



STATE BAR INSURANCE LAW COMMITTEE
END OF SESSION LEGISLATIVE REPORT
2011

The End of Session Legislative Report is a compilation of Assembly and Senate Bills that have been tracked throughout 2011. It has been organized by insurance subject areas (beginning with health insurance, followed by life and annuity) and status. Each bill is identified with a number, author, title, summary or status, and a link that will direct you to the bill's current form.

HEALTH

From ACLHIC

BILLS SIGNED BY THE GOVERNOR

Medigap: [A.B. 151 \(Monning\)](#) updates the guarantee issue requirement for Medicare supplement coverage to include standardized plans M and N and expands the guarantee issue population to include individuals enrolled in Medicare Advantage plans for which the premium rate is being increased. The bill includes a fifteen percent threshold for increases in premiums or copays to trigger the guarantee issue requirement, and also specifies that the requirement is triggered if the MA plan reduces benefits or discontinues a relationship with the enrollee's provider. The language specifies that the open enrollment right for Medigap plans offered by non-affiliated issuers is extended only during the annual election period for the MA plan, unless the requirement is triggered due to discontinuance of a provider relationship. The bill does not require Medigap issuers to permit individuals to enroll in a group Medigap policy if the individual is ineligible for the group. **AB 151 was signed into law on September 7 and will be effective January 1, 2012.**

Transparency: [S.B. 751 \(Gaines\)](#) prohibits contracts between plans/insurers and facilities from containing clauses that restrict the ability of the plan or insurer to provide enrollees or insured with information on range of costs or quality of procedures and services provided by the facility. The bill requires insurers to provide hospitals or facilities the opportunity to review data and methodology for validation at least 20 days before it is provided to patients, including prior to revisions or distribution or new information, and requires online disclosures informing enrollees that hospitals or facilities may disagree with the information and stating factors that could affect validity. Hospitals or facilities choosing to establish an online website responding to the information are entitled to require the plan or insurer to post a link on the website displaying the cost and quality information for enrollees. **SB 751 was signed into law on September 6, and will be effective January 1, 2012.**

BILLS AWAITING ACTION BY THE GOVERNOR

Federal Reform

- **Medical Loss Ratio:** [S.B. 51 \(Alquist\)](#) requires health care service plans and health insurers to comply with provisions of ACA prohibiting lifetime and annual limits and mandating rebates for failure to meet required loss ratio standards. The bill references the federal requirements specifically and applies to all plans and health insurers other than state programs or the state's high risk pools. Rulemaking authority is provided and clarifications are included to specify that the provisions are to be implemented to the extent required by federal law, and shall comply with, but not exceed, the scope and requirements of the ACA and rules or regulations issued pursuant to the ACA provisions.

Mandated Benefits** (see end of email for definitions pertaining to applicability of mandated benefits legislation)

Autism: [S.B. 946 \(Steinberg\)](#) mandates coverage for pervasive developmental disorders and autism by health care service plans and health insurance policies. Included are requirements to provide coverage for applied behavior analysis and other intensive behavior programs and a requirement to maintain an 'adequate' network of autism service providers. A 'qualified autism service provider' is defined by the bill as both licensed providers (physicians, therapists, etc) and non-licensed individuals with autism treatment certification. Coverage is required to comply with a treatment plan provided for the patient, with only limited requirements such as a specific timeline and measurable goals. The bill specifies that the benefit shall become inoperative on July 1, 2014 and repealed on January 1, 2015 unless extended by the legislature. Additionally, the bill does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations if such services are not established under final rulemaking for essential health benefits at the federal level. **SB 946, in its amended form, passed the Senate and Assembly on September 9.**

- o Similar versions of this legislation that did not pass include [A.B. 171](#), [S.B. 166](#), and [S.B. 770](#).

Maternity: [A.B. 210 \(Hernandez\)](#)/[S.B. 222 \(Evans\)](#) ([A.B. 185](#)) require individual and group health insurance policies to provide coverage for maternity services beginning no later than July 1, 2012, defined to include prenatal care, ambulatory care, involuntary complications, neonatal care, and inpatient hospital care (including labor, delivery, and postpartum care). The bill specifies that the definition of 'maternity services' is effective until final regulations or guidance define the required scope of maternity benefits under the ACA. The bill does not apply to specialized health insurance, Medigap, short-term limited duration, CHAMPUS-supplement, or TRI-CARE. (SB 222 in its introduced form pertained to joint ventures).

