

# DEPARTMENT OF INSURANCE

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*Commissioner: Ricardo Lara ♦ Toll-Free Consumer Hotline: (800) 927-4357 ♦ Licensing Hotline: (800) 967-9331 ♦ Internet: [www.insurance.ca.gov](http://www.insurance.ca.gov)*

Insurance is the only interstate business wholly regulated by states rather than the federal government. In California, this responsibility rests with the Department of Insurance (DOI or the Department), organized in 1868 and headed (as of 1988) by an elected Insurance Commissioner. Insurance Code sections 12900 through 12938 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 1,000-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The California DOI is the nation's largest state consumer protection agency. The Department's designated purpose is to regulate the insurance industry to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of companies to sell insurance products in the state. Nearly 1,400 employees work at DOI to oversee more than 1,400 insurance companies and license more than 420,000 agents, brokers, adjusters, and business entities. In the ordinary course of business, DOI annually processes more than 8,000 rate applications, issues approximately 200,000 licenses (new and renewals), and performs hundreds of financial reviews and examinations of insurers doing business in California. DOI annually receives more than 170,000 consumer assistance calls, investigates more than 37,000 consumer complaints, and, as a result, recovers more than \$84 million a year for consumers. DOI annually receives and processes tens of thousands of referrals regarding suspected fraud against insurers and conducts criminal investigations

resulting in thousands of arrests every year.

In addition to its licensing function, DOI is the principal agency involved in collecting annual taxes paid by the insurance industry.

The Department collects more than 175 different fees levied against insurance producers and companies. The Department performs the following consumer protection functions:

(1) it regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

(2) it reviews and approves/disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(3) it establishes rates and rules for workers' compensation insurance;

(4) it preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

(5) it becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law and ordering an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim; that power is reserved to the courts.

DOI's Consumer Services Division (CSD) is responsible for gathering and responding to consumer inquiries and complaints regarding insurance companies or producers. CSD maintains four

separate bureaus: Consumer Communications Bureau; Claims Services Bureau; Health Claims Bureau; and Rating and Underwriting Services Bureau. CSD operates the Department's toll-free complaint line. Through its bureaus, CSD responds to requests for general information; receives, investigates, and resolves individual consumer complaints against insurance companies, agents, and brokers; tracks trends in code violations; and cooperates with law enforcement to bring deterrent compliance actions. Cases which cannot be resolved by CSD are transferred to DOI's Legal Division, which is authorized to file formal charges against a licensee and take disciplinary action as appropriate, including cease and desist orders, fines, and license revocation.

The Department's Fraud Division was established in 1979 to protect the public from economic loss and distress by actively investigating and arresting those who commit insurance fraud. The Fraud Division is currently composed of four separate fraud programs: automobile; workers' compensation; property, life, and casualty; and disability and health care.

On February 11, 2021, Commissioner Lara [welcomed](#) Mark Morales as Chair of the Insurance Diversity Task Force. Morales is the first LGBTQ+ person to lead the Diversity Task Force.

On February 16, 2021, Commissioner Lara [announced](#) the appointment of Dr. Fabiola Cobarrubias to the Insurance Diversity Task Force and Sara Flocks to the California Life and Health Insurance Guarantee Association (CLHIGA) Board of Directors.

# HIGHLIGHTS

## **Federal Judge Upholds Legality of Drug Transparency Law Requiring Manufacturers to Report Drug Price Increases to Department**

On January 4, 2021, the United States District Court for the Eastern District of California filed an [order](#) upholding the legality of a 2017 California drug price transparency law in *Pharmaceutical Research & Manufacturers of America (“PhRMA”) v. David*, No. 2:17-cv-02573-MCE-KJN, --- F.Supp.3d ---, 2021 WL 22473 (E.D. Cal. Jan. 4, 2021). This law requires manufacturers to, among other things, report price increases of 16% or more over a two-year period, and to provide a 60-day notice and an explanation for the increase to DOI and the Department of Managed Health Care. The Departments are then required to compile the reported information into a report for the public and legislators that demonstrates the overall impact of drug costs on health care premiums and publish the reports annually. In this lawsuit, plaintiff PhRMA alleges the 2017 law is unconstitutional and seeks a permanent injunction preventing its implementation.

On October 9, 2017, former California Governor Edmund G. Brown signed [SB 17 \(Hernandez\) \(Chapter 603, Statutes of 2017\)](#), which amends the law to require the manufacturer of a prescription drug to notify purchasers “at least 60 days before increasing the drug’s federally defined wholesale acquisition cost (“WAC”) if: (1) a course of therapy has a WAC of more than \$40, and (2) the proposed increase would result in a cumulative increase of 16 percent or more over the two calendar years prior to the current year.” The notice must include a statement explaining why the drug price is increasing. The legislative intent behind the law states in part as follows:

[T]he State of California has a substantial public interest in the price and cost of prescription drugs. California is a major purchaser through the Public Employees' Retirement System, the State Department of Health Care Services, the Department of General Services, the Department of Corrections and Rehabilitation, and other entities acting on behalf of a state purchaser...It is the intent of the Legislature in enacting this chapter to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing.

On December 8, 2017, plaintiff PhRMA filed suit against Robert P. David, in his official capacity as director of the California Office of Statewide Health Planning and Development, seeking declaratory and injunctive relief. PhRMA claims the law is unconstitutional on its face, because it (1) violates the Dormant Commerce Clause of the United States Constitution by directly regulating interstate commerce through a de facto 60-day price freeze nationwide on qualifying drugs, and (2) violates the First Amendment by compelling pharmaceutical manufacturers to communicate specified information when they would otherwise remain silent. [*see* [24:2 CRLR 181–182](#)]

In the order, Senior U.S. District Judge Morrison C. England, Jr. rejected PhRMA's arguments that the law violates the Dormant Commerce Clause and First Amendment and denied the plaintiff's motion for summary judgment. As to the Commerce Clause claim, Judge England found that the law does not regulate commerce outside California's borders and agreed that the state has a substantial public interest in the price and cost of prescription drugs. Judge England concluded that SB 17 does not necessarily dictate the transaction price of prescription drugs in other states. In addition, PhRMA did not meet its burden in showing that SB 17 violates the Dormant Commerce Clause on its face because there are genuine disputes of material fact as to whether providing advance notice of certain increases in a prescription drug's WAC results in either direct or extraterritorial regulation.

