



# Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

State Farm • Farmers • 21st Century Insurance Group • SAFECO • Progressive • NAMIC

## FLOOR ALERT

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**Date:** May 13, 2005

**To:** Members of the California State Senate

**From:** Dan C. Dunmoyer, President  
Rex D. Frazier, Vice President & General Counsel  
Michael A. Gunning, Senior Legislative Advocate  
Michael A. Paiva, Senior Legislative Advocate

**Re:** SB 399 (Escutia): Health Services: Third-Party Liability  
As Amended May 2, 2005  
Senate Third Reading File  
**PIFC Position: Oppose**

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The Personal Insurance Federation of California (PIFC), representing insurers who write over 50% of all personal lines insurance sold in California, including State Farm, Farmers, Safeco, 21<sup>st</sup> Century, Progressive, and NAMIC, **opposes SB 399** by Senator Escutia. If enacted, SB 399 will lead to higher liability costs due to the inflated medical as well as “pain and suffering” recoveries that will be available.

SB 399 would allow a medical provider to charge inflated prices for services provided to a Medi-Cal recipient in the instances where a third-party is responsible for the recipient’s injuries. The bill would do so by permitting a medical provider participating in the Medi-Cal system to place a lien against any judgment or settlement that is reached between a Medi-Cal recipient and the responsible third-party for the provider’s “usual, customary and reasonable charges” the provider supposedly would have charged had the recipient not been a Medi-Cal recipient in the first instance. This 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.

### **“Usual, Customary and Reasonable Charges” Means Inequitable Medical Inflation**

SB 399 would allow a doctor that has already treated an uninsured patient and been paid by Medi-Cal to return the Medi-Cal payment and seek a much higher payment from a responsible third-party or, if available, a liability insurer. Under this system, the provider can seek its “usual, customary and reasonable charges,” a standard which has no basis in reality.

When providers used this “standard” in the workers’ compensation system, it led to medical cost inflation and contributed to escalating costs in the workers’ compensation system. According to the California State Auditor’s report on the workers’ compensation system, dated August 27, 2003, the Auditor concluded that “usual, customary and reasonable” charges “are inflationary and inequitable and that such a payment method distorts the relationship between the resources used to provide the services and the

payment for those services.” Further, the Auditor stated that the “absence of a [medical] fee schedule also has created the unintended consequence of increased administrative costs as a result of case-by-case negotiations between the payers and providers for each procedure.”

SB 399’s “usual, customary and reasonable” standard will achieve the same inflationary and inequitable results in the tort system that previously concerned the Auditor in the workers’ compensation system. SB 399’s new standard is a complete departure from the real world, where providers typically are part of networks with contracted rates or they accept the Medi-Cal reimbursement rate. Under SB 399, providers can charge as much as they can possibly justify even though such charges are not regularly received in their everyday practices. This is the equivalent of forcing businesses, cities and insurers to pay “MSRP” prices when, in reality, nobody pays sticker price.

### **Beneficiaries and their Plaintiff Lawyers Also Want Medical Inflation**

The medical beneficiaries who file suit against third-party tortfeasors after receiving their Medi-Cal treatments, like providers, will attempt to drive up claimed medical costs. Each additional dollar of medical costs received will increase a recipient’s claimed non-economic damages, such as “pain and suffering.” This results in a system where a small group will receive payments grossly in excess of the amount they deserve, at the expense of California consumers, businesses, and local governments.

While SB 399 requires a recipient to bear the burden of justifying his or her medical costs in a third-party action, providers will be all too happy to assist the recipient in generating enormous claimed medical costs. SB 399 contains no mechanism to keep a lid on medical costs, except judges who will be expected to review medical records to determine whether a recipient and provider are claiming “usual, customary and reasonable” costs. Despite the best efforts of judges and an opposing point of view of a tortfeasor, there is no reason to suspect that judges will be able to meaningfully challenge any claimed costs except those that are so excessive as to cause outrage. Judges will not be an effective break upon the medical inflation to be sought by providers, beneficiaries and their plaintiff lawyers under SB 399.

Absent any such effective cost discipline, economic damages sought by Medi-Cal beneficiaries and providers will escalate. Non-economic damages used to pay plaintiff lawyers will skyrocket. Consumers, businesses, local governments and insurers will experience unjustified increases in premiums and liability costs.

### **SB 399 is a Shell-Game to Help Trial Lawyers**

The proponents of SB 399 ask for support by pointing to the state’s low Medi-Cal reimbursement rates for medical providers, as if this justifies placing an excessive burden on businesses, local governments and insurers for excessive economic and non-economic damages. If the true problem is the low Medi-Cal reimbursement rate, state government should raise the Medi-Cal reimbursement rate – not play a shell-game of asking local governments and the business community to bail out the state.

Under federal law, a state Medicaid plan and the plan administering it must ensure that provider reimbursement rates are “reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with State and Federal laws, regulations, and quality and safety standards.” (42 C.F.R. § 447.250(a)) By their arguments, the proponents of SB 399 suggest that California has failed to meet the requirements of federal law to ensure a reasonable rate for an efficiently-operated medical provider.

What is SB 399’s solution to this failure of state funding? Remarkably, it is to allow medical providers and lawyers to seek dramatically higher amounts of money. Instead of attempting to fix the problem cited by the proponents, SB 399 would shift the responsibility elsewhere.

For the reasons stated above, **PIFC opposes SB 399 and urges your “No” vote.** If you have any questions regarding our position, please contact Rex Frazier at (916) 442-6646.

cc: Gloria Ochoa, Senate Judiciary Committee  
Mike Petersen, Senate Republican Caucus  
Cynthia Bryant, Office of the Governor  
Scott Reid, Office of the Insurance Advisor  
Senate Floor Analyses

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