FLOOR ALERT

Date:	July 25, 2007
To:	Members, California State Senate
From:	American Insurance Association Association of California Insurance Companies Pacific Association of Domestic Insurance Companies Personal Insurance Federation of California Insurance Brokers and Agents West Mercury Insurance Group
Re:	SB 83 (Committee on Budget and Fiscal Review): Health As Amended July 20, 2007 Senate Unfinished Business **Coalition Position: OPPOSE**

The coalition of trade associations above representing insurers and agents, opposes **Senate Bill 83** authored by the Committee on Budget and Fiscal Review.

Specifically, the coalition opposes Section 70, page 126, lines 8-11:

"The amount paid by Medi-Cal shall not be considered as evidence of past medical damages or for the purpose of reducing the third party's liability to the beneficiary in any third-party action."

We are deeply concerned that plaintiff attorneys would attempt to use this sentence 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 in a lawsuit against an insured tortfeasor. Under the language in SB 83, plaintiffs could 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 costs and artificially inflate medical awards – harming consumers by placing upward pressure on auto insurance rates.

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, **PIFC, AIA, ACIC, IBA WEST, PADIC AND MERCURY respectfully requests that the Senate vote down SB 83 and place its provisions in another trailer bill without the objectionable provision above. Please see our additional Background information on the reverse.** If you have any questions regarding our position, please contact Michael Gunning (916) 442-6646.

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 (i.e., whether this would enable "double recovery" and a resultant windfall for the plaintiff). 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 SB 83 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 in SB 83 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.

cc: Dan Chick, Chief of Staff, Senator Dick Ackerman
Mike Prosio, Chief Deputy Legislative Affairs Secretary, Office of the Governor
Cynthia Bryant, Deputy Chief of Staff and Director, Office of Planning and Research
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Senate Floor Analyses

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