As to the First Amendment claim, Judge England found that the speech in question was “hardly inflammatory” and did not force manufacturers to promote a state-sponsored message. Further, PhRMA failed to show that the state does not have a sufficient interest [in drug pricing] or that its interests are unrelated to SB 17’s notice and justification requirements.

As a result of the court’s decision, SB 17 remains in effect. On January 22, 2021, PhRMA filed a motion for certification of interlocutory appeal. The motion has been fully briefed. At this writing, the court has not yet ruled on the motion.

## **Department Notifies Insurance Companies of Obligation to Abide by New Mental Health and Substance Abuse Law**

On December 10, 2020, Commissioner Lara released a [notice](#) to all health insurance companies informing them of their responsibility to follow a new mental health and substance abuse parity law. The bill requires health insurance policies to cover health care services that are medically necessary to diagnose, prevent, and treat all mental health conditions, substance use disorders, and other medical conditions.

In previous years, members of the California legislature tried and failed to expand mental health coverage and enforcement. The insurance industry blocked attempts to change the law, saying it would increase consumer costs.

On January 1, 2021, [SB 855 \(Wiener\) \(Chapter 151, Statutes of 2020\)](#) took effect. This bill adds Insurance Code section 10144.5(a)(1), and provides that “[e]very disability insurance policy issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance

use disorders, under the same terms and conditions applied to other medical conditions.” The law requires insurers to cover all mental health conditions and substance abuse disorders listed in the recent edition of the *Diagnostic and Statistical Manual of Mental Health Disorders*.

In a [press release](#) issued on December 9, 2020, Commissioner Lara stated, “[t]he pandemic is exposing a greater need for mental health services and substance use continues to rise. My department will guarantee insurance companies provide fair and equal access to coverage for Californians who need this vital care.” Sacramento Mayor Darrell Steinberg and co-sponsor of SB 855 noted that this law is essential in light of Californians’ mental health challenges, which have been compounded by a pandemic, high unemployment, and anxiety about fires, and racial injustice.

In an effort to ensure compliance with this new law, Commissioner Lara directed all health insurers to review their medical necessity criteria and utilization review policies and procedures and implement any changes necessary to ensure they are consistent and compliant with SB 855 by January 1, 2021. By this date, health insurers submit to the Department amended insurance forms showing compliance with the new law.

## **DOI Holds Second Workshop Regarding Proposed Regulations to Expand Auto Insurance Group Discounts to Low-Income Drivers**

On March 23, 2021, DOI held a [second prenotice public workshop](#) regarding contemplated amendments to expand auto insurance group discounts to lower-income drivers. DOI is responsible for the review and approval of automobile insurance premiums in the state to ensure they are fair and based on objective factors. The [second workshop draft text of regulation](#) includes amendments and

additions to group insurance plans under Insurance Code section 1861.12 (private passenger auto) and various California Code of Regulations sections.

The Department proposed this expansion to group discounts after Commissioner Lara ordered an [investigation](#) into group discounts in May of 2019. Specifically, Commissioner Lara directed DOI to investigate whether personal automobile affinity group discounts increased the cost of insurance for lower-wage, less-educated consumers. This investigation [found](#) that “one-quarter of Californians receive an affinity group premium reduction ranging from 1.5% to 25.9% depending on the insurer and group.” In addition, the [data](#) showed that participation in group discount programs decreased with income and education level, with those living in areas with average income above \$49,000 more than twice as likely to receive discounts as those in areas with an average income of \$22,500 or below. The data showed that in some areas of Los Angeles, San Diego, and the Bay Area, participation in group discount programs in high-income areas was three to four times higher.

The proposed regulatory changes come thirty years after Proposition 103, which outlawed certain forms of insurance discrimination. Proposition 103 permits group discounts to exist, and the Department stated that its changes would ensure that these discounts are offered equally to persons regardless of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, primary language, immigration status, occupation, educational attainment, or income level.

On December 23, 2019, DOI released the [first draft](#) of the proposed regulations and a subsequent [invitation for a public workshop](#). In a [press release](#) dated February 18, 2021, DOI shared the revisions on the second draft. These revisions include requiring insurance companies to offer group discounts to make sure they are available to drivers at different income levels who have similar

driving experience, adding an incentive system whereby insurers who excel in writing policies from underserved socio-economic communities will receive a small increased allowance in their expense calculation, and requiring all of an insurer's available group plans be included in a list of available discounts to every new policyholder at every renewal. These changes are meant to help drivers avail themselves of discounts they may be entitled to but not made aware of presently. [see [25:2 CRLR 138–140](#)]

During public comment at the March 23, 2021 workshop, many groups expressed their dissatisfaction with the proposed regulations, stating that the proposed regulations would not accomplish what DOI intends to accomplish (to expand discounts to auto insurance group discounts without adversely affecting those who currently receive discounts), and will instead hurt affinity groups that already receive discounts. An attorney for Consumer Watchdog stressed the need for a change to the existing program because of its adverse impacts on people of color and low-income consumers; in particular, the current state of the group discounts causes racial and economic disparities. Consumer Watchdog also expressed that under current regulations, on average, construction workers pay higher costs than attorneys for auto insurance. Black community leaders expressed their disapproval of the proposed regulations, stating that they would actually eliminate discount programs that help minorities and drive up costs to black communities. These advocates expressed their desire for an expansion of the discount programs to meet the needs of the black community. Multiple insurance companies also opposed the proposed changes.