DMHC and Office of Patient Advocate Reorganization: [A.B. 922 \(Monning\)](#) transfers the Department of Managed Health Care (DMHC) and the Office of Patient Advocate (OPA) from the Business, Transportation and Housing Agency to the California Health and Human Services Agency. The office is charged with developing informational materials, producing reports such as quality grades and report cards, assisting with claims and dispute related filings (complaints, appeals, etc), and assisting with the external review process. Beginning in 2013, duties expand to include receiving and responding to consumer inquires, requests, and complaints, providing outreach and education on health coverage and public programs, providing assistance and advocating for consumers with regard to health care problems (service problems, claims issues, or payment problems) and coordinating with other state and federal agencies engaged in health care reform implementation. The Office will also track and analyze health care inquire and complaint data for public reporting.

Medi-Cal/Public Programs

- [A.B. 415 \(Logue\)](#) establishes disclosure requirements for health care providers delivery services through the use of telehealth that require patients to verbally consent to use of telehealth for medical services. The bill also prohibits health care service plans and health insurance policies from requiring in-person contact between a patient and a provider as a

condition of payment for medical care and from limiting the type of setting where services are provided before payment is made (subject to terms and conditions of the contract). Hospitals of patients receiving telehealth services will be permitted to grant, verify, and approve credentials and privileges for participation.

BILLS OF NOTE, THAT DID NOT PASS PRIOR TO ADJOURNMENT

(remain in chamber of origin unless noted)

Federal Reform

- **Exchange:** [A.B. 792 \(Bonilla\)](#) would require plans and insurers to provide individuals with notification of their potential ability to enroll in coverage through the Exchange upon occurrence of events specified in the bill (including divorce, separation, adoption, and enrollment or renewal in COBRA coverage). Beginning in 2014, the bill also requires plans (other than specialized health care service plans) and health insurers to transfer specified information to the Exchange for individuals ceasing coverage in order to initiate enrollment (upon consent) in Exchange coverage and maintain adequate information on individuals and employees ceasing coverage. The bill requires written consent from an individual prior to transfer of the information to the Exchange. **AB 792 passed the Assembly on June 1, but stalled in Senate Appropriations.**
- **Omnibus Reform Conformity/Implementation:** [A.B. 1083 \(Monning\)](#) does the following:
 - Amends standards for solicitor/agent/broker contracts with plans and insurers to prohibit compensation variations based on the health status, claims experience, industry, occupation, or geography of a small employer or their employees;
 - Prohibits encouraging or directing small employers to seek Exchange coverage due to prohibited factors (health status, claims experience, industry, occupation, or geography);
 - Requires solicitors/agents/brokers to notify employers of Exchange coverage and risk rate variations;
 - Amends standards for calculating full-time employee status;
 - Provides late enrollee eligibility for individuals and dependents covered by the Exchange, but that lost coverage and requested employer coverage within the required timeframe;
 - Mandates that employer contribution requirements for small group coverage be consistent with the ACA;
- Requires nongrandfathered individual and all small employer products to provide coverage for essential benefits as prescribed in the ACA;
 - Prohibits excessive waiting or affiliation periods, including those based on health factors;

- Expands the timeframe in which a health care service plans are required to file notice of material modification to a small employer plan from 20 days to 60 days;
- Requires insurers to file statements of benefit designs in force prior to providing or renewing small employer coverage;
- Requires plan reporting based on number of enrollees by product line and type;
- Prohibits preexisting condition provisions, rescissions, and denials of coverage;
- Eliminates employer group risk factors effective 1/1/2014;
- Amends family size categories for small employer risk rating to refer to domestic partners, rather than 'two-adult families';
- Provides DMHC and CDI authority to issue regulations so that rating factors conform to the ACA;
- Effective 2014, includes groups of one within the definition of small employer (to the extent required by ACA);

AB 1083 passed the Assembly on May 27, but stalled in the Senate.

