

April 16, 2015

TO: Members, Senate Committee on Labor and Industrial Relations

FROM: Jeremy Merz, Policy Advocate

**SUBJECT: SB 563 (PAN) WORKERS' COMPENSATION: UTILIZATION REVIEW
SCHEDULED FOR HEARING – APRIL 22, 2015
OPPOSE – JOB KILLER**

The California Chamber of Commerce respectfully **OPPOSES SB 563 (Pan)**, which has been labeled a **JOB KILLER**, because it would undermine the entire medical treatment review process in California's workers' compensation system thereby exposing injured workers to potentially inappropriate treatment, triggering significant system cost increases and subverting the recent data-driven reform process. **SB 563** alters the current medical treatment review process – a process recently reformed through a joint labor-management negotiated legislative package – by limiting the application of that process.

Put simply, **SB 563** eliminates review of physician recommendations when all of the following conditions are met:

1. The treatment recommendations are solely for the purpose of maintaining the employees health care regimen for a pre-existing condition.
2. The same treatment recommendation has previously been approved based on the medical necessity and the employee's current healthcare regimen.
3. There is no evidence of a change in the employee's condition.

Undermines Treatment Review Process

The process of reviewing medical treatment requests to ensure consistency with evidence-based treatment guidelines – including both utilization review (“UR”) and independent medical review (“IMR”) – was designed to ensure that injured workers receive the most necessary, efficacious, and appropriate treatment. It is a heavily regulated process with prescriptive statutes and regulations, limited treatment review timeframes, thorough performance audits by the Division of Workers' Compensation, and a robust penalty scheme for noncompliance. Decisions to delay, deny, or modify a treatment recommendation must be made by a physician, not by a claims administrator. This process serves as a limited check on dangerous care and results in approval of nearly 95 percent of requested treatment.

Yet **SB 563** would undercut that process by creating ambiguous exceptions to the applicability of California's established medical treatment review system. In many situations under **SB 563**, the initial approved treatment would essentially stand without question as to the appropriateness of the same treatment in the future. For example, if an initial treatment request for opioid medication was approved, all subsequent requests for the same medication (even if they did not fit within the evidence-based medical guidelines) would be approved unless the provider indicated a change in the injured worker's status – a conclusion that would not be subject to review. Because the UR process would be foreclosed under **SB 563** in this situation, employers would not be able to seek a review for the appropriateness of the prescription. Moreover, they could not seek an independent review through the IMR process, which requires a prior UR determination and can only be triggered by an injured worker under current law.

This potential outcome of **SB 563** is particularly concerning in light of the ongoing overutilization of opioids and other dangerous prescription drugs in California's workers' compensation system. Pharmaceutical requests significantly outpace all other medical treatment requests that go to UR and IMR. The removal of evaluation tools could potentially compound the ongoing opioid issues, reduce return-to-work outcomes and drive costs. Certainly the effects of **SB 563** would not be limited to pharmaceuticals and would apply to other unnecessary and potentially dangerous treatments including surgeries and injections.

Creates Significant Cost Increases

SB 563 would also result in a significant increase in system costs. The recently enacted IMR system was estimated to save the system nearly \$400 million through increased medical dispute efficiency. By significantly undermining the IMR process, **SB 563** threatens to eliminate potential savings from the recent reforms and drive employer costs in the country's most expensive workers' compensation system.

In addition to the impact on medical treatment decisions, **SB 563** would result in a great amount of litigation and undermine recent efforts to take medical decisions out of the hands of unqualified administrative law judges. **SB 563** would give judges the power to determine that UR and IMR processes are not applicable, and override medical decisions. **SB 563** would squarely put medical decisions back in the hands of judges, thereby exposing injured workers to long calendar delays for hearings and employers to higher litigation costs.

Subverts the Data Driven Reform Process

The recent system reforms were developed through data driven analyses which allowed stakeholders to thoughtfully vet and better understand the impacts of any proposed system changes. This created a balanced reform that has moderated system costs increases while providing nearly one billion dollars in new benefits. **SB 563** veers away from this process by creating massive system changes without any review or understanding the policy's impacts. The lack of information and analysis threatens to trigger massive system cost swings that the reforms sought to avoid.

For these reasons, we respectfully **OPPOSE SB 563** as a **JOB KILLER**. ®

cc: Tom Dyer, Office of the Governor
The Honorable Richard Pan, District Office
Gideon Baum, Senate Committee on Labor and Industrial Relations
Cory Botts, Senate Republican Caucus
District Offices, Members, Senate Committee on Labor and Industrial Relations

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