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Date: September 12, 2014

TO: MEMBERS, BOARD OF DIRECTORS

I. AGENDA ITEM # AND TITLE :	Open Agenda Item 3d – Consent Calendar: Legislative Update
II. NAME AND PROGRAM:	Rhonda Myers, Government Affairs
III. ACTIVITY:	<input checked="" type="checkbox"/> Informational <input type="checkbox"/> Request for Direction <input type="checkbox"/> Action Proposed
IV. JUSTIFICATION:	<input checked="" type="checkbox"/> Standard/Required Item <input type="checkbox"/> Board Request – New Item <input type="checkbox"/> New Topic from Staff

V. EXECUTIVE SUMMARY:

Several bills with the potential to impact State Fund and/or the workers' compensation industry were introduced at the beginning of the second year of the 2013/2014 Legislative session.

Several pieces of legislation expanding benefits for peace officers and hospital workers have been enacted, or are pending approval by Governor Brown. Legislation clarifying the intent of SB 863 has also been enacted. Bills to increase penalties within the workers' compensation system have failed to pass from committee, and are "dead." The United States Congress has also introduced bills to extend the Terrorism Risk Insurance Act (TRIA).

The 2014 session ended on August 29th. Governor Brown has until September 30th to sign or veto bills in his possession. The Legislature will reconvene on January 5, 2015. Government Affairs will continue to monitor and assess all legislation that has the potential to impact State Fund and/or the industry and recommend appropriate action.

VI. ANALYSIS: SEE INDIVIDUAL BILL ANALYSIS IN APPENDIX

VII. RECOMMENDATION: N/A

VIII. PRESENTATION EXHIBITS: N/A

IX. APPENDIX: See attached

AB 1035 (Perez) Workers' Compensation: Firefighters and Peace Officers
Chaptered by Secretary of State - Chapter 15, Statutes of 2014

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation is anticipated to increase the time frame for dependents to pursue death benefits for firefighters and peace officers from 240 to 420 weeks from the date of injury. The death must have resulted from a presumptive injury of cancer, tuberculosis, blood-borne infectious disease, or methicillin-resistant Staphylococcus aureus (MRSA) skin infection and the date of injury must have been during active service.

These provisions do not apply to cases that have been previously adjudicated or finalized, cases in which the existing time frame lapsed prior to January 1, 2015, or cases in which proceedings were initiated within 240 weeks from the date of injury and a final determination of no eligible dependents had been made. The increase will sunset on January 1, 2019.

This legislation is anticipated to increase the number of public safety workers' cancer death claims by 7% and add approximately \$4.7 million annually to workers' compensation death benefit costs for cancer injuries alone, according to the Bickmore Risk Services report to the Commission on Health and Safety and Workers' Compensation on March 4, 2014. This prediction will be higher if AB 2052 is also enacted, which proposes to expand the full-time peace officer occupations that qualify for the cancer presumption.

AB 2052 (Gonzalez) Workers' Compensation
To Engrossing and Enrolling

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would expand workers' compensation presumptions for conditions of hernia, cancer, heart trouble and pneumonia, tuberculosis, biochemical exposure, and meningitis, to cover all full-time peace officers under the California Penal Code.

All employees in California are covered by workers' compensation insurance for injuries caused by, or arising out of, their employment, but disputes often arise over whether an injury is in fact work-related. State law, however, has established that some conditions are to be presumed industrial. These situations are often referred to as "presumptions," and generally apply to law enforcement and firefighting occupations.

The provisions of this bill could present a considerable impact to the State of California and to State Fund's inventory of claim cases managed under the Master Agreement with the State. According to the Assembly Appropriations committee, an estimated 2,000 additional state employees would become conclusively covered under these injury presumptions. For peace officers of the California Highway Patrol (CHP) and the Department of Corrections and Rehabilitation (CDCR), and fire fighters of the Department of Forestry and Fire Protection (CDF), the average cost of an active cancer claim with an injury date of 2009 or older is \$86,486.

**AB 2378 (Perea) Workers' Compensation: Temporary Disability Payments
To Engrossing and Enrolling**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would allow specified firefighters and peace officers to receive up to 1 year of paid leave due to industrial injury in addition to the current maximum temporary disability payment period of 2 years.

