AMENDED IN SENATE APRIL 14, 2009

SENATE BILL No. 156

Introduced by Senator Wright

February 12, 2009

An act to add Section 1873.5 to the Insurance Code, and to amend Section 4603.5 of the Labor Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

SB 156, as amended, Wright. Workers' compensation: Insurance: fraud prevention and detection. Existing law generally provides for the prevention, detection, and investigation of insurance fraud. Under existing law, insurers are required to disclose to an authorized governmental agency information relative to incidents of workers’ compensation fraud, as specified. Existing law also requires employers to post certain notices relative to employer coverage for medical treatments related to workers’ compensation claims, as specified. This bill would authorize the Department of Insurance or a district attorney to convene meetings with insurers to discuss emerging trends and schemes involving insurance fraud and would provide that any person sharing information pursuant to that authorization would be protected from civil liability, as specified. This bill would also require employers to send an employee an explanation of benefits notice when the employer pays for certain medical treatments or services as a result of the employee’s workers’ compensation claim, and would authorize the employer to send a notice about other medical payments, as specified.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California Department of Insurance regulates more than 123 billion dollars ($123,000,000,000) of insurance business annually. Workers’ compensation business accounts for 11.5 billion dollars ($11,500,000,000) of that business as of 2006.

(b) A report issued by the Department of Insurance Advisory Task Force in May of 2008 estimated that insurance fraud of regulated businesses amounts to costs of 15 billion dollars ($15,000,000,000) per year, costing each resident an average of more than five hundred dollars ($500) per year.

(c) Perpetrators of fraud often involved more than one insurance program. An effective antifraud effort requires greater cooperation, coordination, and communication of impacted insurers, services, and regulating agencies.

(d) One effective strategy used by the Medicaid and Medi-Cal programs to combat fraud involves sending an explanation of benefits notice to the recipients of services who can then confirm if fraudulent or excessive billing has occurred. California’s workers’ compensation program does not provide this notice which many employers and law enforcement officials believe could help reduce incidents of fraudulent billing.

(e) It is the intent of the Legislature to enact statutory provisions to provide law enforcement regulators and the regulated community additional insurance antifraud tools and protections.

SEC. 2. Section 1873.5 is added to the Insurance Code, to read:

1873.5. The commissioner, or his or her designated deputy commissioner, a district attorney, or his or her designated deputy district attorney, may convene meetings with representatives of insurance companies to discuss emerging trends and schemes involving insurance fraud. Information shared during the course of those meetings, including possible evidence of other criminal activity not involving insurance fraud, shall be protected by the provisions of Section 1873.2.

SEC. 3. Section 4603.5 of the Labor Code is amended to read:

4603.5. (a) The administrative director shall adopt rules pertaining to the format and content of notices required by this article; define reasonable geographic areas for the purposes of
Section 4600; specify time limits for all such notices, and responses
thereof; and adopt any other rules necessary to make effective the
requirements of this article.

Employers shall notify all employees of their rights under this
section.

(b) (1) It is the policy of this state that an injured worker should
be sufficiently informed of the medical treatments being paid for
by the employer so that the worker can assist in the detection of
erroneous or fraudulent billing.

(2) The administrative director shall adopt regulations specifying
one or more approved forms of an explanation of benefits notice
which will inform an employee of the amount or amounts billed
and the amount or amounts paid by the employer for one or more
treatments, medicines, supplies, devices, or services provided by
the employer pursuant to this article. The notice shall, at a
minimum, include the date of service, the name of the individual
or organization provider of service, and a simple description of
the service. The notice shall encourage the employee to advise the
employer of any discrepancies between the items billed and the
treatments, medicines, supplies, devices, or services received by
the employee.

(3) The administrative director, in consultation with the
Commission on Health and Safety and Workers’ Compensation,
shall adopt regulations specifying the method for selecting the
medical payments for which an employer shall be required to
provide the explanation of benefits notice to the employee. In
developing the selection method, the administrative director and
the commission may consider the cost of providing the notice to
an individual compared to the potential benefit of reducing medical
payment errors and fraud.

(4) An employer shall provide to the employee an explanation
of benefits notice in a form approved by the administrative director
for any medical payment for which a notice is required by
regulations adopted by the administrative director. An employer
may, in its discretion, provide explanation of benefits notices in a
form approved by the administrative director for medical payments
for which a notice is not required. If the employee is represented
by an attorney, the employer shall provide a copy of the notice to
the attorney concurrently with providing the notice directly to the
employee. The employee shall be allowed to reply to the employer.
and the employer shall provide the employee’s attorney with a
copy of the reply if it does not appear that the employee has
provided a copy to the attorney. The employer shall provide the
attorney a summary of the reply if the reply is received verbally.