FLOOR ALERT

Date: September 10, 2007

To: Members, California State Senate

From: American Insurance Association
Association of California Insurance Companies
Insurance Brokers and Agents West
Pacific Association of Domestic Insurance Companies
Personal Insurance Federation of California
Mercury Insurance Group
Civil Justice Association of California
California Chamber of Commerce

Re: AB 1456 (Laird) Medi-Cal Liens
As Amended September 7, 2007
Senate Third Reading
Coalition Position: OPPOSE

Here we go again! The plaintiff attorneys are again attempting to circumvent ordinary legislative process by amending AB 1456, an 11th hour money grab. AB 1456 is the exact same concept that was just rejected by the Legislature in the budget trailer bill, SB 83. Not only is this objectionable, but what this bill tries to do is controversial without any legislative debate or hearing.

The coalition above opposes Assembly Bill 1456, authored by Assembly Member Laird. We are deeply concerned that plaintiff attorneys would attempt to use the language in this bill to overturn *Hanif v. Housing Authority*, 200 Cal.App.3d 635 (1988), which ensures that injured Medi-Cal eligible plaintiffs cannot recover inflated medical damage awards. This affects not only insured defendants, but also governments and self-insured businesses – anyone who could be liable to others.

Under the language in AB 1456, plaintiffs would attempt to bar introduction of evidence showing that a Medi-Cal eligible plaintiff had previously received medical care at the Medi-Cal reimbursement rate. Barring introduction of such evidence would allow plaintiffs to prove their medical "damages" at much higher rates and artificially inflate medical awards – harming our consumers and increasing costs for all.

Previously, Governor Schwarzenegger has vetoed two measures, SB 494 (2004) and SB 399 (2005) that addressed this same issue of inflated medical damages.

For the reasons stated above, **the Coalition respectfully requests your "no" vote on AB 1456. Please see our additional Background information attached.** If you have any questions regarding our position, please contact Michael Gunning at (916) 442-6646.

cc: The Honorable John Laird, Author
Mike Prosio, Chief Deputy Legislative Affairs Secretary, Office of Governor Schwarzenegger
Dan Chick, Chief of Staff, Senate Republican Leader's Office
Kathleen Webb, Office of the Insurance Advisor

4.AB1456-AFl-9-07

Background:

The *Hanif* case examined the issue of whether it is appropriate for a Medi-Cal plaintiff, after already receiving treatment paid for by the Medi-Cal program, to sue for medical damages. In permitting the Medi-Cal recipient's lawsuit for medical damages against a third-party tortfeasor, the *Hanif* court noted that the third party tortfeasor should not benefit from reduced liability because of a previous medical payment through the Medi-Cal system. Allowing a suit for medical damages would properly align fault because the Medi-Cal program could exert a lien on the recovery and obtain reimbursement of the amounts previously paid for treatment of the Medi-Cal plaintiff. Therefore, the *Hanif* court held that a Medi-Cal recipient is entitled to recover from a negligent third-party the actual amount expended for past medical services (i.e., payment of the medical provider at the Medi-Cal reimbursement rate). So, in a lawsuit by a Medi-Cal recipient, the third-party tortfeasor obtains a jury instruction regarding medical damages calculated at the Medi-Cal reimbursement rate.

The language in AB 1456 could eliminate introduction of evidence that a plaintiff's medical care was previously paid by the Medi-Cal system. Without this restraint, a plaintiff could attempt to prove its medical damages using the "usual, customary and reasonable charges" a medical provider supposedly would have charged had the recipient not been a Medi-Cal recipient in the first instance. This change would have a direct impact not only on insurers, but also on self-insured third-parties (retailers, small businesses, and city governments) that are responsible for liability claims. If enacted, this language will lead to higher liability costs due to the inflated medical, as well as "pain and suffering", recoveries that will be available.

As we suggested in 2005 and 2006, the language AB 1456 is an end run and an ill-conceived "solution" to an otherwise legitimate problem related to the public health care system. If enacted, this language would unjustly increase liability costs for individuals, businesses and government entities (including special districts, cities, counties and the State of California) to inflate medical and "pain and suffering" lawsuit recoveries by injured Medi-Cal recipients, their doctors and their lawyers. This use of the budget process represents an attempt to use the tort system to address funding issues in the public health system. This is not sound policy and, moreover, is zero-sum politics at its worst.