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INSURANCE LAW

NEWSLETTER OF THE INSURANCE LAW PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

IN THIS ISSUE

California Legislative Report: 2007 Session

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The 2007 Legislative Session was intended, by all parties, to be the year of "Healthcare Reform." While there was agreement on the goal of creating a healthcare system to address the approximately 6.5 million uninsured in the state of California, there was very little agreement on how to accomplish that goal. As a result, the majority of insurance legislation introduced was health-related. Governor Schwarzenegger started the effort with a call for a mandate on all Californians to have health insurance, which was quickly answered by a universal health care plan sponsored by the California Nurses Association. After being unable to come up with a proposal during the Regular Legislative Session, Governor Schwarzenegger called a special session to address the issue and in the final days of the Extraordinary Session on Healthcare, the Governor reached a deal with Assembly Speaker Fabian Nunez. However, an expected \$14 billion budget deficit resulted in Senate President Don Perata deferring a vote on the agreement. Senator Perata felt a vote would not be fiscally prudent. As a result, the year of Healthcare Reform came and went without final action. Senator Perata has recently stated that the Senate Health Committee will vote on the measure on January 16.

The Legislature reconvened for the 2008 Legislative Session on Monday, January 7. The Governor delivered his annual State of the State address on Tuesday, January 8. He has declared a fiscal emergency for the state of California on Thursday, January 10. Doing so triggers a 45-day deadline for lawmakers to present the Governor with a solution. If they fail, they are not allowed to consider any other legislation until

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they do come up with a plan to solve the fiscal crisis.

Below are Summary Digests of selected insurance-related legislation enacted this past term prepared by the Office of Legislative Counsel,¹ which are the Office's analysis of the intent and effect of the legislation, and links to a full text of the legislation. If you have any questions regarding the legislation or the 2008 legislative session, please contact [Phyllis Marshall](#) at 916.552.2350 or Fred Main at 916.552.2360.

¹ The Office of Legislative Counsel is a nonpartisan public agency that drafts legislative proposals, prepares legal opinions, and provides other confidential legal services to the Legislature.

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Agents

[AB 720](#) (De Leon) Chaptered:
Insurance: 10/05/2007
licenses. [html pdf](#)

Existing law authorizes a life agent, by or on behalf of a life, disability, or life and disability insurer, to transact life, disability, or life and disability insurance. This bill would instead authorize a life licensee to act as a life agent on behalf of a life insurer or a disability insurer to transact life insurance, accident and health insurance, or life and accident and health insurance. This bill contains other related provisions and other existing laws.

Status: 10/05/2007-Chaptered by the Secretary of State, Chapter Number 270, Statutes of 2007

[AB 797](#) (Coto) Chaptered:
Insurance: 10/05/2007
agents. [html pdf](#)

Existing law defines various types of insurance agent licensees. This bill would add a limited lines automobile insurance agent, as specified, to the existing types of agent licensees. This bill contains other related provisions and other existing laws.

Status: 10/05/2007-Chaptered by the Secretary of State, Chapter Number 271, Statutes of 2007

[AB 1639](#) (Duvall) Chaptered:
Insurance: 07/20/2007

licensing.[html](#) [pdf](#)

Existing law provides that a provider teaching any approved continuing education course at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing that course, except that such person shall qualify for those classroom hours only once each license term. This bill would provide that a provider may not use its own self-study course toward its continuing education requirement. This bill contains other related provisions and other existing laws.

Status: 07/20/2007-Chaptered by the Secretary of State, Chapter Number 122, Statutes of 2007

Health Insurance/Health Service Plans

(Salas) Health care service plans: disease reports. Chaptered:
10/10/2007
[html](#) [pdf](#)

AB 328

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Under the Knox-Keene Act, all contracts between a provider and a plan are required to be in writing. Other provisions of existing law require a health care provider, as defined, to report specified diseases or conditions of a patient to the local health officer where the patient resides. This bill would require a health care service plan, on and after July 1, 2008, to include in its contract with a health care provider, as defined, who provides services to an enrollee in Mexico a provision requiring the provider to comply with this mandate, reporting the specified diseases or conditions to the health officer in California where the patient resides or is employed. The bill would also require a health care service plan that contracts with those health care providers to give a specified notification to those providers of the reporting requirement. This bill contains other related provisions and other existing laws.

