



# 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

## MEMORANDUM

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**Date:** June 16, 2005

**To:** The Honorable Dave Jones, Chair  
Members, Assembly Judiciary Committee

**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  
Assembly Judiciary Committee: June 21, 2005  
**PIFC Position: Oppose**

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 all doctors, surgeons and public hospitals 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 such a medical provider to place a lien on any judgment against or settlement with the responsible third-party for the provider's “usual, customary and reasonable charges” the provider supposedly would have charged had the injured person not been a Medi-Cal recipient in the first instance. This would have a direct impact not only on insurers, but also on consumers, businesses and self-insured third-parties that are responsible for liability claims. In addition, SB 399 would increase liability costs for government entities, including special districts, cities, counties and the State of California.

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

SB 399 would allow a medical provider 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 a May 27, 2003 presentation made to the Conference Committee on Workers’ Compensation, the California State Auditor concluded that “usual,

customary and reasonable” charges “are inflationary and that such a payment method distorts the relationship between the resources used to provide the services and the payment for those services.”

SB 399’s “usual, customary and reasonable” standard will achieve the same inflationary results in the tort system that previously concerned the Auditor in the workers’ compensation system. Under SB 399, providers will, despite their actual costs of care, charge as much as they can possibly justify even though such inflated 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 substantially increase a recipient’s claimed non-economic damages, i.e. “pain and suffering,” which are typically estimated at two or three times the underlying medical recovery. This results in a system where a small group of people will receive payments grossly in excess of the amount they deserve, at the expense of California consumers, businesses, and 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 medical 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 plaintiff lawyers under SB 399.

Absent any such effective cost discipline, economic damages sought by Medi-Cal beneficiaries and providers will escalate due to SB 399. Non-economic damages used to pay plaintiff lawyers will skyrocket. Consumers, businesses, 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 justify this measure and ask for support by pointing to the state’s low Medi-Cal reimbursement rates for medical providers. 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 governments, consumers and the business community to assume responsibility for a state obligation.

For instance, is it good public policy to require a law enforcement agency (police, sheriff or Highway Patrol) to pay excessive liability costs after unintentionally injuring a Medi-Cal recipient? SB 399 would permit this. Is it good public policy to make a county government pay excessive liability costs after a Medi-Cal recipient slips and falls on public property? Or, when a Medi-Cal recipient slips in a retail store? SB 399 would permit this. Should insurance rates for individual consumers and small businesses be forced up so that lawyers can collect excessive “pain and suffering” damages? SB 399 would permit this as well. The real beneficiaries of SB 399 will be the plaintiff lawyers that dramatically increase the amount of non-economic damages and subsequently their contingency fee.

### **The Problems of Public Hospitals Would Still Exist Even if SB 399 Were Enacted**

Even if SB 399 is enacted, public hospitals would still be in financial difficulty. SB 399 does not address the underlying problem of inadequate Medi-Cal reimbursement rates.

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. The proponents would enrich a select few, impose additional costs on the rest of society and, yet fail to address the true plight of public hospitals.

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: Senator Escutia, Author  
Kevin Baker, Assembly Judiciary Committee  
Mark Redmond, Assembly Republican Caucus  
Cynthia Bryant, Deputy Legislative Secretary for the Governor  
Scott Reid, Office of the Insurance Advisor

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