The Labor Code sets out the maximum time period injured workers can receive temporary disability (TD) payments. Currently, this period is up to 2 years of payments, and is paid at 2/3 of salary. Certain firefighters and peace officers have also been entitled to a separate paid leave benefit of up to 1 year at full salary, in addition to the 2 years of TD. These additional benefits are called simply by the Labor Code sections that define them, "4800 time", "4800.5 time", and "4850 time". However, in January 2013 the 1st District Court of Appeals handed down a decision in the case of *County of Alameda v. Bryan Knittel*, controverting established practice by determining that 4850 time falls within the 2 year time limit for TD. While the decision only specifically mentions 4850 time, the prevailing consensus is that the legal principle would equally apply to 4800 and 4800.5 time. This bill seeks to nullify the *Knittel* decision and aims to restore the extra year of benefits available to the affected public safety personnel.

**AB 2616 (Skinner) Workers' Compensation: Hospital Employers: Compensation
To Engrossing and Enrolling**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would create a disputable presumption that a methicillin-resistant *Staphylococcus aureus* (MRSA) skin infection is a work-related injury for a hospital worker who provides direct patient care.

MRSA is a bacterial infection that is resistant to a large group of antibiotics and can be very serious. Hospital-acquired MRSA is usually found in immunocompromised and elderly patients or after surgery or life support operations. Community-acquired MRSA arises outside of a hospital but it can progress to a serious infection that may require hospitalization. The common incubation period for a MRSA infection is 2 to 10 days, but if a person is colonized (with bacteria present but not causing symptoms) it may take months or years before an infection occurs.

Hospitals have made great strides nationally in reducing hospital-acquired MRSA infections with a 54% decline between 2005 and 2011, according to the Centers for Disease Control and Prevention (CDC).

The California Workers' Compensation Institute (CWCI) recently analyzed the 393 MRSA claims that have been reported to the California Workers' Compensation Insurance System since 2000. Of those claims, 6% were initially rejected but subsequently accepted. It is unknown how many claims were denied but not disputed by the employee or affirmed by the court.

This legislation would create a presumption of injury for employees in a category not traditionally included in existing presumptions of injury, which generally apply to public safety employees. There is an increase in costs each time a new presumption is created and the general trend is to increase accepted claims and costs over time.

**AB 1710 (Dickinson) Personal Information: Privacy
To Engrossing and Enrolling**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation was amended to include third-party entities that maintain personal data for businesses. In the event of a data breach, the entity responsible for a security breach would be required to offer affected persons one year of identify theft protection services if the data was not encrypted. The legislation also expressly prohibits the sale of social security numbers.

State Fund would be required to provide identity protection services for at least one year if it is responsible for a security breach of unencrypted personal data. Currently, State Fund voluntarily offers 12 months of post-breach credit monitoring.

**AB 2604 (Brown) Workers' Compensation: Proceedings: Payment Delay
Failed Deadline to Pass From Committee**

Desk	Dead	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would have increased the penalty for the unreasonable delay or denial of a workers' compensation payment to either 25% of the benefit in question, or \$10,000, whichever is greater.

Labor Code section §5814 contains a penalty provision to act as a deterrent to bad-faith conduct by employers and insurance carriers. The penalty is commonly called a "5814 penalty". Currently, the maximum penalty amount is \$10,000. This bill would have substantially increased the dollar amount of that penalty, creating a much stronger disincentive to withhold benefit payments.

**AB 2663 (Dababneh) Fraud Prevention
Failed Deadline to Pass From Committee**

Desk	Dead	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would have raised the civil penalty to range from \$10,000 to \$25,000 for illegal referral and for other unlawful acts related to insurance claims in the workers' compensation system and other lines of insurance.

**AB 2665 (Dababneh) Workers' Compensation: Enforcement
Failed Deadline to Pass From Committee**

Desk	Dead	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would have increased the fine for employers that fail to obtain workers' compensation coverage to a minimum of \$25K for the first offense and \$75K for repeat offenses.

