly lost his health benefits while on temporary disability. In that case, the City chose to extend the officer's benefits. Upon closer review, I have not found any other city which terminates the health benefits of police officers while they are on temporary disability.

As noted in my veto of AB 1451 last year, this disability leave benefit drives costs up significantly. Many local agencies are under significant financial stress. They must consider employee benefit increases in light of competing demands for critical services and long-term pension and health care debts.

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In light of all this, I believe the decision on how to handle cases such as this is best left to the local jurisdiction.”

SB 1160 – Utilization Review (Mendoza) - APPROVED

SB 1160 evolved in to a “mini-WC Reform” bill, addressing multiple issues and also includes changes approved by the Governor in AB 2503. Through CAJPA, staff worked continually with the Legislative staff regarding the bill, improving understanding of the Utilization Review (UR) process as administered by Third Party Administrators as well as self-administered programs.

After many revisions, SB 1160’s final outcome will impact the following primary areas:

1. On or before 01/01/18, Notices will be developed to employees regarding access to medical treatment following denial of a claim;
2. Penalties are increased for failure to provide accurate and timely information through Electronic Data Interface (EDI), and will require the posting of those administrators out of compliance;
3. Utilization Review
 - a. Changes to prospective and retrospective UR for injuries occurring as of 01/01/18;
 - i. Medical care provided within the 30 days following the date of injury per the Medical Treatment Utilization Schedule (MTUS) for ACCEPTED claims with dates of injury as of 01/01/18 shall be authorized without prospective UR when provided by a member of the medical provider network (MPN) or health care organization (HCO) or a predesignated physician within the 30 days following the date of injury;
 - b. Establishes new procedures as of 01/01/18 for reviewing medical necessity of medications prescribed per the drug formulary;
 - c. Requires EACH UR process to be accredited as of 07/01/18;
 - i. Exempts nonprofit, public sector INTERNAL programs.
 - d. Develops a system for electronic reporting of UR documents. An evaluation will be conducted of medical treatment provided within the first 30 days after a claim is filed for injuries filed during the period 01/01/17 – 01/01/19;
4. Lien Claimants
 - a. Requires lien claimants to file a declaration, under penalty of perjury with specific information including indicating the dispute DOES NOT RELATE to either Independent Bill Review (IBR) or Independent Medical Review (IMR). Failure to do so is grounds for dismissal of the lien;
 - b. Will automatically “stay” providers liens upon filing of criminal charges against the lien claimant or entity for offenses involving medical fraud;
 - c. Liens filed as of 01/01/17 must include an original bill along with an itemization of charges;

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- d. Provides that liens assigned to another entity or person other than that which provided the service will be invalidated after 01/01/17;
5. The MTUS will be updated by order and published on the web site;
6. A reasonable range for deponent (applicant attorney fees) fees will be developed on or before 07/01/18;
7. Develops regulations for the identification and verification of credentials for those providing interpreter services; and
8. Revises the treating physician reporting requirements.

Implementation of the changes outlined in SB 1160 will require additional training for claims administrators and employers. The FASIS staff will further analyze the changes and will work closely with the claims administrator and the FASIS members as each change is implemented.

SB 1175 – Workers’ Compensation Payments (Mendoza) - APPROVED

Currently employers are required to pay for medical expenses relating to Workers’ Compensation claims. This bill requires requests for payment incurred for medical expenses, including med-legal expenses, as of 01/01/17, to be submitted for payment within 12 months of the date of service provided. This will allow employers to more accurately and appropriately estimate and pay the costs of Workers’ Compensation claims.