Status: 10/10/2007-Chaptered by the Secretary of State, Chapter Number 385, Statutes of 2007

(Aghazarian) Health care coverage: dental care. Chaptered:
07/30/2007
[html](#) [pdf](#)

AB 895

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, the willful violation of which is a crime, provides for the

licensure and regulation of health care service plans and specialized health care service plans, including plans covering dental services. Existing law provides for the regulation of insurers by the Department of Insurance. Existing law imposes specified coverage and disclosure requirements on health care service plans and insurers. Existing law provides for, but does not require, a coordination of benefits in instances where coverage for a claim is available from more than one insurer or plan, as specified. This bill would require a health care service plan or a specialized health care service plan contract covering dental services, or a disability insurer that issues a dental insurance policy, to declare its coordination of benefits policy, as defined, prominently in its evidence of coverage documents or in its contracts or policies with both enrollees or insureds and subscribers or policyholders. The bill would require an enrollee's or insured's primary dental benefit plan, as defined, that is coordinating dental benefits with one or more other plans or insurers to pay the maximum amount required by its contract or policy with the enrollee or insured or the subscriber or policyholder. The bill would require a secondary dental benefit plan, as defined, to pay the lesser of either the amount that it would have paid in the absence of any other dental benefit coverage or the enrollee's or insured's total out-of-pocket cost payable under the primary dental benefit plan for benefits covered under the secondary dental benefit plan. This bill contains other related provisions and other existing laws.

Status: 07/30/2007-Chaptered by Secretary of State - Chapter No. 164, Statutes of 2007

(Karnette)

**Disabled persons:Chaptered:
support and10/15/2007
health carehtml pdf
coverage.**

AB 910

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, a plan and a health insurer are required to provide that coverage for a dependent child who attains a limiting age specified in the plan or policy shall not terminate if the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or a physical handicap and chiefly dependent upon the subscriber or insured for support, provided that proof of those facts is

furnished within 31 days of the request for the information or the child's attainment of the limiting age, as specified. This bill would change the first criterion, requiring a health care service plan and a health insurer to provide that coverage of a dependent child shall not terminate upon attaining the limiting age if, in addition to meeting the second criterion, as specified, the child is and continues to be incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition. The bill would require the plan and insurer to notify the subscriber or insured at least 90 days before the dependent child attains the limiting age and would require the subscriber or insured to submit proof, within 60 days of receiving that notice, that the child meets the criteria. The bill would require the plan or insurer upon request from the subscriber, group member, or policyholder and proof the child meets the criteria for continued coverage, to determine whether the child meets that criteria before the date the child attains the limiting age. The bill would also require, after a change in carriers, that the new plan or insurer continue coverage of the dependent child and would authorize that new plan or insurer to request information about the dependent child not more frequently than annually after the 2-year period following the child's attainment of the limiting age in order to determine if the child continues to meet the criteria. This bill contains other related provisions and other existing laws.

Status: 10/13/2007-Chaptered by Secretary of State - Chapter 617, Statutes of 2007.

(De La Torre)

Health care Chaptered:
coverage: 10/15/2007
treatment [html](#) [pdf](#)
authorization.

AB 1324

Existing law provides for regulation of health care service plans by the Director of the Department of Managed Health Care. Existing law provides for the regulation of health insurers by the Insurance Commissioner. This bill would additionally specify that a health care service plan or a health insurer is precluded from rescinding or modifying its authorization for any reason, including its subsequent rescission, cancellation, or modification of the contract or its subsequent determination that it did not make an accurate eligibility determination. The bill would also state that it is not the intent of the Legislature to instruct a court as to whether these provisions make a change to existing law. This bill contains other existing laws.

Status: 10/14/2007-Chaptered by Secretary of State - Chapter 702, Statutes of 2007.

SB 1038 (Committee on Banking, Finance and Insurance) Chaptered: 07/20/2007
[html](#) [pdf](#)
Insurance.

Existing law provides that any person or other entity that provides coverage in this state for medical or related services, whether this coverage is by direct payment or otherwise, and that enters into an arrangement or contract with, or underwrites, a preferred provider organization or arrangement is subject to the jurisdiction of the Department of Insurance. This bill would delete a repealed statutory cross-reference in that provision. This bill contains other related provisions and other existing laws.

Status: 07/20/2007-Chaptered by the Secretary of State, Chapter Number 100, Statutes of 2007

AB 1302 Health Insurance Portability and Accountability Act (Horton) Health Insurance Portability and Accountability Act Chaptered: 10/15/2007
[html](#) [pdf](#)

Existing law, the Health Insurance Portability and Accountability Implementation Act of 2001 (the act), provides for the implementation of the federal Health Insurance Portability and Accountability Act (HIPAA) by the state under the direction of the Office of HIPAA Implementation, which was established by the Governor in the California Health and Human Services Agency. Under existing law, the act will be repealed January 1, 2008, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date, and all unexpended or unencumbered funds under the act will revert to the General Fund. This bill would extend the act's duration to July 1, 2010, when it would become inoperative, and all funds under the act that are unexpended or unencumbered as of that date would revert to the General Fund.

Status: 10/14/2007-Chaptered by Secretary of State - Chapter 700, Statutes of 2007.

