

March 28, 2007

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Patricia Galvan  
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding workers' compensation medical benefits (A.G. File No. 07-0002, Amdt. #1-S).

### **Background**

***Workers' Compensation System.*** The workers' compensation system compensates individuals for work-related injuries and covers the costs for treatment of those injuries. Under state law, businesses, as well as the state and local governments, must purchase workers' compensation insurance or self-insure to pay these expenses.

***Medical Benefits.*** An employer or an employer's workers' compensation insurer generally must pay for an employee's medical care if he or she is hurt on the job. State law provides that employees can choose the physician or medical provider who will treat them under workers' compensation only in certain specified instances. The state Department of Industrial Relations (DIR) has the authority to establish statewide guidelines concerning the type and amount of treatment for workplace injuries based on "evidence-based, peer-reviewed, nationally recognized standards of care." The law also requires each employer (either directly or through its insurer) to establish a review process to approve, modify, delay, or deny workers' compensation treatment requests by physicians and providers to ensure that the requests are consistent with DIR's guidelines. This process involves review of treatment requests before, during, and after the proposed treatment is provided.

***Payments to Medical Providers.*** Current law generally requires employers or insurers to issue payment for medical treatments under workers' compensation within 45 to 60 working days after receipt of required documentation. The law provides procedures for employers or insurers to review and dispute the items billed by the medical pro-

vider. Current law requires DIR to adopt and revise periodically an official medical fee schedule that establishes reasonable fees paid for various services provided under workers' compensation.

### **Key Provisions**

This measure changes several provisions of California's workers' compensation laws. Specifically, the changes apply to the medical benefits required to be provided to injured workers and the payments to medical practitioners who treat injured workers.

*Right of Injured Workers to Choose Medical Practitioner.* This measure would reverse laws that limit the ability of an employee to choose the physician or other medical practitioner who provides treatment for a workplace injury. Workers would be able to choose one or more licensed physicians or practitioners licensed by the state for this purpose.

*Medical Practitioner Treatment Decisions Not Subject to Prior Review.* The proposal would end any current requirements for prior insurer or employer authorization of the treatment recommendations of the medical practitioner providing services to an injured worker. The measure states that a licensed medical practitioner "shall be considered to be delivering reasonable and necessary medical treatment for work injuries in the workers' compensation system."

*Changes to Medical Fee Schedule Requirements.* The measure provides that bills from a medical practitioner are adequate and sufficient if consistent with a schedule of reasonable medical charges established by DIR. Under the proposal, DIR must review the medical charge schedule annually with notice and opportunity for public comment.

### **Fiscal Effect**

*Interpretation of Measure and Choices of Workers Would Affect Costs.* Interpretations of this measure's provisions by the courts and DIR would affect employers' workers' compensation costs. In addition, costs would depend significantly on the choices made by workers with regard to choosing medical practitioners and those practitioners' treatment decisions.

*Private and Public Workers' Compensation Costs.* 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 totaled around \$20 billion in 2006 for all employers in California. This proposal modifies parts of the recent laws that have contributed to lower medical costs in the workers' compensation system. The measure increases workers' abilities to choose their own medical practitioners and reduces limits on those practitioners' decisions. Accordingly, employer workers' compensation costs probably would increase under this measure. The magnitude of

these costs would likely be significant—potentially in the billions of dollars annually for private and public employers.

***State and Local Government Workers' Compensation Costs.*** The state and local governments spent roughly \$2.5 billion for workers' compensation for their own employees in 2006. The state and local governments could experience cost increases under the measure similar to those of other employers. These cost increases could be in the mid-hundreds of millions of dollars per year.

***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.

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

- Increased annual state and local government costs—potentially in the mid-hundreds of millions of dollars—for workers' compensation benefits for their employees.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance