

January 27, 2006

Hon. Bill Lockyer  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Tricia Knight  
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional and statutory initiative regarding workers' compensation (File No. SA2005RF0143).

### **Key Provisions**

The workers' compensation system compensates individuals for work-related injuries. Workers' compensation covers medical bills for treatment and provides temporary disability benefits to replace some wages lost as a result of injury. In some cases, workers' compensation pays permanent disability benefits based on the nature of an injury and an injured worker's reduced ability to earn wages in the future. Under state law, businesses, as well as the state and local governments, must purchase workers' compensation insurance or self-insure to pay these expenses.

This measure changes a number of provisions of California's workers' compensation laws. The changes concern the rights of employees and medical providers to sue employers or insurers, medical care, and pharmacy services.

### **Rights of Injured Workers and Medical Providers to Sue**

*Legal Suits by Injured Workers.* This measure significantly expands the ability of injured employees to sue an employer or an employer's insurer for work-related injuries. Under the proposal, after 90 days from when an injury is reported, an employee (or his or her dependents, if the employee has died) can choose whether to (1) proceed within the workers' compensation system or (2) sue an employer or insurer for damages by going to court and attempting to prove the employer was at fault for the injury. When an employee (or dependents) receives a judgment or settlement from a

lawsuit, any workers' compensation benefits that have been received would be credited against the judgment or settlement.

By contrast, under current law, workers have limited rights to sue employers for work-related injuries. In general, the workers' compensation system is the employee's exclusive remedy—meaning that there is no ability to sue an employer for damages. In the existing system, workers do not have to prove that someone else was at fault in order to receive medical care and compensation for work-related injuries.

***Legal Suits by Medical Providers.*** This measure allows a medical provider to sue an employer or insurer when he or she is not paid for authorized medical services within 60 days of submitting information required for payment. Existing workers' compensation law establishes penalties for employers or insurers that delay paying or refuse to pay for authorized benefits. In most cases under existing law, the workers' compensation system is a medical provider's exclusive remedy—meaning that there is no ability to sue an employer or insurer for damages.

***Legal Suit Provisions Do Not Apply to Public Employees and Others.*** This measure prevents state and local government employees from utilizing its provisions expanding the rights of workers to sue. The measure also prohibits private sector employees working under labor-management agreements that establish an alternative workers' compensation system (such as a system using mediation or arbitration to establish benefits for injured workers) from utilizing these provisions. As of 2002 (the most recent year for which data are available), under 20,000 Californians worked for companies with these alternative systems.

## **Medical Care and Pharmacy Services**

***Expanded Ability for Workers to Choose a Physician.*** This measure expands the ability of employees to choose their own doctor for work-related injuries. Existing law allows an employer or insurer to establish a network of medical providers to treat injured workers. This proposal provides that if a person works for an employer with a medical network, he or she can choose his or her own physician or treatment facility after 30 days from when an injury is reported. The employer or insurer must pay for this treatment.

Currently, injured workers can be required to seek treatment—as well as second and third medical opinions—within an employer or insurer's medical network. Disputes remaining after the third opinion go to an independent medical review process.

***Physician Findings Presumed to Be Correct.*** This proposal provides that when a worker for an employer with a medical network chooses a physician (after 30 days from when an injury is reported), the findings of that physician are presumed to be correct in

the workers' compensation system. The physician's findings would be accepted by the system unless a preponderance of medical opinion disagrees.

*Elimination of Pharmacy Networks.* This measure eliminates the sections of current law that allow employers or insurers to enter into contracts with a pharmacy network to serve their injured workers. Under existing law, these contracts can require injured workers to obtain medicines and medical supplies only from that network. Under the measure, therefore, workers would have more ability to choose their own pharmacies.

### **Other Provisions**

*Retroactivity.* The measure's provisions would apply to all future worker injury claims. In addition, the provisions would apply to any claims and cases resulting from any work-related injury before the measure's passage. Existing law limits the number of years after an injury that workers would have to start a lawsuit under this measure.

*Constitutional Amendment.* This measure amends the State Constitution to provide that workers' compensation laws may be amended through the initiative process by voters. Currently, the Constitution does not include a direct reference to voters having this power.

### **Fiscal Effect**

*Interpretation of the Measure and Choices of Workers Would Affect Costs.* Interpretations of this measure's provisions by the courts and the state Division of Workers' Compensation would affect employers' costs for work-related injuries (particularly the interpretation of this measure's provisions concerning employee and physician lawsuits). In addition, costs would depend significantly on the choices made by workers with regard to filing lawsuits and choosing physicians.

*Private and Public Costs of Work-Related Injuries.* In 2003 and 2004, several laws were passed to reduce costs of the workers' compensation system. Consequently, costs for workers' compensation have decreased significantly since 2004 and are expected to total around \$20 billion in 2006 for all employers in California. Several provisions of this proposal—including sections concerning medical and pharmacy networks, and the legal weight given to physician findings—modify parts of the recent laws that have contributed to lower workers' compensation costs. In addition, the new rights of injured workers and physicians to sue could result in a significant volume of litigation. Any such litigation, which results in findings against employers and insurers, could increase employers' costs. The magnitude of all of these increased costs would be major—potentially in the billions of dollars annually for private and public employers.

*State and Local Government Costs for Workers' Compensation.* The state and local governments are expected to spend roughly \$2.5 billion for workers' compensation for

their own employees in 2006. The state and local governments could experience cost increases, but these increases could be less significant than those of private employers. This is because employees of the state and local governments would not be given increased rights to sue, unlike most employees in the private sector. Cost increases potentially could be in the low to mid hundreds of millions of dollars each year.

***State Administrative and Judicial Branch Costs.*** By authorizing more lawsuits in place of workers' compensation claims, this proposal may increase the workload of the state's court system. If so, increased judicial branch costs may be offset in part by reduced expenses to administer the workers' compensation system. The net effect of these costs is not possible to estimate.

***Other Effects on Governmental Finances.*** The impact on governmental revenues would depend on how the measure affected workers' compensation costs and other costs of work-related injuries. Increased costs may reduce business profitability, thereby decreasing income tax revenues. Partially offsetting this decrease could be a gain in the gross premiums tax paid by insurance companies. The net effect of these impacts is not possible to estimate.

There is a possibility that increased benefits under this measure would reduce the number of persons seeking assistance from state health and social service programs. Such a reduction could result in state and local savings for various programs. To what extent such a reduction would occur is not known.

***Fiscal Summary.*** This measure would have the following major fiscal impact:

- Annual costs—potentially in the low to mid hundreds of millions of dollars—for state and local government workers' compensation.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance