



333 Bush Street
 San Francisco, CA 94104
 (415) 263-5400
 www.statefundca.com

Date: November 7, 2014

TO: MEMBERS, BOARD OF DIRECTORS

I. AGENDA ITEM # AND TITLE :	Open Agenda Item 3h – 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:

Governor Brown completed the bill signing/veto process on September 30th.

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 were vetoed by Governor Brown. Legislation to increase penalties within the workers' compensation system failed to pass from committee, and is "dead." As previously reported, legislation clarifying the intent of SB 863 has been enacted. The United States Congress has also introduced bills to extend the Terrorism Risk Insurance Act (TRIA).

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
1 st House				2 nd House							

This legislation increases 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.

AB 2052 (Gonzalez) Workers' Compensation
Vetoed by the Governor on September 29, 2014

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

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

All employees in California are covered by workers' compensation 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 would have presented a considerable impact to the State of California and to State Fund's inventory of claims managed under the Master Agreement with the State. According to the Assembly Appropriations committee, an estimated 2,000 additional state employees would have been 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.

In his veto message, Governor Brown stated that the measure sought to expand coverage to dozens of additional categories of officers without real evidence that these officers confronted the hazards that gave rise to the presumptions codified in existing law. Further, he stated that presumptions should be used rarely and only when justified by clear and convincing scientific evidence.

AB 2378 (Perea) Workers' Compensation: Temporary Disability Payments
Vetoed by the Governor on September 29, 2014

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

This legislation would have allowed specified firefighters and peace officers to receive up to one year of paid leave due to an industrial injury, in addition to the current maximum temporary disability payment period of two years.

The Labor Code sets out the maximum time period for injured workers to receive temporary disability (TD) payments. Currently, this period is up to two years of payments, and is paid at two-thirds of salary. Certain firefighters and peace officers are also entitled to a separate paid leave benefit of up to one year at full salary, in addition to the two years of TD. These additional benefits have been named by the Labor Code sections that define them, "4800 time", "4800.5 time", and "4850 time". 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 fell within the two year time limit for TD. While the decision only specifically mentioned 4850 time, the prevailing consensus is that the legal principle would have equally applied to 4800 and 4800.5 time. This bill sought to nullify the *Knittel* decision and aimed to restore the extra year of benefits available to affected public safety personnel.

In his veto message, Governor Brown stated that the bill provided a benefit increase for a limited class of employees. Further, he stated that the special considerations supporting salary continuation for public safety employees did not correspondingly support the expectation that these employees needed substantially more time than other injured workers to recover from their injuries.

AB 2616 (Skinner) Workers' Compensation: Hospital Employers: Compensation
Vetoed by the Governor on September 29, 2014

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

This legislation would have created a disputable presumption that a methicillin-resistant *Staphylococcus aureus* (MRSA) skin infection was a work-related injury for a hospital worker who provided 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.

In his veto message, Governor Brown stated that while statutory presumptions have steadily expanded for certain public employees, he was not inclined to further this trend or to introduce it into the private sector. Further, he stated that he would direct the Department of Industrial Relations to investigate allegations that hospitals have intimidated nurses from filing valid workers' compensation claims for a work-related MRSA infections.

AB 1710 (Dickinson) Personal Information: Privacy
Chaptered by Secretary of State - Chapter 855, Statutes of 2014

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

This legislation makes third-party entities that maintain personal data for businesses, responsible for the protection of personal data. In the event of a data breach, the entity responsible for a security breach is now 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 will now be required to provide identity protection services for at least one year if it is responsible for a security breach of unencrypted personal data. We do not anticipate an impact to State Fund as we currently voluntarily offer 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 was 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
Vetoed by the Governor on September 30, 2014

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

This legislation would have required 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 provisions. The bill would have prohibited the award of a personal services contract to a bidder who did not complete the required questionnaire or who previously failed to comply with the provisions.

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

In his veto message, Governor Brown stated that the far-reaching questionnaire proposed by this bill would have required contractors to provide detailed information under penalty of perjury. He believed such a questionnaire added a burden to the bidding process without providing a benefit.

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 the bill hoped that Congress would act to extend TRIA in September. No action was taken. The next opportunity for the bill to be acted upon will be after the November 2014 elections.