

# 2016 LEGISLATIVE & REGULATORY UPDATE

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California Coalition on  
Workers' Compensation



# CCWC LEGISLATIVE PROGRAM

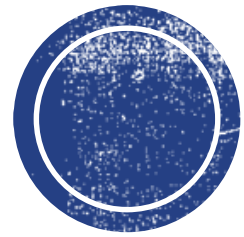
- **INDUSTRY LEADER** CCWC maintains a strong advocacy presence in Sacramento and provides leadership for the employer community on legislative and regulatory issues. CCWC combines the knowledge and experience of our membership with the talents of a leading lobbying firm to produce real results for employers
- **GR COMMITTEE** The CCWC Government Relations Committee consists of experts from member companies around the state. The committee serves in an advisory role and helps analyze legislation and direct official positions taken by the association
- **BOARD DIRECTION** The CCWC Board of Directors monitors the legislative program and works directly with the lobbying team to guide the strategy for legislative and regulatory advocacy



# CCWC ADVOCACY PERFORMANCE

YEAR	2010	2011	2012	2013	2014	2015	2016
Supported	6	5	2	2	1	3	2
Opposed	10	6	5	5	9	6	7
Final	1 Support bill signed	4/5 support bills signed	2 support bills signed	2 support bills signed	2 oppose & 1 support bill signed	3 support bills signed	2 support bills signed





# 2016 WC LEGISLATION

Active year characterized by maintenance work on past reforms, and repeat efforts to pass problematic bills that would unbalance the workers' compensation system and increase employer costs

# SB 1160 (MENDOZA)

- Senator Tony Mendoza (D – Artesia)
  - CCWC was *neutral* on the bill, but was very active in shaping and protecting certain provisions
  - The bill was a product of discussions held by the CA Department of Industrial Resources, the Division of Workers' Compensation, and the California State Senate
  - Result of years of labor and applicant attorney complaints that employers and insurance companies perform “too much” utilization review as a strategy to deny appropriate treatment
- **Utilization Review**
    - No prospective UR in the first 30 days in MPN, HCO, pre-designated physician, or other form of employer medical control
    - Exceptions to this rule for surgery, medications not covered by formulary, psychological treatment, home health care services, and more
    - Requires all treatment in the first 30 days to be reported to claims administrator
    - Allows retrospective review of treatment in the first 30 days by claims administrator. If a “pattern or practice” of noncompliance with MTUS is established, prospective UR in the first 30 days can once again be done on provider



# SB 1160: OTHER PROVISIONS

## ▪ UR Processes

- Prohibits UR contracts that provide a financial incentive to delay or deny treatment requests
- Requires disclosure of financial relationships between TPAs and UROs
- Requires accreditation of UR processes
- Provides DWC authority to approve UR processes
- Requires availability of “peer to peer” contact in the case of denials or modifications
- Collection of UR data for system performance analysis

## ▪ Anti-Fraud Measures

- Requires liens filed after 1/1/2017 to specify the basis upon which the lien is authorized. Requires the same for existing liens, but allows compliance by 7/1/2017. Liens without this information will be dismissed with prejudice
- Stays all liens of any provider charged with specific types of fraud
- Codifies Chorn v. WCAB in an effort to address lien activity between 1/1/2014 and 12/31/2017 (pertains to constitutionality of lien filing fee)
- Further limits the assignment of liens to a third party



# AB 1643 (GONZALEZ)

- Asm. Lorena Gonzalez (D – Chula Vista)
  - CCWC was opposed to this bill because it sets an unrealistic and unscientific standard for PD ratings, and undermines apportionment
  - The bill is sponsored by CAAA and is based on the premise that PD ratings for breast cancer and apportionment to certain conditions is discriminatory to women
  - Subject of a class action lawsuit
  - Previous bill vetoed by Governor Brown
- **PD Ratings**
    - Requires PD ratings for breast cancer and its sequelae to be equal to PD ratings for prostate cancer and its sequelae
  - **Apportionment**
    - Prohibits apportionment for nonindustrial disability related to pregnancy, menopause, osteoporosis, and carpal tunnel syndrome
    - Previous bill vetoed by Brown; other similar bills vetoed by both Brown and Schwarzenegger
    - Despite 2015 veto the bill's scope was actually expanded



FOR IMMEDIATE RELEASE  
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**'Being a Woman Is Not a Pre-Existing Condition'  
Class Action Suit Challenges Systemic Gender Discrimination  
In CA Workers' Comp System**

***Statewide system relies on outdated stereotypes about women's capacities and roles, contributing to the feminization of poverty in California, burdening women and families***

LOS ANGELES — Today a group of women workers and the SEIU California State Council filed a first-of-its-kind, statewide class action lawsuit challenging systemic gender discrimination in California's workers' compensation system.

