May 15, 2025

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to insurer coverage of medical procedures and medication (A.G. File No. 25-0002, Amendment #1).

BACKGROUND

Californians Have Different Kinds of Health Insurance. Most Californians (around 95 percent) have health insurance. Around half have insurance through their employer or by buying it themselves. Most of these people are enrolled in health plans, such as Kaiser Permanente or Anthem Blue Cross. The other around half are covered by public programs. These programs include Medi-Cal (a joint state-federal program that covers health care for low-income people) and Medicare (a federal program that covers health care for elderly and disabled people).

Health Insurers Must Cover Certain Medically Necessary Care. State law requires health insurance to include certain kinds of services. For example, most health plans must cover specific kinds of services, such as doctor and hospital visits, when medically necessary. State law (as well as federal law) also determines which kinds of services Medi-Cal covers.

Health Insurers Can Deny or Change Services, With Some Limits. There are some cases when health insurers (including public programs) can deny or change a provider-recommended service to a patient. For example, health plans do not have to cover health care services beyond the state law's requirements. Health plans also do not have to cover services that are not medically necessary, with some limits. For example, health plans must use licensed providers (such as doctors) when determining whether a specific service or drug is medically necessary. State law also limits how much time a health plan can take to determine coverage for a specific service.

Legislative Analyst's Office
California Legislature
Gabriel Petek, Legislative Analyst
925 L Street, Suite 1000, Sacramento, CA 95814
(916) 445-4656

State Reviews Health Care Denials or Changes. Under state law, people can appeal decisions by health insurers to deny or change a provider-recommended service. For people insured by a health plan, the process begins with internal reviews by the plans. People also can appeal to the state, which reviews whether cases are medically necessary, among other issues. People in Medi-Cal also can request a state hearing to review complaints. Furthermore, people and other entities can sue their insurance in court to resolve disputes.

PROPOSAL

Restricts Insurer Denials, Delays, or Changes to Medical Services. The initiative restricts insurers from denying, delaying, or changing certain medical services or drugs for patients. Specifically, the initiative prohibits these actions when they (1) overturn recommendations made by licensed doctors and (2) could result in specified negative patient health outcomes. As Figure 1 shows, the measure includes five negative health outcomes (such as disability and death). Moreover, any denials, delays, or changes to a doctor-recommended service or drug would have be made by a licensed doctor on behalf of the insurer.

Figure 1

Initiative Includes Five Negative Health Outcomes

Insurers could not change a doctor-recommended service or drug if the change could result in:

- Amputation.
- Death.
- Disability.
- Loss or reduction of any bodily function.
- Permanent disfigurement.

Creates New Way to Sue Insurers. Under the initiative, there would be a new way to sue insurers for denials, delays, or changes to doctor-recommended services or drugs. Specifically, an insurer, rather than the person filing the lawsuit, would have to prove that the services or drugs were unnecessary or that the denial, delay, or change would not result in the specified negative health outcomes. The insurer would also have to meet a higher burden of proof than what is typical in most other civil lawsuits. An insurer that fails to meet this burden of proof would have to pay three times the amount of damages suffered by the person who filed the lawsuit (in addition to other costs).

FISCAL EFFECT

Scope of Initiative's Restrictions Uncertain. The initiative would result in new restrictions on "health insurers," which is not defined in the initiative. As a result, the scope of these restrictions is uncertain and the exact number of affected insurers is unclear. For example, the initiative could apply to many kinds of state-regulated insurance (such as health plans and the Medi-Cal program). It also is uncertain how broadly state courts would interpret the measure's restrictions on insurer denials, delays, and changes.

Probably Increased Costs for Health Care Sector Overall, but Size Uncertain. Given the above uncertainty, pinpointing the initiative's fiscal effects on the state's health care sector is difficult. On net, the initiative probably could result in higher statewide health care costs. This is because affected

health insurers might deny, delay, or change fewer doctor-recommended services and drugs to avoid penalties from potential lawsuits. To cover these higher costs, many health insurers would likely raise monthly premiums. The size of this cost, however, is uncertain. It depends on the scope of initiative's restrictions, as well as how many new services insurers cover as a result of the measure.

Probably Increased, but Also Uncertain, State and Local Government Health Care Costs. Some of the increase in health care costs could fall on state and local governments. The size of this cost also is uncertain. Much of the effect depends on the measure's impact on Medi-Cal, the state's largest health care program. Higher premiums also could increase state and local government employee health insurance costs. Because of this uncertainty, the cost could range from limited to extensive, potentially from the hundreds of millions of dollars to as much as the billions of dollars each year (annually). (State and local governments currently spend tens of billions of dollars annually on Medi-Cal and employee and retiree health care.)

Increased State Court Costs. The initiative would likely result in a net increase in state court workload and costs. The size of this net increase is uncertain and would depend on various factors. One key factor is how health insurers, the public, attorneys, and the courts respond to the new way to sue health insurers. For example, there could be more lawsuits due to the increased burden of proof for insurers to defend their actions and the possibility for those who sue to receive three times the amount of the damages they suffer. This would increase state court workload and costs. The size of the increase would depend on the number, type, and complexity of cases filed. The size of the increase would also depend on how health insurers change their business practices in response to this measure. For example, the size of the increase could be reduced to the extent health insurers cover more services and drugs to avoid lawsuits. On net, the increase in state court costs is unlikely to exceed the low tens of millions of dollars annually.

Summary of Fiscal Effects. This measure would have the following fiscal effects:

- Either limited or extensive effect on state and local government health care costs, potentially from the hundreds of millions of dollars to as much as the billions of dollars annually, depending on how courts interpret the measure and how insurers react to the measure's new restrictions.

Sincerely,

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for Gabriel Petek
Legislative Analyst

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for Joe Stephenshaw
Director of Finance