At the conclusion of the second workshop, the moderator announced there would be a third workshop after Commissioner Lara and DOI review the oral and written comments from the second workshop. At this writing, a date has not yet been set.

## **Department Proposes Regulation to Increase Transparency of Dental Benefits Coverage**

On January 8, 2021, DOI published [Notice of Proposed Emergency Action](#) to adopt section 2239.10, Title 10 of the CCR to implement the requirements of section 10603.04 of the Insurance Code regarding the Summary of Dental Benefits and Coverage Disclosure Matrix (SDBC).

According to the finding of emergency, [SB 1008 \(Skinner\) \(Chapter 933, Statutes of 2018\)](#) added section 10603.04 to requires insurers that issue, sell, renew, or offer a health insurance policy that also provides dental coverage, to use a uniform benefits and coverage disclosure matrix, which must contain the following information, including corresponding copayments or coinsurance and limitations: the annual overall policy deductible, the annual benefit limit, coverage for preventative and diagnostic services, basic services, major services and orthodontia services; dental policy reimbursement levels and estimated insured cost share for services; waiting periods; and examples to illustrate coverage. The statute requires DOI, in conjunction with the Department of Managed Health Care, to develop the matrix in consultation with stakeholders. It also provides that the Department shall develop emergency regulations to implement the bill's requirement that insurers will have to comply with the new form, content, and delivery requirements. The statute applies to policy years on and after January 1, 2021 or 12 months after DOI adopts regulations, whichever is later.

These regulations effectively ensure that consumers will have all necessary documents that describe coverage of dental benefits in a uniform manner, thus providing consumers with a better understanding of different coverage options.

For individual coverage, the insurer must provide a SDBC for prospective individual enrollment or for individual applications for dental coverage within seven business days following receipt of the application for coverage. For group contracts, the insurer must provide a SDBC for each policy that provides coverage for dental benefits it offers in the group market. For insured individuals or prospective insured individuals qualifying for coverage under a special enrollment period, the insurer must provide a SDBC to the individual at the same time it provides other disclosure information. When requested by an insured, regardless of individual or group coverage, the insurer must provide the applicable SDBC within seven business days of the request.

The notice of emergency rulemaking asserts that these regulations seek to benefit California consumers by disseminating information about dental health benefits coverage in a clear and transparent format. The matrices will provide detailed information on dental benefits in a visual format that will make it easier for consumers to compare different health plans. The regulations will not result in costs incurred by or have a fiscal impact on any local, state, or federally funded agency.

DOI filed the request for adoption of emergency regulations with the Office of Administrative Law (OAL) on January 19, 2021. Pursuant to the express terms of section 10603.04(f)(2), these emergency regulations were not subject to review and approval by OAL. OAL received the regulations and filed them with the Secretary of State on January 28, 2021 and they became effective immediately on that date.

On February 23, 2021, the Department issued an [invitation](#) to pre-notice public discussions with respect to the [proposed text](#) to implement the SDBC matrix in the formal rulemaking process, which took place on March 11, 2021. At this writing, the Department has not published formal notice of its intent to adopt permanent regulations.

## **DOI Leaving Virus Exclusion Questions up to the Courts**

At the start of 2021, there were over 1,500 property insurance claims across the country due to COVID-19 business interruptions. These cases largely address interruptions caused by local and state ordinances, which forced the closure of many businesses generally open to the public. The policyholder claims allege that state-ordered closures deter people from coming to businesses, thus decreasing the profitability of the business and causing some to close. Most insurance policies include exclusions, such as virus exclusions or exclusions from civil authority and actions of government bodies. These exclusions have left businesses unable to receive insurance benefits from damages caused by business interruptions due to COVID-19.

California was one of the first states to take action regarding business interruption claims. Commissioner Lara issued a [notice](#) to insurance companies to fairly investigate all business interruption claims caused by COVID-19. In 2020, [AB 1552 \(Ramos and Limón\)](#) was introduced and would have retroactively expanded insurance coverage under existing policies to cover losses incurred due to COVID-19 related business interruptions. Importantly, the bill would have provided that with respect to coverage for business interruption due to an order of civil authority, a rebuttable presumption applied that COVID-19 was present on property located within the geographical location covered by the order of civil authority and caused physical damage to that property. However, the bill died in a Senate committee. Because most insurance policies contain virus exclusions, the issue appears to be beyond the control of the Department and must be resolved in the courts.

Court decisions in California regarding COVID-19 insurance coverage thus far have been favorable to insurers. For instance, on January 25, 2021, in *Fink v. The Hanover Insurance Group, Inc., et al.*, Case No. CV03907 (N.D. Cal.), the United States District Court for the Northern District of California [granted](#) the defendant’s motion to dismiss COVID-19 business interruption insurance claims against it. The court found that the plaintiff policyholder failed to allege “loss at his property which can be fixed, replaced, or disinfected,” nor that there was any force responsible for loss of use of his property. In this case, the court decided that the policy did not provide civil authority coverage because the government closure orders were preventative and intended to mitigate the COVID-19 pandemic, thus, the plaintiff failed to establish a “causal link between prior property damage and the government’s closure order.” The judge in this case granted a leave to amend the complaint, thus giving the plaintiffs an opportunity to correct the deficiencies noted by the court in an amended complaint. On February 11, 2021, the claim was [dismissed with prejudice](#) after the plaintiffs chose not to amend the complaint.

