

## MEMORANDUM

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**To:** Neal Kloke

**From:** Melvin N. Sorensen

**Date:** January 29, 2017

**Re:** NAIFA Legislative Report—4-17

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### **House and Senate Committees Consider Controversial Companion Bills Authorizing Inducements to Buy Insurance**

A controversial San Francisco-based employee benefits firm is apparently behind the introduction of HB 1185 and SB 5242—companion measures that would allow insurers, insurance producers, or title insurance agents to offer goods that are free or for less than fair market value incident to an insurance sale or solicitation. The bills were introduced at the request of Zenefits after Insurance Commissioner Mike Kreidler ordered the company last month to cease offering free employee benefits software, finding that the activity is in violation of Washington’s law against inducements. The company was fined by the OIC in 2016 for allowing unlicensed individuals to sell insurance in Washington. Last November regulators in California imposed significant fines and penalties against the company for licensing violations in that state.

HB 1185 was considered at a hearing of the House Business & Financial Services Committee for consideration, and a hearing has been scheduled to consider the measure on Wednesday, January 25. SB 5242 was considered by the Senate Financial Institutions and Insurance Committee at a hearing on Thursday, January 26. NAIFA, together with other producer associations and the Office of the Insurance Commissioner, testified in opposition to the measures. NAIFA President Neal Kloke, together with Keith Wallace, the President of the Washington Association of Health Underwriters, along with representatives of the Professional Insurance Agents of Washington/Alaska and the Independent Insurance Agents and Brokers of Washington, testified that the measures would unravel recently-enacted revisions to Washington’s insurance inducement provisions that were the result of careful negotiations between the OIC and producer groups only two years ago. They also expressed concern that the bill would provide competitive advantages to large entities who are able to offer large financial inducements to build client relationships that are completely beyond the reach of main street agents and brokers. The OIC also testified against the bills.

### **Senate Committee Considers OIC Request Bill Dealing with Personal Non-Public Health Information**

On Tuesday, January 24 the Senate Health Care Committee held a hearing to consider SB 5124—a measure that was introduced at the request of Insurance Commissioner Mike Kreidler to clarify that personal, non-public health care information that comes into possession of the OIC is not subject to public disclosure, except in furtherance of regulatory or legal action brought as part of the OIC’s official duties. The hearing was uncontroversial, with no testimony expressing concerns or opposition to the measure. The bill has not yet been scheduled for a vote.

On Wednesday, January 18 the House Health Care & Wellness Committee held a hearing to consider HB 1043—the House version of the bill. Insurers, health care provider groups, and consumers testified in support of the measure. There was no testimony in opposition to the measure. The bill is scheduled for a vote in the House committee on Tuesday, January 31.

### **Controversial “Continuity of Care” Bill Considered by Senate Committee**

On Tuesday, January 24 the Senate Health Care Committee held a hearing to consider SB 5160—a measure that would prohibit insurers from denying continued coverage, or increasing out-of-pocket costs for a prescription drug for a patient who is medically stable. The bill was introduced on Monday, January 16 by Senator Ann Rivers (R, 18<sup>th</sup> Legislative District). Senator Rivers is the Chair of the Senate Health Care Committee. On Friday, January 13 Representative Laurie Jinkins (D, 27<sup>th</sup> Legislative District) introduced a similar measure in the House—HB 1211.

Health plans testified against the bill at the Senate hearing, arguing that the restrictions in the bill would interfere with efforts to respond on a timely basis to the introduction of new medications, or the appropriate consideration of updated research and consensus in the medical literature regarding prescription drugs. They also noted that the bill would likely result in higher drug costs for consumers, which would be reflected in health insurance rate increases. The Office of the Insurance Commissioner also testified in opposition to the bill, also expressing concern about cost increases which would be passed on to consumers in higher costs for coverage. Patient groups, apparently with the backing of drug manufacturers, testified in support of the measure. The bill has not been scheduled for a vote of the committee. It appears unlikely that the House version of the bill—HB 1211—will be considered.