Rate Regulation: [A.B. 52 \(Feuer\)](#) would establish a time-consuming and administratively burdensome rate regulation process for all individual and group health plans and insurers. This bill is loosely based off of a similar measure from last year (which failed to pass), however this year's bill is sponsored by the Insurance Commissioner Dave Jones, and includes additional objectionable requirements such as:

- Prior approval of all individual and group rate filings;
- Limits on rate increases to no more than once per year;
- A private right of action (judicial review) to review premium rate increases;
- Public hearings for any average rate increase over 10% or any rate increase that would impact one consumer more than 15%;
- Intervener fees are to be paid by health plans for consumer advocates who "intervene on behalf of the public" in such rate filing hearings;
- Reporting of an "overhead ratio" in addition to the federal and state Medical Loss Ratios and other required elements; and
- Retroactive application of the new rate approval requirements.

- Amendments to the bill prior to Assembly passage require review of rate filings to take into account 'established actuarial principles', require medical expense reports accompanying rates to include costs associated with experimental or investigative therapies, provide for de novo judicial review of orders, amend the intervenor language to enrollee/insured authorization or participation, and eliminate language that provided expansive authority for regulators to request additional information not required by the bill.

AB 52 passed the Assembly on June 2 and received committee approval in the Senate, but did not come up for a vote on the Senate Floor.

Long-Term Care: [A.B. 999](#) (Yamada) requires long-term care insurers to post online a 'specimen' individual policy form or group master policy and certificate for each policy offered by the insurer, provide refunds for failure to meet loss ratio standards, and prohibits the use of asset investment yields as a justification for rate increases. The bill also requires pooling of policy forms by insurers and their affiliates and limits the frequency with which premium rate schedule increases may be approved, but provides for a waiver of the frequency limits based on financial hardship. Amendments were adopted requiring the annual consumer guide to include a standard outline of coverage for each product marketed in the state and requiring lifetime loss ratios for rate revisions to exceed at least the lifetime expected loss ratio in the initial filing. As amended, the bill prohibits the use of asset investment yields to justify rate increases (except for limited circumstances). **AB 999 passed the Assembly on June 1, but failed the policy committee deadline in the Senate.**

LIFE AND ANNUITY

From ACLHIC

BILLS SIGNED BY THE GOVERNOR

Group Life Insurance – ACLHIC-sponsored bill signed

ACLHIC is pleased to report that [SB 220 \(Price\)](#) was signed into law by the Governor (Chapter # 126). This ACLHIC-sponsored bill will give insurers the option to offer group life dependent coverage until age 26. This will help our members respond to requests from employers and groups seeking this optional coverage, many of which are updating coverage for health insurance dependents required under the federal Affordable Care Act (PPACA). **This statute takes effect January 1, 2012.**

REVERSE MORTGAGES

[AB 793 \(Eng\)](#) was recently signed by the Governor. It will enhance existing cross-selling restrictions for reverse mortgage lenders by eliminating compensation to agents and brokers who refer a senior for a reverse mortgage in order to purchase an annuity/financial product. At ACLHIC's request, and upon passage from the Senate Floor, the author and sponsors submitted the following [intent letter](#) to the Journal to clarify that the new law is intended to impose cross-selling/compensation restrictions only, and not a perpetual ban on the availability of financial products to individuals who have ever had a reverse mortgage. We were neutral with this clarification. [TA](#) **Signed by the Governor, Chapter 223, Effective January 1, 2012.**

BILLS AWAITING ACTION BY THE GOVERNOR

Suitability

ACLHIC **supports** [AB 689 \(Blumenfield\)](#) and [SB 715 \(Calderon\)](#). These bills have been sent to the Governor and would create new annuity "suitability" requirements for insurers and producers to further strengthen existing protections for California consumers and senior consumers, and give much needed clarity for insurers and producers. These comprehensive and balanced measures combine new, enhanced duties for insurers based on uniform approaches suggested by the National Association of Insurance Commissioners (NAIC), merged with existing California requirements and practical adjustments suggested by the California Department of Insurance (CDI). These measures represent the culmination of a nearly ten-year effort to enhance California's already strong senior-insurance statutes, while not imposing unnecessary restrictions on an industry that provides valuable life insurance and annuity products to consumers of all ages. **These bills have no opposition and are substantially similar. We anticipate one or both will be signed by the Governor.**

Retained Asset Accounts (RAA)