Similarly, on January 26, 2021, in *Colgan v. Sentinel Insurance Co., LTD.*, Case No. CV04780 (N.D. Cal.), the United States District Court for the Northern District of California [granted](#) the defendant’s motion for judgment regarding a COVID-19 business interruption claim. The court found that the losses incurred by the plaintiff were excluded by his policy’s virus exclusion. In both cases, the plaintiffs were granted leave to amend the pleadings to correct the deficiencies cited in the opinions. On February 11, 2021, the plaintiffs in Colgan [filed](#) a notice of intent not to file an amended complaint in order to appeal to the Ninth Circuit. Plaintiff requested the case be dismissed per the court’s January 26 order. The case was dismissed with prejudice on March 3, 2021.

California policyholders can refer to the Department’s [FAQ](#) page on business interruption

claims or contact the Department of Insurance with questions or issues regarding their insurance policy or insurance company at (800) 927-4357 or through the website, [www.insurance.ca.gov](http://www.insurance.ca.gov).

## **DOI Sponsors Legislation that Would Crack Down on Inhumane Conditions in Private Prisons**

On February 8, 2021, Senator Maria Elena Durazo (D-Los Angeles) introduced [SB 334 \(Durazo\)](#), the Private Detention Accountability Act. Sponsored by Commissioner Lara and the Coalition for Humane Immigrant Rights, SB 334 would require all private, for-profit detention facilities and prisons located in California to provide basic health and safety standards for detainees. The bill would mandate that these detention facilities receive insurance coverage from an insurer licensed by the Department. The facility's insurer would then be required to ensure the facility is complying with health and safety requirements. Failure to meet the minimum state, federal, health, and safety standards may result in termination of coverage if the deficiencies are not corrected. Further, the detention facilities affected would be required to submit compliance reports to DOI.

Private prison companies have come under scrutiny for allowing human rights abuses of detainees and for subpar conditions. According to [Human Rights Watch](#), at least fifteen immigrants died while in custody in private California detention facilities from December 2015 to April 2017. In a February 9, 2021 [press release](#), Commissioner Lara stated that the mandates under SB 334 “will shine a light on an industry that has profited from a broken immigration system, and it will enforce the basic dignity that every person in custody deserves.” On May 6, 2020, a person in San Diego County's immigration custody died from COVID-19 while detained at Otay Mesa Detention Center. Since then and throughout the pandemic, the Otay Mesa Detention Center has had at least two major

outbreaks and has been a hotspot for COVID-19 transmission. Commissioner Lara noted that “the pandemic has compounded the dire conditions that immigrants have faced for years in for-profit detention centers and private prisons.”

The Private Detention Accountability Act was introduced shortly after California Governor Gavin Newsom announced that under [AB 32 \(Bonta\) \(Chapter 739, Statutes of 2019\)](#), California will be phasing out private, for-profit prisons and immigration detention centers by 2028. There are five private detention facilities contracted with United States Immigration and Customs Enforcement that continue to operate in California, including Adelanto, Imperial Regional, Mesa Verde, Otay Mesa, and El Centro. According to the sponsor of the bill, SB 334 would require for-profit detention facilities and prisons to adhere to the detention standards of care and confinement set forth in the facility’s contract for operations, in addition to California’s minimum jail standards and all appropriate local and state building, zoning, health, safety, and fire standards.

The bill was amended on April 12, 2021. A hearing on the bill is scheduled for April 20, 2021 before the Senate Judiciary Committee (*see* LEGISLATION).

## **MAJOR PUBLICATIONS**

The following reports/studies/guidelines have been conducted by or about DOI during this reporting period:

- [\*Transgender Healthcare\*](#): Kenneth B. Schnoll, DOI General Counsel and Deputy Commissioner, December 30, 2020 (Legal opinion addressing inquiry from Trans Family Support Services, finding that an insurer may not deny coverage for female-to-male chest reconstruction surgery as part of a treatment for gender dysphoria based solely on a patient’s inability to meet a

minimum age threshold. The opinion states that insurers must consider a patient’s specific clinical situation to determine the medical necessity of treatment and failure to do so violates state gender nondiscrimination laws and regulations.).

- [2020 California Insurance Diversity Survey Results](#), California Department of Insurance, November 2020 (Pursuant to [SB 534 \(Bradford\) \(Chapter 249, Statutes of 2019\)](#)), provides 2019 data from 260 insurance companies (comprising 90% of the total market share); reveals from among at least 1,300 board seats surveyed, nearly 80% were occupied by Caucasians, and 70% identified as men; less than 1% of board members publicly identified as LGBT and those from historically underrepresented communities continue to remain disproportionately low.). [see [25:1 CRLR 198–199](#)]

- [Bulletin 2021-03: Premium Refunds, Credits, and Reductions in Response to COVID-19 Pandemic](#), March 11, 2021 (Bulletin from Commissioner Lara to all admitted and nonadmitted property and casualty workers’ compensation insurers ordering them to 1) do more to return additional premium relief from March 2020 forward, and report these additional premium returns to the Department commensurate with continuing reductions in the exposure to loss for particular lines of insurance; 2) communicate with policyholders about how they will return premiums, and options available for reducing their ongoing premium; sets forth history of previous bulletins ordering insurance companies to return a portion of premiums due to the decrease in economic activity and decreased risk of loss for insurance companies in light of the COVID-19 pandemic; provides summary of data received by Department pursuant to previous bulletins. According to a [press release](#) accompanying the Bulletin, the Department found that auto insurance companies overcharged consumers despite reduced risk of accidents and loss due to the COVID-19

pandemic; concludes insurance companies returned an average of 9 percent of auto premiums, but should have refunded 17 percent.).

## RULEMAKING

The following is a status update on recent rulemaking proceedings that DOI has initiated:

- **Summary Dental Benefits and Coverage Disclosure Matrix:** On January 8, 2021, DOI published [Notice of Proposed Emergency Action](#) to adopt section 2239.10, Title 10 of the CCR to implement the requirements of section 10603.04 of the Insurance Code regarding the SDBC. The Department submitted the emergency regulations to OAL on January 19, 2021, and OAL filed them with the Secretary of State on January 28, 2021, effective immediately pursuant to section 10603.04(f)(2) of the Insurance Code. The Department hosted a [public workshop](#) to draft the final rulemaking text on March 11, 2021 (*see* HIGHLIGHTS).