### **House Committee Holds Hearing to Consider OIC Request Bill on “Surprise Billings”**

On Wednesday, January 18 the House Health Care & Wellness Committee held a hearing to consider HB 1117—a measure that was introduced at the request of Insurance Commissioner Mike

Kreidler to address issues related to billings for health care services delivered to patients by providers who have not signed participating provider agreements with the patient's health plan. Health plans expressed concerns about the bill, but testified that agreement on a solution should be obtainable. The Washington State Medical Association, Washington State Hospital Association, and some specialty provider groups testified in opposition to the measure, indicating frustration that their prior suggestions are not reflected in the bill. Consumer testified in support of the measures.

The issue has posed a challenge for several years. The most significant examples stem from emergency services delivered at a hospital emergency room where the hospital is a participating provider with the patient's health care plan, but the emergency room physician is not a participating provider with the plan. Patients have expressed surprise and irritation to find that they are subject to paying "billed charges" for the professional services rather than benefiting from the fees and other protections negotiated by their health plans with participating providers, which usually include the hospital involved. HB 1117 is drafted to address such circumstances. Committee Chair Eileen Cody (D, 34<sup>th</sup> Legislative District) indicated that she would convene a work group of stakeholders from the insurer and provider community in an effort to hammer out a final agreement. Those discussions are already underway.

### **Hearings Scheduled to Consider House and Senate Bills Introduced to Remove the Sunset on the Washington State Health Insurance Pool**

On Wednesday, January 18 Representative Eileen Cody (D, 34<sup>th</sup> Legislative District) and Senator Annette Cleveland (D, 49<sup>th</sup> Legislative District) introduced companion bills that would remove the December, 2017 sunset of authority for the Washington State Health Insurance Pool to offer health insurance coverage. HB 1338 has been referred to the House Health Care & Wellness Committee, and SB 5253 has been referred to the Senate Health Care Committee. Both bills have been scheduled for hearings before their respective committees on Tuesday, January 31. Health plans, together with NAIFA and WAHU, are expected to testify in support of the measures.

### **Bill on Chiropractic Services Introduced**

On Thursday January 26 Senator Mark Miloscia (R, 30<sup>th</sup> Legislative District) introduced SB 5518—a measure that would establish new requirements regarding the reimbursement of chiropractic services. The bill would prohibit health plans from reimbursing chiropractors less than other providers for specified services referenced in particular physical medicine and rehabilitation codes, including spinal manipulation codes. The bill has been referred to the Senate Health Care Committee, but has not yet been scheduled for hearing.

### **Legislature Adopts Cut-Off Resolution for the Consideration of Bills**

This week the Senate and House adopted SCR 8400—a cut-off resolution establishing dates for the consideration of bills. Key dates are as follows:

February 17—the last day for committees in the House of origin to take action on bills;  
February 24—the last day for Fiscal committees in the House of origin to take action on bills;  
March 8—the last day for the House of origin to take action on bills;  
March 29—the last day for committees in the opposite House to take action on bills;  
April 4—the last day for Fiscal committees in the opposite House to take action on bills;  
April 12—the last day for the opposite House to take action on bills (except exempt bills and bills passed by both Houses in different forms);  
April 23—the last day of the 2017 Regular Legislative Session

### **OIC Prepares Legislative Proposals**

Insurance Commissioner Mike Kreidler has prepared a package of legislative proposals that he intends to submit to the 2017 Legislature. A link to the OIC's legislative priorities can be found at <https://www.insurance.wa.gov/laws-rules/legislation-rules/legislation/>.

The OIC's request bills include:

- A measure to address “surprise billings” by medical providers who are not in a patient's health plan provider network;
- A measure to address the privacy of health care information during OIC examinations of insurers;
- A measure to remove an annual study of K-12 health benefits that the OIC is currently required to perform;
- Amendments to recently-passed legislation regarding life insurer products available in the new small business retirement market place that is offered through the Washington State Department of Commerce; and
- Adjustments to the requirements regarding licensing for surplus lines brokers.