The landmark lawsuit, filed by Public Counsel, Caldwell Leslie & Proctor, PC, Equal Rights Advocates, and Professor Catherine Fisk of the University of California, Irvine School of Law against the California state agencies and officials responsible for administering the workers' compensation system, documents the denial of equal compensation to women workers in violation of the U.S. and California constitutions. The suit, filed in Los Angeles Superior Court, exposes overt gender bias and discrimination against working women injured on the job by revealing a shocking pattern of reduced permanent disability benefits to women workers solely on the basis of their gender. In contrast, men's benefits are not reduced on the basis of gender. The suit also challenges the egregiously low workers' compensation benefits afforded to women with work-induced breast cancer.

# CLASS ACTION LAWSUIT AIMED AT THE STATE OF CALIFORNIA

In July of 2016 a group of women and their advocates filed a class action lawsuit alleging systematic gender bias in California's workers' compensation system

The group claims unequal compensation for women in violation of the US Constitution, specifically related to PD ratings and the application of apportionment







OFFICE OF THE GOVERNOR

SEP 30 2016

To the Members of the California State Assembly:

I am returning Assembly Bill 1643 without my signature.

This bill prohibits apportionment in cases of physical injury based on pregnancy, menopause, osteoporosis, and carpal tunnel syndrome and requires that breast cancer not be less than the comparable impairment rating for prostate cancer.

I am vetoing this bill for many of the same reasons that I returned a similar measure, AB 305, last year. This bill is poorly drafted and reflects a seriously flawed understanding of both the workers' compensation system and the nature of physical disability that may result from a work-related injury. The bill would, among other provisions, mandate that impairment ratings for breast cancer be no less than the ratings for prostate cancer. It would also create broad gender-based exceptions to the core principle of apportionment: that employers are liable only for the permanent disability directly caused by their employee's work-related injury.

This measure seeks to draw a false comparison between disability ratings resulting from prostate and breast cancers, notwithstanding that these organs neither perform analogous physiological functions nor do their treatments result in similar physical limitations. There is a wide disparity in impairment levels that may result among individual women diagnosed with breast cancer and individual men diagnosed with prostate cancer, and individuals of all genders diagnosed with any form of cancer, depending on the stage at which the cancer was diagnosed, the nature of the treatment, and the degree and process of recovery. The suggestion that these two very different conditions should be rated equivalently in all cases has no basis in medical fact and upends the goals of ensuring consistency, uniformity and objectivity in ratings supported by substantial medical evidence.

On the issue of apportionment, this bill creates broad, gender-based exceptions to the rule that employers are liable only for the percentage of permanent disability directly caused by a work-related injury. As written, the bill would prohibit apportionment to, and thus require employers to pay for, a permanent disability that actually resulted from pregnancy or menopause, or from osteoporosis or carpal tunnel syndrome where these are preexisting conditions or unrelated to work.



OFFICE OF THE GOVERNOR

As I said last year, there is no place for gender discrimination in the workers' compensation system. Current law, however, already prohibits apportionment to risk factors, including gender, age, and family history. There is ample opportunity within the workers' compensation adjudicatory process for workers, their counsel, and others to raise any concerns or allegations of improper and impermissible gender discrimination in the medical evaluation or apportionment process.

California's workers' compensation system strives to treat all injured workers fairly and to ensure that all workers, regardless of gender, are adequately compensated for any permanent disability directly caused by work-related injuries. Rather than promoting equality, the statutory changes proposed by this measure would create new gender-based classifications and spur additional and costly litigation, undermining the successful reforms enacted in 2012 and the sustainability of the system.

I urge proponents of this bill to support efforts to educate medical evaluators on current laws prohibiting bias and to collaborate with my administration.

Sincerely,

Edmund G. Brown Jr.

# REPEATEDLY CALLING THE GOVERNOR "WRONGHEADED" GENERALLY LEADS TO...

An extraordinarily detailed and thorough two-page-long veto letter that will haunt the proponents of this legislation for years to come

- Politically sensitive
- Women's Caucus Priority
- Governor strong on similar gender equity issues
- Has moral authority to veto



# SB 897 (ROTH)

- Senator Richard Roth (D – Riverside)
- CCWC was opposed to this bill because it extended LC 4850 paid leave to public safety officers who suffered certain types of injuries under specific circumstances, but without objective evidence supporting the need
- The bill was a result of concerns that arose from a severe injury to a police officer in the City of Riverside
- **LC 4850 Time**
  - Bill extended eligibility to two full years of 4850 time for public safety officers that suffer a “catastrophic injury at the hands of another”
  - Very compelling and dramatic testimony in assembly and senate policy committee hearings
  - Overwhelming support from legislature
    - 36-1 on Senate Floor
    - 71-2 on Assembly Floor





OFFICE OF THE GOVERNOR

SEP 30 2016

To the Members of the California State Senate:

I am returning Senate Bill 897 without my signature.

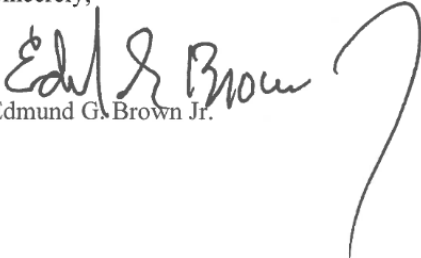
This bill doubles from one to two years special leave benefits for police officers, firefighters, or sheriffs who are disabled by a qualifying catastrophic injury. This leave is required to be provided at full salary and tax-free, resulting in take home pay that is higher than pre-injury wages.