[AB 713 \(Block\)](#), one of two RAA bills, was signed by the Governor (Chapter # 130). It will become effective January 1, and only if **SB 599** is also signed. **[SB 599 \(Pan\)](#)** is currently pending on the Governor's desk. Both bills enhance disclosures in California regarding retained asset account payment options. (Note: A retained asset account is a draft holding account that is a payment option after a life insurance benefit payment, as an alternative to a lump sum payment). **ACLHIC removed opposition to earlier versions and supports**. These bills have no known opposition and contain provisions requiring enhanced disclosures similar to those recommended by NCOIL and the NAIC. **Both bills are unopposed and moving to the Governors' desk.** **[BW](#)**

CALIFORNIA ORGANIZED INVESTMENT NETWORK (COIN)

[AB 624 \(Perez\)](#) would extend the California Community Development Financial Institution (CDFI) Tax Credit and Certification Program until 2017. The program, which began in 1997, is administered by the California Organized Investment Network (COIN) within the California Department of Insurance. The bill would also authorize the Insurance Commissioner to create a COIN Advisory Board which would include volunteers knowledgeable in identifying sound investment opportunities for insurers wishing to assist California's low-to-moderate income communities. This would include insurance industry specialists and others who provide recommendations on how to increase investments in community development projects. **ACLHIC had been neutral, but is now supporting and requesting a signature with the latest amendments that improved the bill. The bill is pending action by the Governor** **[TA](#)**

DISCRETIONARY CLAUSE PROHIBITION

[SB 621 \(Calderon\)](#) Senator Calderon carried this CDI-sponsored bill, virtually identical to AB 1868 that was vetoed last year (deemed duplicative of existing law). This bill would codify a California court's ruling banning discretionary language in insurance contracts that gives undue discretion to insurers. The bill retains language that ACLHIC had crafted last year to clarify that the bill did not adversely impact an insurer's ability to determine eligibility to protect against fraud. **ACLHIC is neutral. The bill passed the Legislature with no opposition and is pending on the Governor's desk.** **[TA](#)**

AB 1423 (Perea) Tax Conformity/RICs

ACLHIC is asking for a signature of this measure which would conform specified California tax provisions to the relevant provisions of the federal Regulated Investment Company ("RIC") Modernization Act (P.L. 111-325), which passed Congress without objection last December. The federal Act made a number of changes to technical rules governing the tax treatment of

RICs (more commonly known as mutual funds). **The bill is on its way to the Governor for his consideration.**

WORKERS COMPENSATION

From ACIC

BILLS SIGNED BY THE GOVERNOR

[AB 1263](#) (William) State Compensation Insurance Fund: Director and Officer

Prohibits a member of the State Compensation Insurance Fund's Board of Directors and fund officers appointed by the board from lobbying the fund for 2 years after leaving the fund. Requires that any consulting for the fund by former members of the fund's board and former officers, who had been appointed by the board, be approved by the board.

STATUS:

06/29/2011 Signed by GOVERNOR.

07/01/2011 Chaptered by Secretary of State. Chapter No. 53

ACIC Position: Monitor

[SB 424](#) (Rubio) Mechanics Liens: Design Professionals

Relates to the right of a design professional to record a mechanics lien for providing work authorized for a work improvement. Authorizes a design professional to convert a recorded design professional lien to a mechanics lien if certain requirements are met.

STATUS:

07/26/2011 Signed by GOVERNOR.

07/26/2011 Chaptered by Secretary of State. Chapter No. 127

ACIC Position: Monitor

BILLS AWAITING ACTION BY THE GOVERNOR

[AB 211](#) (Cedillo) Workers' Compensation: Disability Benefits

Amends provisions of existing law regarding a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment that cause permanent partial disability to apply to injuries occurring on or after a specified date and before a specified date. Provides, for injuries that cause permanent partial disability on or after a specified date, for a supplemental job displacement benefit voucher to cover reeducation and skill enhancement. Exempts certain employers.

STATUS:

09/07/2011 *****To GOVERNOR.

ACIC Position: Priority, Support

[AB 228](#) (Fuentes) State Compensation Insurance Fund: Out-of-State Risks

Amends existing law authorizing the State Compensation Insurance Fund to insure an employer's liability for workers' compensation benefits for employees temporarily working

outside the state under specified conditions. Authorizes the fund to insure a qualified employer whose principal place of business is in the state against the employer's liability for workers' compensation benefits, under the law of any other state, if the fund insured the employees who work within the state. Relates to advertising.