Currently, the fine for the first offense is a minimum of \$10,000 and \$50,000 for repeat offenders. Enforcement of these provisions is handled by the California Department of Insurance (CDI) Fraud Division. CDI reported 22 convictions for the period September 2012 through August 2013. The sentences included jail, probation, fines, and community service. Fines collected for these violations are deposited into the Workers' Compensation Fraud Account and used to combat fraud.

**AB 2482 (Wilk) Workers' Compensation: Utilization Review
Failed Deadline to Pass From Committee**

Desk	Dead	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would have prohibited an employer or its utilization review entity from requesting or accepting any compensation that may create or creates a conflict of interest in the utilization review process.

Workers' compensation reform in 2012 created stringent conflict of interest standards for the workers' compensation system by adding Labor Code §139.32. The code section lists the types and instances of prohibited conflicts and the penalties for violations and did not require regulations to implement the law. The new code section also applies to the utilization review process. Utilization review (UR) is the process used in the workers' compensation system to determine medical necessity of requested medical treatment. In the UR process, only a physician can deny, delay, or modify a request for medical treatment and is additionally bound by statutory conflict of interest and professional conduct standards for the practice of medicine. No impact is expected because the proposal in this bill is expressed in existing law.

**AB 2732 (Committee on Insurance) Workers' Compensation
Chaptered by Secretary of State - Chapter 217, Statutes of 2014**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation cleans-up and clarifies various provisions of the 2012 reforms made by SB 863.

Lien reforms were enacted to reduce the volume of and litigation over workers' compensation liens. This included shortening the time frame to file a lien, implementing a lien filing or activation fee, and limiting assignment of a lien from the original provider to another party. However, friction in the system has developed over whether the limitation on lien assignments applies retroactively and who is responsible for reimbursing a filing or activation fee which may be ordered under certain conditions.

SB 863 also contained a drafting error in which medical-legal expenses were inadvertently eliminated from the list of costs recoverable by filing a lien in a workers' compensation claim.

This legislation clarifies that lien assignment limitation only applies to liens assigned on or after January 1, 2013, and specifies that this is declarative of existing law. It also clarifies that the employer is responsible for any reimbursement of a lien filing or activation fee owed to a lien claimant. It again allows a lien for medical-legal expenses.

This legislation gives the Division of Workers' Compensation Administrative Director the flexibility to create a form to request an Independent Medical Review that is up to two pages, rather than one page as currently mandated.

**SB 975 (Lieu) Personal Services Contracts: Legal Compliance
To Engrossing and Enrolling**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would require every bidder for a personal services contract to complete under the penalty of perjury, a standard questionnaire pledging compliance with specified provisions of law relevant to the bidder's employees, worksite, bid, and contract these provisions. The bill would prohibit the award of a personal services contract to a bidder who does not complete the required questionnaire or who previously failed to comply with these provisions.

The legislation would permit a personal services contract to be terminated or payments to be suspended if the contractor has made a false certification or fallen out of compliance with these provisions. No impact is expected, as these requirements are currently part of State Fund's personal service contracting process.

Federal Legislation

**S 2244 (Schumer) Terrorism Risk Insurance Program Reauthorization Act of 2014
House Banking Committee hearing pending**

This federal legislation would extend the Terrorism Risk Insurance Act (TRIA) program for seven years. It would also increase the cost-share percentage for insurers from 15% to 20% and increase the amount of recoupment from \$27.5B to \$37.5B.

TRIA has provided a useful backstop for what could be truly catastrophic losses to workers' compensation programs across the nation. The premiums to pay for those losses cannot be priced with the same precision actuaries are able to apply to conventional workers' compensation liabilities. Without TRIA, in the event of a large-scale terrorist attack, state workers' compensation funds will be required to pay millions of dollars in workers' compensation claims without federal assistance, even though the federal government has assumed primary responsibility for preventing terrorist attacks. In addition, it is probable that the workers' compensation competitive market would collapse for some period of time.

Proponents of TRIA extension hope that the bill will be heard in committee in September. If Congress does not act to extend TRIA in September, the next opportunity for the bill to be heard will be after the elections.