- **Eyewitness Identification Procedures:** On February 12, 2021, DOI published a [Notice](#) of its intent to adopt sections 2698.22–2698.26, Title 10 of the CCR relating to Eyewitness Identification Procedures as set forth in the [proposed text](#). According to the [Initial Statement of Reasons](#), the Department proposes to adopt these regulations pursuant to section 859.7 of the Penal Code, as added by [SB 923 \(Weiner\) \(Chapter 977, Statutes of 2017\)](#), which requires all law enforcement agencies and prosecutorial entities to adopt regulations for conducting photo lineups and live lineups. The formal rulemaking notice follows the Department’s telephonic public discussion of the proposed regulations on June 18, 2020. [*See* [26:1 CRLR 163](#)] The public comment period expired on March 29, 2021, and the Department held a public hearing on the same day. At this writing, the Department has not taken further action on the proposed rulemaking.

# LEGISLATION

- [SB 334 \(Durazo\)](#), as amended on April 12, 2021, and as it relates to DOI, would add section 679.75 to the Insurance Code to require for-profit detention facilities and prisons operating in California to meet and maintain insurance requirements, including workers' compensation and liability, adhere to all appropriate state and local health, safety, fire and jail standards, and mandate that they obtain coverage from an admitted insurance carrier authorized to operate in California by the state's Department of Insurance. DOI is the sponsor of the bill. According to Commissioner Lara, poor conditions at for-profit detention facilities in California have only been exacerbated by the pandemic and there is little oversight requiring these facilities to adhere to established health and safety standards. This bill would require insurance companies to monitor private for-profit prisons' and detention facilities' compliance with the detention standards of care and other health and safety standards, which in turn will be an effective way for insurance companies to manage their own risks and losses (see HIGHLIGHTS). *[S. Jud]*

- [AB 1158 \(Petrie-Norris\)](#), as introduced on February 18, 2021, and as it applies to DOI, would amend section 10087 of, and add Chapter 13 (commencing with section 679.76) to, the Insurance Code relating to alcoholism or drug abuse. This bill would ensure that licensed drug abuse recovery and treatment facilities and recovery residences that contract with the government maintain minimum insurance coverage levels and higher standards to protect patients from abuse or injury. According to the author, this bill is intended to impose stronger consumer protections for patients seeking treatment for substance abuse from Recovery or Treatment Facilities or Recovery Residences and their families. *[A. Ins]*

- [SB 72 \(Rubio\)](#), as amended on March 10, 2021, would add section 929.4 to, and add and repeal section 10100.4 of, the Insurance Code. This bill would require the Insurance Commissioner to transmit to the Secretary of the Natural Resources Agency a report that makes recommendations on vegetation management projects based on an analysis of nonrenewal data on insurance policies of residential properties and the perceived risks of the agency, and post the report on the Department’s website, on or before November 1, 2022 and annually thereafter. *[S. Appr]*

- [AB 454 \(Rodriguez\)](#), amended on April 8, 2021, and as it applies to DOI, would add section 10176.65 to the Insurance Code to authorize the Insurance Commissioner to require a health insurer to provide specified payments and support to a provider during and at least 60 days after the end of a declared state of emergency or other circumstance. The bill would require that, when determining the appropriate amount and type of support to be provided, the Commissioner must take specified factors into consideration, including whether the plan providers have received support from the Federal Emergency Management Agency. According to the author, this bill is intended to address the fact that many health care providers suffered financially during the pandemic due to lower patient volume, while health plans have profited from collecting premiums but not having claims to payout. *[A. Health]*

- [SB 11 \(Rubio\)](#), as amended April 12, 2021, would amend sections 10091 and 10094 of the Insurance Code to authorize the Fair Access to Insurance Requirements (FAIR) Plan to sell commercial insurance coverage to farms. Specifically, this bill would exclude from “farm risks” a farm’s equipment or permanent structures used primarily for the production of commercial agricultural commodities or livestock. According to the sponsor, the California Farm Bureau

Federation, unlike homeowners and many business property owners, California's commercial farms and ranches do not have access to basic property insurance provided by the California FAIR plan. This bill would clarify insurance law to ensure that certain permanent structures on farms are eligible for basic insurance. *[S. Floor]*

- [AB 32 \(Aguiar-Curry\)](#), as amended on February 12, 2021, and as it applies to DOI, would amend section 10123.855 of the Insurance Code to require health care services furnished by an enrolled clinic through telehealth to be reimbursed by Medi-Cal on the same basis as those services are reimbursed if furnished in person. According to the author, this bill would extend the telehealth flexibilities that were put in place during the COVID-19 pandemic and ensure that these services are available to patients, regardless of their insurance. It would also help individuals who have geographic, transportation, childcare, or work-related concerns be able to access affordable and reliable access to healthcare. *[A. Health]*

- [AB 97 \(Nazarian\)](#), as amended March 30, 2021, and as it applies to DOI, would amend section 10176.61 of the Insurance Code to prohibit a health insurance policy from imposing a deductible on an insulin prescription drug. According to the author, this bill is intended to address the burden of the high cost of insulin on individuals with diabetes who require insulin to live. *[A. Health]*

- [AB 342 \(Gipson\)](#), as amended March 25, 2021, and as it relates to DOI, would add section 10123.207 to the Insurance Code. The bill would prohibit a health insurance policy from imposing cost-sharing on an individual who is between 50 and 75 years of age for colonoscopies conducted for specified purposes. The bill would also provide that it does not require a health

insurance policy to provide benefits for items or services delivered by an out-of-network provider and does not preclude a health insurer from imposing cost-sharing requirements for items or services that are delivered by an out-of-network provider. According to the author, this bill, which is sponsored by the American Cancer Society Cancer Action Network and the California Colorectal Cancer Coalition, will remove cost barriers to colonoscopies, helping to catch cases of colorectal cancer earlier and improving survival. *[A. Appr]*