I was concerned when told this bill was prompted by a City of Riverside police officer who nearly lost his health benefits while on temporary disability. In that case, the City chose to extend the officer's benefits. Upon closer review, I have not found any other city which terminates the health benefits of police officers while they are on temporary disability.

As noted in my veto of AB 1451 last year, this disability leave benefit drives up costs significantly. Many local agencies are under significant financial stress. They must consider employee benefit increases in light of competing demands for critical services and long term pension and health care debts.

In light of all this, I believe the decision on how to handle cases such as this is best left to the local jurisdiction.

Sincerely,

  
Edmund G. Brown Jr.

# BROWN VETOES

Governor Brown has consistently refused to get bogged down in anecdotes and talking points when assessing workers' comp bills

- Room for reconsideration
- Expect to see this bill again
- Watch behavior of cities



# AB 1244 (GRAY)

- Asm. Adam Gray (D – Merced)
- CCWC was supportive of this anti-fraud measure authored by a key moderate democrat from the central valley
- The anti-fraud effort focused on reducing fraud by physicians and applicant attorneys, which is rampant in the WC system
- Bill pushed behind the scenes by Richie Ross, consultant to CAAA
- Seen as “paired” with fraud efforts in SB 1160
- Creates a process for the AD to suspend providers from participation in the workers’ compensation system if convicted of certain offenses
- Requires Director of the Department of Health Care Services to notify the AD when a provider is added to the Suspended or Ineligible Providers List
- Providers eligible for suspension must be suspended, after notice and hearing, by the AD
- Bill signed by Governor Brown



# OTHER BILLS

- **AB 1922 (Daly)**

- Reduces oversight Role for DOI on some WC insurance policies for large sophisticated employers
- Battle between DOI and Insurers resulting from regulations

- **AB 2493 (Atkins)**

- Expanded 4850 time to supervisors at CalFire / No local government impact
- CalFire has previous budget pressures (diversion from GF) related to workers' compensation costs

- **SB 482 (Lara)**

- Requires providers to consult CURES when prescribing Schedule II, III, or IV drugs to a patient for the first time, and then at least once every four months after
- Less provider opposition than past bills

- **AB 2503 (Oberholte)**

- Gives DWC authority to promulgate regulations specifying where physicians must send an RFA for consideration
- Will help streamline delivery and evaluation of treatment requests



# OTHER BILLS

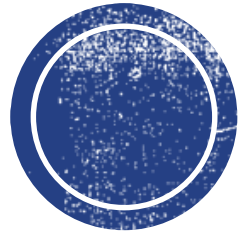
- AB 2577 (Chu)

- Established a broad pulmonary presumption for public safety officers that covered COPD, chronic bronchitis, emphysema, and more
- Applied to all city, county, state, and UC firefighters, and some law enforcement personnel
- Bill was retroactive to 1/1/2014
- Measure defeated early in legislative session

- AB 2407 (Chavez)

- Sponsored by CA Chiropractic Association
- Bill was an attempt by the chiropractors to start a conversation about the soft cap on chiropractic treatment
- Argue that MTUS, UR, and IMR eliminate need for caps on chiropractic care
- CCWC worked with CalChamber and others to defeat the bill in Assembly Insurance Committee





# 2016 REGULATORY UPDATE

CCWC's 2016 regulatory advocacy program focused on finalizing regulations to implement SB 863 (de Leon, 2012), as well as other important changes to the regulatory landscape.

# WC DRUG FORMULARY

- AB 1124 (Perea, 2015) – Establishes a workers' compensation formulary
  - Requires the AD to adopt a drug formulary in the workers' compensation system by 7/1/2017
  - Requires the formulary to be phased in for existing patients
  - Requires the AD to update the formulary on a quarterly basis, and exempts changes from the APA
  - Requires the AD to establish a Pharmacy and Therapeutics Committee and consult with the committee on updates to the formulary
  - Requires the AD to consult with stakeholders prior to the adoption of a formulary





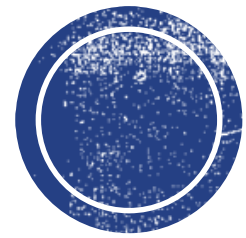
# FORMULARY REGULATIONS



# OTHER REGULATORY HAPPENINGS

- RTW Fund
  - CAAA Petition arguing for an application deadline extension for injured workers who received a voucher prior to 4/13/2015 when the application process was finalized.
- Home Health Care Fee Schedule
- Hospital Outpatient / Ambulatory Surgical Center Fee Schedule
- WCIS Reporting
- Looking ahead:
  - Significant implementation of SB 1160, as well as harmonizing of formulary and MTUS regulations.
  - AB 1244 – Process to suspend physicians
  - AB 2503 – AD authority to specify where RFA must be sent by physician.





# QUESTIONS?