Life Insurance
(Cox) Life Chaptered:

SB 357

insurance: group 07/17/2007
policies. [html](#) [pdf](#)

Existing law provides that group life insurance may be written under a policy covering not less than 10 persons. This bill would provide that group life insurance may be written under a policy covering not less than 2 persons. This bill contains other related provisions and other existing laws.

Status: 07/17/2007-Chaptered by the Secretary of State, Chapter Number 78, Statutes of 2007

Privacy**AB 1298**

(Jones) Personal Chaptered:
information: 10/15/2007
disclosure. [html](#) [pdf](#)

The Confidentiality of Medical Information Act prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. The act includes within the definition of "provider of health care," any corporation organized for the primary purpose of maintaining medical information for treatment or diagnosis, as specified. This bill would apply the prohibitions of the Confidentiality of Medical Information Act to any business organized for the purpose of maintaining medical information to allow an individual to manage his or her information, or for the treatment or diagnosis of the individual. By expanding an existing crime, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Status: 10/14/2007-Chaptered by Secretary of State - Chapter 699, Statutes of 2007.

Service Contracts**AB 1008**

(Calderon, Charles) Chaptered:
Insurance: vehicle 10/08/2007
service contracts. [html](#) [pdf](#)

Existing law defines "vehicle service contract" for purposes of provisions relating to sellers of vehicles. This bill would change the definition of "vehicle service contract" to include only those agreements that have a term of at least one year that

promise routine maintenance, and agreements that promise repair or replacement of a tire, wheel, or glass on a vehicle, as specified. This bill contains other related provisions and other existing laws.

Status: 10/08/2007-Chaptered by the Secretary of State, Chapter Number 326, Statutes of 2007

<u>AB 522</u>	Other (Duvall) Nonadmitted insurers.	Chaptered: 07/27/2007 html pdf
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Existing law generally provides that a surplus line broker may solicit and place insurance, other than as excepted, with nonadmitted insurers only if that insurance cannot be procured from insurers admitted for the particular class or classes of insurance and that actually write the particular type of insurance in this state. This bill would provide that this requirement does not apply to extensions of coverage by a nonadmitted insurer, of or for the same risks, and to the same insured under an existing surplus lines policy, as specified. This bill contains other related provisions and other existing laws.

Status: 07/27/2007-Chaptered by the Secretary of State, Chapter Number 134, Statutes of 2007

<u>AB 796</u>	(Committee Insurance) Insurance.	onChaptered: 07/27/2007 html pdf
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Existing law requires that insurers file a comprehensive financial plan with the commissioner on the occurrence of a Company Action Level Event, as defined. That report must be filed if, among other things, certain insurers' annual Risk-Based Capital (RBC) report indicates either of 2 specified levels of Total Adjustable Capital. This bill would add another level of Total Adjusted Capital which, with respect to certain insurers, would be indicated in the insurer's RBC report. This bill contains other related provisions and other existing laws.

Status: 07/27/2007-Chaptered by the Secretary of State, Chapter Number 138, Statutes of 2007

<u>AB 1401</u>	(Aghazarian) Insurance fraud: assessments.	Chaptered: 10/08/2007 html pdf
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Existing law provides that the costs of administration and operation of the Fraud Division are to be borne by all of the insurers admitted to transact insurance in this state. The assessment is equal among all insurers, in an amount adequate to operate the division, not to exceed \$1,300 each fiscal year. This bill would repeal and recast this provision to require each insurer doing business in this state to pay an annual special purpose assessment to be determined by the commissioner, not to exceed \$5,100, to be used exclusively for the support of the Fraud Division. All moneys received by the commissioner from insurers pursuant to this special purpose assessment would be transmitted to the Treasurer to be deposited in the State Treasury to the credit of the Insurance Fund. This bill contains other related provisions.

Status: 10/08/2007-Chaptered by the Secretary of State, Chapter Number 335, Statutes of 2007

SB 316 (Yee) Insurance. Chaptered:
10/10/2007
[html](#) [pdf](#)

Existing law requires insurers to maintain certain minimum reserves for outstanding losses and loss expenses for various coverages included in the lines of business described in the annual statement. This bill would delete workers' compensation insurance from this requirement. This bill contains other related provisions and other existing laws.

Status: 10/10/2007-Chaptered by the Secretary of State, Chapter Number 431, Statutes of 2007

SB 339 (Scott) Insurance: Chaptered:
excess investment. 10/05/2007
[html](#) [pdf](#)

Existing law provides that an insurer may make excess fund investments in shares of an open-end diversified investment company, as defined, under specified conditions. This bill would revise and recast the conditions applicable to an investment company in which a domestic insurer may make excess fund investments.

Status: 10/05/2007-Chaptered by the Secretary of State, Chapter Number 297, Statutes of 2007

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