- [AB 347 \(Arambula\)](#), as amended April 8, 2021, and as it relates to DOI, would amend sections 10123.191, 10123.197, and 10123.201 of the Insurance Code to establish standards for exceptions to “step therapy,” where patients are required to try a specified drug and fail before coverage is granted for the prescribed drug. Specifically, this bill would require a health insurer to expeditiously grant a step therapy exception if specified criteria are met; authorize an insured to file an appeal of a prior authorization or the denial of an exception request; require a health insurer to designate a clinical peer to review; require a health insurer to annually report specified information about the exception and prior authorization requests to DOI, and deem a prior authorization request or step therapy exception request to have been granted if a health insurer fails to send an approval or denial within a specified timeframe. According to the author, health insurers use utilization management solely based on cost, which limits a health care provider’s ability to tailor care to individual patient needs, and more than 20 states have implemented standard exceptions to step therapy. *[A. Appr]*

- [AB 493 \(Wood\)](#), as introduced on February 8, 2021, would amend sections 10112.27, 10198.7, 10753.05, 10753.14, 10965.3, and 10965.9 of the Insurance Code to codify certain

provisions of the federal Patient Protection and Affordable Care Act (PPACA) into California law. Specifically, the bill would codify the requirement to provide coverage of essential health benefits; the prohibition on imposing preexisting condition provisions on individuals, the requirement for a health insurer to fairly and affirmatively offer, market, and sell all of the insurer's health benefit plans sold in the individual and small group market, and the requirement to establish only specified rating criteria in the individual and small group markets. According to the author, the purpose of the bill is to ensure that these provisions of the PPACA remain in California law in light of the United States Supreme Court's upcoming consideration of a case that may strike down the federal legislation in part of in its entirety. *[S. RLS]*

- [AB 457 \(Santiago\)](#), as amended on April 8, 2021, and as it applies to DOI, would add section 10123.856 to the Insurance Code, to enact the Protection of Patient Choice in Telehealth Provider Act. Specifically, the bill would require a health insurer to arrange for the provision of service via telehealth to an insured through a third-party corporate telehealth provider only if the service is not available to the insured via telehealth through a contracting individual health professional, a contracting clinic, or a contracting health facility, consistent with existing timeliness standards when specified conditions are met. According to the author, this bill would make sure patients have all the information they need to make informed decisions when accessing telehealth services from direct-to-consumer third-party providers. *[A. Health]*

- [AB 570 \(Santiago\)](#), as amended on March 18, 2021, and as it applies to DOI, would amend sections 10700, 10753, 10755, and 10965 of, and to add section 10278.1 to, the Insurance Code to require a group or individual health insurance policy issued, amended, or renewed on or after

January 1, 2022, that provides dependent coverage, to make that coverage available to a qualified dependent parent or stepparent. The bill would also expand the definition of “dependent” for an individual or small employer health insurance policy to include a qualified dependent parent or stepparent. According to the author, this bill would provide health coverage to more Californians by ensuring that dependent parents, including undocumented immigrants, are covered, and by allowing adult children to add their dependent parents to their health care plans, working families will save a significant amount each year on healthcare costs. *[A. Health]*

- [AB 752 \(Nazarian\)](#), as amended April 15, 2021, and as it applies to DOI, would add section 10123.204 to the Insurance Code to require a health insurer to furnish specified information in real-time about a prescription drug upon request by an insured or their health care provider. The bill would also prohibit a health insurer from restricting a health care provider from sharing the information furnished about the prescription drug or penalizing a provider for prescribing a lower-cost drug. According to the author, information about prescription drugs will help consumers make better-informed choices about costs, allow pharmacy benefit managers to better negotiate prices, and therefore reduce the cost of prescription drugs for consumers. *[A. Appr]*

- [AB 935 \(Maienschein\)](#), as introduced February 17, 2021, and as it relates to DOI, would add s 10123.868 to the Insurance Code to establish the Mothers and Children Mental Health Support Act of 2021 and require health insurers by July 1, 2022, to provide access to a telehealth consultation program that meets specified criteria and provides providers who treat children and pregnant and certain postpartum persons with access to a mental health consultation program. According to the author, given the prevalence of maternal and children’s mental health issues, which

has been exacerbated by the pandemic, this bill aims to increase the capacity of screening primary care providers to treat mental health disorders and open access to mental health treatment. *[A. Health]*

- [AB 1162 \(Villapudua\)](#), as introduced February 18, 2021, and as it applies to DOI, would amend sections 10112.95, 10123.13, and 10123.147 of, and add section 10123.146 to, the Insurance Code to require a health insurer to provide access to medically necessary health care services to its insureds that are displaced or otherwise affected by a state of emergency. The bill would also allow the Department to suspend requirements for prior authorization during a state of emergency. According to the author, this bill would modernize the law to prevent unnecessary payment delays to hospitals and other healthcare providers and ensure adequate finances to secure all things patients need during emergencies such as the COVID-19 pandemic. *[A. Health]*

- [AB 1468 \(Cunningham\)](#), as introduced February 19, 2021, and as it applies to DOI, would amend section 10123.135 of, and add section 10123.75 to, the Insurance Code to require a health insurer that implements an automated prior authorization system to use evidence-based clinical guidelines to program the system and to make the algorithms used for the system available for download. The bill would also require an insurer that implements an automated prior authorization system to ensure that a licensed health care professional makes the decision to deny or modify a request by examining the request specific to the enrollee and does not simply ratify an automated response. According to the author, this bill is designed to address the practice of third parties attempting to control utilization of physical therapy and other services and denying care that was determined to be medically necessary by a patient's health care provider. *[A. Health]*

