



HEALTHY CALIFORNIA ACT (SB 562) MAY IMPACT INJURED WORKERS

By Scott O'Mara

On June 1, 2017, the passage of Senate Bill 562 by the Senate — known as the Healthy California Act — constituted the first step in the creation of a new state health care approach, the Healthy California program. This legislation states that all residents of the state of California (not just citizens) have the right to health care, and the intent of the program is to “provide universal health coverage for every Californian based on his or her ability to pay and funded by broad-based revenue”.

SB 562 also notes that Californians — including individuals, employers and taxpayers — have had rising costs for health care coverage, and the increased costs for businesses have resulted in many employers either shifting the burden for this expense to their employees or dropping health care coverage altogether. The Healthy California Act specifically articulates that the intent of this legislation is to establish a program which will “provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents of the state”. Thus, the goal of the Healthy California program is not only to provide benefits to all Californians, but also to control health care costs. Known also as the Single-Payer Bill, SB 562 is being examined as well as a system to direct and control medical care in the Workers' Compensation system for job-related injuries requiring medical care.

Interestingly, another aspect of SB 562 is to “prohibit law enforcement agencies from using the HC [Healthy California] program's funds, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation or warrant for a violation of any

requirement that individuals register with the federal government or any federal agency based on religion, national origin, ethnicity, or immigration status”.

SB 562 further clarifies that when referring to “all residents of the state”, the word “resident” is defined as “an individual whose primary place of abode is in the state, without regard to the individual's immigration status”. Section 100612 states that the Healthy California Board of nine members shall have all powers and duties necessary to establish and implement the Healthy Care plan. This could allow the resident Board members the full latitude to directly impact the basic right of injured workers to access their medical care.

To govern this new health care program, SB 562 provides for the creation of the Healthy California Board, which is to be composed of nine members who are residents of the state (§100610(a)) and have “demonstrated and acknowledged expertise in health care”. Four of these members will be appointed by the Governor; two will be appointed by the Senate Committee on Rules; two will be appointed by the Speaker of the Assembly; and the ninth member will be the Secretary of California Health and Human Services “or his or her designee”. This last member “shall serve as a voting *ex officio* member of the Board”.

SB 562 further mandates that the nine appointed members of the Healthy California Board must include: “at least one representative of a labor organization representing registered nurses”; “at least one representative of the general public”; “at least one representative of a labor organization”; and “at least one representative of the medical provider community”.

In addition to these requirements, “the Secretary of California Health and Human Services shall establish a public advisory committee to advise the Board on all matters of policy for the program”. This committee will be composed of 22 members, including:

four physicians, two registered nurses, one licensed allied health practitioner, one mental health care provider, one dentist, one representative of private hospitals, one representative of public hospitals, one representative of an integrated health care delivery system, four consumers of health care, one representative of organized labor, one representative of essential community providers, one member of organized labor, one representative of small business (“a business that employs less than 25 people”), one representative of large business (“a business that employs more than 250 people”), and one pharmacist.

Chapter 4, Section 100630, of SB 562 provides an extensive list of the benefits which are covered by the Healthy California Act.

Chapter 5, Section 100635, covers delivery of care, with separate sections on health care providers and care coordination. Included in this section is the requirement that health care providers, to participate in the new program, must be “licensed to practice in California” and “otherwise in good standing”, and their services must be “performed within the state of California”.

In addition, this section states: “The Board shall establish and maintain procedures and standards for recognizing health care providers located out of the state for purposes of providing coverage under the program for members who require out-of-state health care services while the member is temporarily located out of the state.” Of note here is the use of the word “temporarily”.

Further in SB 562, Article 4, Section 100640, covers the topic “Health Care Organizations”. The final paragraph in this section (100640(g)) contains this very significant statement: “**Health care organizations shall not use health information technology or clinical practice guidelines that limit the effective exercise of the professional judgment of physicians and registered**

nurses. *Physicians and registered nurses shall be free to override health information technology and clinical practice guidelines if, in their professional judgment, it is in the best interest of the patient and consistent with the patient's wishes.* [Emphasis applied.]

This statement is very significant because health care for California injured workers has been hamstrung for many years by the "information technology and clinical practice guides" in Utilization Review (UR) and Independent Medical Review (IMR) – at the direct expense of dismissing "the professional judgment of physicians and registered nurses" who personally know the workers for whom treatment is recommended and therefore are in the best position to address these patients' health care.

Also, the artificial thresholds of UR and IMR are used to deny or limit California injured workers' access to the medical care they need to cure or relieve the effects of their work injuries – a right which is specifically set forth in the California Constitution, Article XIV, Section 4, as part of a complete system of Workers' Compensation which is to include medical, surgical, hospital and other services as are requisite for each injured worker.

SB 562 also is specific that the monies from the Healthy California Trust Fund – a continuously-appropriated fund established in the State Treasury by this legislation – "shall not be loaned to, or borrowed by, any other special fund or the General Fund, or a county general fund or any other county fund".

Currently, California injured workers' access to medical care under Workers' Compensation is fraught with limitations and cost-containments which adversely affect not only the workers, but their families as well – in direct conflict with the mandate of the California Constitution. If SB 562 is signed by the Governor, it could constitute a change, but not necessarily a good change.

The marketing of the Healthy California Act presently is without a structural plan or template – something which is to be created by the nine-member Healthy California Board (who are California residents, not necessarily citizens of California) discussed above.

That might create a roadmap as to how this new system will work. The nine-member Board's roadmap can remove the UR/IMR limits on medical care. This roadmap must understand that some injured workers move to other states and must be allowed care in those states.

The discussion regarding the attempt to blend Workers' Compensation access to medical care under the Healthy California Act requires extensive planning, knowledge and expertise. Based on what appears to be its plan, the proposed new system, on the surface, may have value.

Nonetheless, attention to detail is still necessary to ensure the benefits mandated by the California Constitution are accessible to injured workers to a greater degree than is now the case. Many writers indicate the California Nursing Association is the driving force behind SB 562, but not necessarily the force behind the expansion of this new legislation to include Workers' Compensation.

The Healthy California Act could be a change also for injured workers' access to medical care. Nevertheless, for the benefit of California injured workers, all employee groups must have an in-depth understanding of SB 562. Failure to gain such understanding could prove to be more destructive than living with our current failing system.

The reality is that employer groups and insurance companies will seek changes that lower their costs and responsibilities to injured workers. The push to use the Healthy California Act as a solution to current problems must be done with due diligence to avoid the harm brought upon workers and their families by past changes.

This current discussion of change through the Healthy California Act must have some provision for checks and balances. The checks and balances needed should be provided through judicial review regarding denials and limitations of medical care. Such provision for checks and balances by judicial review will ensure conformance with the State Constitution, Article XIV, Section 4. (For further reference, see *Law1199.com Newsletter 2015 Issue #5.*)

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THE LAW OFFICES OF
SCOTT A. O'MARA
O'MARA & PADILLA

2370 Fifth Ave.
San Diego, CA 92101

4200 Latham St. – Ste. B
Riverside, CA 92501-1766

320 Encinitas Blvd. – Ste. A
Encinitas, CA 92024

1-800-LAW-1199
(1-800-529-1199)

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951-276-1199

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BOBBITT, PINCKARD
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8388 Vickers St.
San Diego, CA 92111

4200 Latham St. – Ste. B
Riverside, CA 92501-1766

858-467-1199

www.coplaw.org

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NOTICE

Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