STATUS:

09/09/2011 From ASSEMBLY Committee on INSURANCE: Recommend concurrence in SENATE amendments.

09/09/2011 In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment.

ACIC Position: Oppose

AB 335 (Solorio) Workers' Compensation: Notices

Amends existing law requiring that specified notices be provided to injured employees. Requires the Administrative Director of the Division of Workers' Compensation to prescribe reasonable rules and regulations for serving certain notices on an employee and to make such rules and regulations accessible on the Department of Industrial Relations Internet Web site. Requires informational material written in plain language describing the overall workers' compensation claims process to be made available.

STATUS:

09/08/2011 In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment.

ACIC Position: Priority, Support

AB 378 (Solorio) Workers' Compensation: Pharmacy Products

Amends existing law that establishes the Workers' Compensation System. Adds pharmacy goods to the list of medical goods or services for which it is unlawful for a physician to refer a person for specified medical goods or services. Relates to the billing of any compounded drug product. Sets the maximum reimbursement for a dangerous drug, dangerous device, or other pharmacy goods. Relates provisions governing physician-dispensed pharmacy goods. Relates to the maximum pharmacy and drug fees.

STATUS:

09/09/2011 In SENATE. Read second time. To third reading.

09/09/2011 In SENATE. Senate Rule 29.3 suspended.

09/09/2011 In SENATE. Read third time. Passed SENATE. *****To ASSEMBLY for concurrence.

09/09/2011 In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment.

ACIC Position: Priority, Support

AB 584 (Fong) Workers' Compensation: Utilization Review

Amends existing workers' compensation law that generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Requires a related psychologist and a related physician to be licensed by state law. Provides that a claim for state disability benefits may also be supported by a defined health professional.

STATUS:

09/14/2011 *****To GOVERNOR.

ACIC Position: Oppose, Priority

AB 1425 (Assembly Insurance Committee) Insurance

Revises and recasts the provisions governing the rulemaking authority of the Insurance Commissioner. Authorizes the commissioner to adopt rules and regulations reasonably necessary to implement specified provisions governing life settlements. Repeals the language that authorized the commissioner to adopt emergency regulations in relation to the low-cost automobile insurance program. Relates to a specified disclosure requirement by a workers' compensation insurer.

STATUS:

09/08/2011 In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment.

ACIC Position: Monitor, Priority

BILLS OF NOTE, THAT DID NOT PASS PRIOR TO ADJOURNMENT

AB 1363 (Alejo) Workers' Compensation: Rating Organizations: Agent

Prohibits the Insurance Commissioner from designating a rating organization as his or her statistical agent unless the organization agrees to comply with the Bagley-Keene Open Meeting Act and the State Public Records Act with regard to activities as the commissioner's agent. Provides the commissioner is not obligated to defend or represent the organization in actions enforcing compliance. Prohibits the organization from releasing information under the acts that is deemed confidential.

STATUS:

05/27/2011 In ASSEMBLY Committee on APPROPRIATIONS: Held in committee.

ACIC Position: Oppose, Priority

SB 129 (Leno) Medical Marijuana: Patients and Primary Caregivers

Amends existing law, the Compassionate Use Act of 1996, and existing law that requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to patients qualified to use marijuana for their personal medical purposes. Makes it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment based upon the person's status as a qualified patient or a positive drug test for marijuana.

STATUS:

06/02/2011 In SENATE. From third reading. To Inactive File.

ACIC Position: Oppose

SB 896 (De Leon) Workers' Compensation: Spine Surgeries

Relates to the workers' compensation system. Requires that specified spine surgeries be reimbursed in accordance with the prescribed formula, but, unless the case qualifies for outlier reimbursement, these provisions would cap the total payment to the provider at 2 times the applicable rate.

STATUS:

04/27/2011 From SENATE Committee on LABOR AND INDUSTRIAL RELATIONS with author's amendments.

04/27/2011 In SENATE. Read second time and amended. Re-referred to Committee on LABOR AND INDUSTRIAL RELATIONS.

ACIC Position: Oppose, Priority