- [AB 1520 \(Levine\)](#), as amended April 14, 2021, and as it applies to DOI, would amend section 10123.83 of the Insurance Code to prohibit a health insurance policy from applying cost-sharing for specified screening services for prostate cancer for an insured who is 55 years of age or older, or is 40 years of age or older and is a high risk, as determined by their health care provider. [*A. Health*]
- [SB 221 \(Wiener\)](#), as amended March 22, 2021, section 10133.53 of, and to add section 10133.54 to, the Insurance Code to codify the regulations adopted by the Department to provide timely access standards for insurers for non-emergency health care services. The bill would require a health insurer to ensure that appointments with nonphysician mental health and substance use disorder providers are subject to the timely access requirements. [*S. Appr*]
- [SB 242 \(Newman\)](#), as amended April 13, 2021, and as it relates to DOI, would add section 10120.35 to the Insurance Code to require a health insurer to contract with its health care providers to reimburse, at a reasonable rate, their business expenses that are medically necessary to comply with a public health order to render treatment to patients, to protect health care workers, and to prevent the spread of diseases causing public health emergencies. The bill contains an urgency clause; if passed, it would take effect immediately. [*S. Appr*]
- [SB 245 \(Gonzalez\)](#), as amended April 12, 2021, and as it applies to DOI, would add section 10123.1961 to the Insurance Code to prohibit an individual or group policy of disability insurance that is issued, amended, renewed, or delivered on or after January 1, 2022, from imposing a deductible, coinsurance, copayment, or any other cost-sharing requirement on coverage for all

abortion and abortion-related services. According to the author, this bill would ensure that no Californian is denied their right to abortion services due to the cost. *[S. Appr]*

- [SB 250 \(Pan\)](#), as amended March 11, 2021, and as it applies to DOI, would add sections 10112.93 and 10123.136 to the Insurance Code to authorize the Commissioner to review an insurer’s clinical criteria, guidelines, and utilization management policies to ensure compliance with existing law. If the criteria and guidelines are not in compliance, the bill would require the Commissioner to issue corrective action and to send the matter to enforcement if necessary. According to the author, COVID-19 has shown the impact that traditional health administrative procedures have on delaying access to care, and this bill would address that delay by creating a simpler billing process for patients. *[S. Appr]*

- [SB 255 \(Portantino\)](#), as introduced January 26, 2021, and as it applies to DOI, would amend section 10753.05 of the Insurance Code. This bill would authorize an association of employers to offer a large group health insurance policy consistent with the Employment Retirement Income Security Act of 1974 (ERISA) if certain requirements are met. According to the author, this bill would help prevent freelance employees in the entertainment industry from losing their insurance while ensuring high insurance standards. *[S. Health]*

- [SB 280 \(Limón\)](#), as introduced February 1, 2021, would add sections 10112.281 and 10112.282 to the Insurance Code to require a large group health insurance policy issued, amended, or renewed on or after July 1, 2022, to cover medically necessary basic health care services, and prohibit discrimination based on race, color, national origin, disability, age, sex, gender identity,

sexual orientation, expected length of life, degree of medical dependency, quality of life, or other health conditions with respect to large group insurance policies. *[S. Appr]*

- [SB 283 \(Gonzalez\)](#), as amended March 10, 2021, would amend sections 799.03, 799.05, 799.08, and 799.10 of the Insurance Code to, after January 1, 2023, prohibit a life or disability income insurer from considering an applicant's occupation in determining whether to require a HIV test. The bill would also prohibit insurers from limiting benefits payable for a loss caused by or contributed to by HIV or AIDS and would clarify the length of time that one may be imprisoned for a misdemeanor conviction for willful, negligent, or malicious disclosure of HIV test results to a third party. In a statement supporting the bill, the DOI writes that this bill would strengthen the Equal Insurance HIV act of 2020 by, among other things, prohibiting insurers from declining an insurance application or enrollment-based solely on a positive HIV test. According to the Department, insurance application denials have been based on outdated survival statistic bias that allows discrimination against individuals who are HIV-positive based on test results only, not considering other health and wellness factors. *[S. Floor]*

- [SB 306 \(Pan\)](#), as amended March 24, 2021, and as it applies to DOI, would add section 10123.204 to the Insurance Code to require a health insurance policy issued, amended, renewed, or delivered on or after January 1, 2022, to provide coverage for home test kits for sexually transmitted diseases (STDs) and the laboratory costs for processing those kits, since home test kit coverage has been limited due to the COVID-19 pandemic. According to the author, this bill would address the broader problem of the disproportionate impact of STDs on California's youth, people of color, and gay, bisexual, and transgender people. *[S. BP&ED]*

- [SB 368 \(Limón\)](#), as amended March 22, 2021, and as it applies to DOI, would add section 10112.281 to the Insurance Code to require health insurers to monitor an insured’s accrual balance toward their annual deductible and out-of-pocket maximum for covered benefits. This bill would allow an insured to request their most up-to-date accrual balances from their health insurer at any time, because, according to the author, no state law currently requires health insurers to inform consumers about where their accrual balance falls. *[S. Appr]*

- [SB 428 \(Hurtado\)](#), as introduced February 12, 2021, and as it applies to DOI, would add section 10123.51 to the Insurance Code, and would require that health insurance policies issued, amended, or renewed on or after January 1, 2022 provide coverage for adverse childhood experiences screenings. Adverse childhood experiences, according to the author, are related to a decline in an individual’s long-term health outcomes, and this bill seeks to alleviate these outcomes. *[S. Health]*

- [SB 510 \(Pan\)](#), as amended April 12, 2021, and as it applies to DOI, would add sections 10110.7 and 10110.75 to the Insurance Code, to require a disability insurance policy that provides coverage for hospital, medical, or surgical benefits, to cover the costs for health care services related to the testing for COVID-19, or a future pandemic disease when declared a public health emergency by the Governor of the State of California and would prohibit that policy from imposing cost-sharing or prior authorization requirements for that coverage. According to the author, this bill aims to counteract problems with insurers and providers inappropriately charging insureds for COVID-19 testing. *[S. Appr]*

- [SB 523 \(Leyva\)](#), as amended March 16, 2021, and as it applies to DOI, would amend section 10123.196 of the Insurance Code to prohibit a religious employer from discriminating or

retaliating against an employee for independently obtaining contraceptives outside of the employer’s policy. According to the author, this bill would help to modernize and expand California’s contraceptive equity laws to reduce structural inequities people face in attempting to access birth control. *[S. Health]*

- [SB 535 \(Limón\)](#), as introduced February 17, 2021, and as it applies to DOI, would amend section 10123.20 to the Insurance Code to prohibit an individual or group health insurance policy issued, amended, delivered, or renewed on or after January 1, 2022, from requiring prior authorization for biomarker testing for an enrollee or insured with advanced or metastatic stage 3 or 4 cancer. According to the author, this bill would improve access to targeted therapy for advanced cancer patients. *[S. Health]*

- [SB 562 \(Portantino\)](#), as amended March 15, 2021, and as it applies to DOI, would amend section 10144.51 of the Insurance Code. This bill would revise the definition of behavioral health treatment to require that the services and treatment programs provided be based on behavioral, developmental, relationship-based, or other evidence-based models. It would also expand the definition of a “qualified autism service professional” to include behavioral service providers who meet specified educational and professional or work experience qualifications. According to the author, changes to the existing law are needed to ensure that Californians with autism spectrum disorder will receive coverage for medically necessary treatments. *[S. Health]*

- [SB 568 \(Pan\)](#), as introduced February 18, 2021, and as it applies to DOI, would add section 10123.1934 to the Insurance Code. This bill would prohibit a health insurance policy issued, amended, or renewed on or after January 1, 2022, from imposing a deductible requirement for a

covered prescription drug and certain equipment and supplies for the management and treatment of insulin used to treat chronic disease. According to the author, this bill aims to level out cost-sharing throughout the year by eliminating deductible requirements for patients with chronic diseases. [*S. Health*].

- [SB 655 \(Bradford\)](#), as introduced on February 19, 2021, is a DOI-sponsored bill that would amend sections 926, 926.1, 927, 927.2, and 927.3 of the Insurance Code to decrease the reporting threshold for required participation in the Department’s supplier diversity and governing board diversity surveys. Specifically, the bill would lower the threshold from \$100 million in California written premiums to \$75 million and would require submission of a board diversity policy statement. Finally, the bill would encourage California Organized Investment Network (COIN) participating insurers to use diverse investment managers. According to the author, DOI’s release of its [2020 California Insurance Diversity Survey Results](#) reveals disconcerting disparities in boardrooms across 260 insurance companies. This bill would build upon California’s efforts to improve diversity in the insurance industry’s highest governing levels by requiring more companies to participate and include measurable goals in the California Insurance Diversity Survey. [*S. Jud*]

- [SB 718 \(Bates\)](#), as amended March 9, 2021, and as it applies to DOI, would amend section 10753.05 of the Insurance Code. This bill would authorize an association of employers to offer a large group health insurance policy to small group employer members of the association consistent with ERISA if certain requirements are met. In the author’s opinion, this bill would allow small emerging companies to compete with global biopharmaceutical or medical device companies by not asking an employee to sacrifice their quality of health coverage for the opportunity to work at a small company. [*S. Health; S. Appr*]

# LITIGATION

- ***Manny Villanueva, et al. v. Fidelity National Title Co.*, 11 Cal. 5th 104 (2021).** On March 18, 2021, the California Supreme Court issued an [opinion](#) that title insurers are not entitled to immunity against lawsuits breaches of California’s Unfair Competition Law for charging unauthorized rates under the Insurance Code. The court also held that the Insurance Commissioner does not have exclusive jurisdiction over unfiled-rate claims. The Supreme Court sided with the trial court and Commissioner Lara’s position in an amicus brief, reversed the appellate court’s decision (*Villanueva v. Fidelity National Title Co.*, 26 Cal. App. 5th 1092, 1136 (2018)), and remanding the matter for further proceedings. The opinion clarifies that consumers do have the right to challenge ratemaking activity and applies beyond the title insurance industry to all insurers.

- ***The People v. Monica Marie Martinez*, 59 Cal. App. 5th 280 (2020).** On December 30, 2020, the Court of Appeal of California, Sixth Appellate District released an [opinion](#) reversing defendant Martinez’s conviction under Insurance Code section 1814, and holding that the Department’s regulation, section 2076, Title 10 of the CCR, is facially invalid as unduly suppressing commercial speech under an intermediate judicial scrutiny standard. Defendant Martinez was convicted for entering into an agreement with an incarcerated person to be notified when an arrest occurred while she was a bail bonds licensee, in violation of section 2076. The court held that the regulation was content-based on its face because it targets a bail licensee’s arrangement or understanding with another to pass specified information to any bail licensee. The Supreme Court granted review on March 17, 2021.

- *Pharmaceutical Research & Manufacturers of America (PhRMA) v. David*, No. 2:17-cv-02573-MCE-KJN, — F.Supp.3d —, 2021 WL 22473 (E.D. Cal. Jan. 4, 2021). On January 4, 2021, the United States District Court for the Eastern District of California filed an [order](#) upholding the legality [SB 17 \(Hernandez\) \(Chapter 603, Statutes of 2017\)](#), a California drug price transparency law (see HIGHLIGHTS).